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The President

Proclamation 9165 of September 10, 2014

Patriot Day and National Day of Service and Remembrance, 2014

By the President of the United States of America

A Proclamation

America will never forget the September tragedy that shook our Nation's core 13 years ago. On a day that began like so many others, a clear blue sky was pierced by billowing black smoke as a wave of grief crashed over us. But in one of our darkest moments, we summoned strength and courage, and out of horrible devastation emerged the best of our humanity. On this solemn anniversary, we pause in remembrance, in reflection, and once again in unity.

On September 11, 2001, nearly 3,000 men, women, and children—friends and neighbors, sisters and brothers, mothers and fathers, sons and daughters—were taken from us with a heartbreaking swiftness and cruelty. As we come together once more to mourn their loss, we also recall how the worst terrorist attack in our history brought out the true character of the American people. Courageous firefighters rushed into an inferno, brave rescue workers charged up stairs, and coworkers carried others to safety. Americans in distant cities and local towns united in common purpose, demonstrating the spirit of our Nation; people drove across the country to volunteer, donors lined up to give blood, and organizations collected food and clothing. And in our Nation's hour of need, millions of young Americans raised in a time of peace volunteered to don the uniforms of our country's military and defend our values around the world.

As we remember all those we lost on that day and the Americans who made the ultimate sacrifice in the wars that followed, we must strive to carry forward their legacy. On this National Day of Service and Remembrance, we take up their unfinished work and pay tribute to their lives with service and charity. Through these acts and quiet gestures, we can honor their memory and reclaim our sense of togetherness. I encourage all Americans to visit *www.Serve.gov* or *www.Servir.gov* to learn more about service opportunities across our country.

In the face of great terror, some turned to God and many found comfort in family and friends—but all Americans came together as one people united not only in our grief, but also in our determination to stand with one another and support the country we love. Today and all days, we remember the patriots who endure in the hearts of our Nation and their families who have known the awful depths of loss. In their spirit, let us resolve to move forward together and rededicate ourselves to the ideals that define our Union as we work to strengthen our communities and better our world.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day,'' and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized ''National Day of Service and Remembrance.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 11, 2014, as Patriot Day and National Day of Service and Remembrance. I call upon all departments,

agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and its Territories and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. Eastern Daylight Time to honor the innocent victims who perished as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–22033
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Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. FAA–2014–0697; Special Conditions No. 29–034–SC]

Special Conditions: AgustaWestland, AW189; Use of 30-Minute All Engines Operating (AEO) Power Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the AgustaWestland Model AW189 helicopter. This model helicopter will have the novel or unusual design feature of a 30-minute all engines operating (AEO) power rating, generally intended to be used for hovering at increased power for search and rescue missions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 4, 2014. We must receive your comments by October 30, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0697 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room @12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Haight, Rotorcraft Standards Staff, ASW–111, Rotorcraft Directorate, Aircraft Certification Service, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5204; facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined that notice and opportunity for public comment are impractical because we do not expect substantive comments, and because this special condition only affects this one manufacturer. We also considered that these procedures would significantly delay the issuance of the design approval, and thus, the delivery of the affected helicopter. Since the public comment process would significantly delay delivery of the AgustaWestland Model AW189 helicopter, the FAA finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

While we did not precede this with a notice of proposed special conditions, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

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

Background and Discussion

On January 31, 2012 AgustaWestland applied for a Type Certificate for the new model AW189. The AW189 is a Transport Category, 14 CFR part 29, twin engine conventional helicopter designed for civil operations. This model will be certificated with Category A performance and under both single and dual pilot instrument flight rules, powered by two General Electric CT7–2E1 engines with a dual channel Full Authority Digital Engine Control system, have five main rotor blades, a maximum gross weight of 18,300 pounds, and a velocity not to exceed 169 knots. The AW189 model will have an integrated modular avionics suite with four 8x10 inch multi-function displays that are night vision goggle compatible, along with a 4-axis automatic flight control system. This helicopter will be capable of carrying a maximum of 19 passengers and 2 crew members. Its initial customer base will be offshore oil and Search and Rescue operations.

AgustaWestland proposes that the AW189 model use a novel and unusual design feature, which is a 30-minute AEO power rating. 14 CFR 1.1 defines ''rated takeoff power'' as limited in use to no more than 5 minutes for takeoff operation. The use of takeoff power for 30 minutes will require special airworthiness standards, known as special conditions, to address the use of this 30-minute AEO rating and its effects on the rotorcraft. The use of this power will be limited to 30 minutes. These special conditions will add requirements to the existing airworthiness standards in 14 CFR

29.1049 (Hovering cooling test procedures), § 29.1305 (Powerplant instruments), and § 29.1521 (Powerplant limitations).

For the AW189 model helicopter, the European Aviation Safety Agency has issued Certification Review Item E–07, which documents the special conditions.

The following is a summary of the final special conditions:

(a) In addition to the requirements of § 29.1049, the aircraft cooling effects due to use of the 30-minute AEO power rating versus the Takeoff (5-minute) rating must be accounted for in the testing.

(b) In addition to the requirements of § 29.1305, since this new 30-minute AEO power rating has a time limit associated with its use, the pilot must have the means to identify:

(1) When the rated engine power level is achieved,

(2) when the event begins,

(3) when the time interval expires, and

(4) when the cumulative time in one flight is reached.

(c) In addition to the requirements of § 29.1521, this new 30 minute AEO power rating must be limited to not more than 30 minutes per use. This new rating will allow use of power above maximum continuous power (MCP) for 30 minutes.

(d) Furthermore, the model AW189 rotorcraft flight manual must include limitations on use of the 30-minute AEO power rating, which state that continuous use above MCP take-off power is limited to 30 minutes.

Type Certification Basis

Under 14 CFR 21.17, AgustaWestland must show that the AW189 model helicopter meets the applicable provisions of part 29, as amended by Amendment 29–1 through 29–52, dated April 5, 2010. The model AW189 certification basis date is the May 12, 2011, date of application to EASA.

The Administrator has determined that the applicable airworthiness regulations (that is, 14 CFR part 29) do not contain adequate or appropriate safety standards for the AgustaWestland model AW189 helicopter because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the AgustaWestland model AW189 helicopter must comply with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

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

Novel or Unusual Design Features

The AgustaWestland AW189 model helicopter will incorporate the following novel or unusual design feature:

- A 30-minute AEO power rating.

Applicability

These special conditions are applicable to the AgustaWestland model AW189 helicopter. Should AgustaWestland apply at a later date for an amendment to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of helicopters. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of this feature.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the AgustaWestland model AW189 helicopter. Unless stated otherwise, all requirements in §§ 29.1049, 29.1305, and 29.1521 remain unchanged.

Section 29.1049, Hovering cooling test procedures. In addition to the requirements of this section, for rotorcraft with a 30-minute AEO power rating, the hovering cooling provisions at the 30-minute AEO power rating must be shown—

(a) At maximum weight or at the greatest weight at which the rotorcraft can hover (if less), at sea level, with the power required to hover but not more than the 30-minute power, in the ground effect in still air, until at least 5 minutes after the occurrence of the highest temperature recorded, or until the continuous time limit of the 30-minute AEO power rating if the highest temperature recorded is not stabilized before.

(b) At maximum weight and at the altitude resulting in zero rate of climb for this configuration, until at least 5 minutes after the occurrence of the highest temperature recorded, or until the continuous time limit of the 30-minute AEO power rating if the highest temperature recorded is not stabilized before.

Section 29.1305 Powerplant instruments, at Amendment 29–40. In addition to the requirements of this section, for rotorcraft with a 30-minute AEO power rating, a means must be provided to alert the pilot when the engine is at the 30-minute power level, when the event begins, when the time interval expires, and when the cumulative time in one flight is reached.

Section 29.1521 Powerplant limitations, at Amendment 29–41. In addition to the requirements of this section, use of the 30-minute AEO power must be limited to not more than 30 minutes per use. The use of the 30-minute power must also be limited by:

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable turbine inlet or turbine outlet gas temperature (for turbine engines);

(3) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating;

(4) The maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative;

(5) The time limit for the use of the power corresponding to the limitations established in paragraphs (1) through (4) above; and

(6) The maximum allowable engine and transmission oil temperatures, if the time limit established in paragraph (5) above exceeds 2 minutes.

Issued in Fort Worth, Texas, on September 4, 2014.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–21794 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0298; Directorate Identifier 2012–NM–175–AD; Amendment 39–17522; AD 2013–15–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –-315 airplanes. This AD was prompted by reports of dual alternating current (AC) generator failure during flight. The failure was attributed to wire chafing along the wing lower flap shroud. This AD requires revising the maintenance program to incorporate certain tasks for the electrical wiring interconnection system inspection program. We are issuing this AD to prevent failure of both AC generators due to wire chafing, which could result in loss of power to the anti-icing heaters for the elevator horn, engine inlet, and propeller, and consequent ice accumulation in these areas, which could adversely affect the controllability of the airplane.

DATES: This AD becomes effective October 20, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0298;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information referenced in this AD, contact Bombardier, Inc., Q Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The NPRM published in the **Federal Register** on April 11, 2013 (78 FR 21573). The NPRM was prompted by reports of dual alternating current (AC) generator failure during flight. The NPRM proposed to require revising the maintenance program to incorporate certain tasks for the electrical wiring interconnection system inspection program. We are issuing this AD to prevent failure of both AC generators due to wire chafing, which could result in loss of power to the anti-icing heaters for the elevator horn, engine inlet, and propeller, and consequent ice accumulation in these areas, which could adversely affect the controllability of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–25, dated August 28, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The MCAI states:

> There have been several reported occurrences of dual [alternating current] AC Generator failure during flight, resulting in the loss of the variable frequency AC System.
>
> Investigations revealed wire chafing along the wing lower flap shroud due to sagging wiring harnesses resting on the support structure, missing teflon tape at the fairlead locations, and missing grommets. Chafed wires may lead to arcing, local overheating, and AC generator failure. The AC generators provide power to the anti-icing heaters, including elevator horn heater, engine inlet heater and propeller heater. Failure of both AC generators would result in the loss of these systems and poses a safety concern.
>
> This [Canadian] AD mandates the inspection and rectification of the wiring harness installations along the centre wing lower flap shroud.

Required actions include revising the maintenance program by incorporating electrical wiring interconnection system inspection program tasks.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0298-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The Air Line Pilots Association, International stated that it supports the NPRM (78 FR 21573, April 11, 2013).

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, Transport Canada Civil Aviation (TCCA), or Bombardier, Inc.'s TCCA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA

directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

Explanation of Changes to This AD

Paragraph (g) of this AD was revised to state that incorporation of tasks into the maintenance or inspection program, as applicable, must be done in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA DAO. The service information previously referenced in paragraph (g) of the NPRM (78 FR 21573, April 11, 2013) is now referenced as guidance material in Notes 1, 2, and 3 to paragraph (g) of this AD.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 21573, April 11, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 21573, April 11, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 89 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $7,565, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0298;* 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 AD, the MCAI, 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–15–06 Bombardier, Inc.: Amendment 39–17522. Docket No. FAA–2013–0298; Directorate Identifier 2012–NM–175–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by reports of dual alternating current (AC) generator failure during flight. The failure was attributed to wire chafing along the wing lower flap shroud. We are issuing this AD to prevent failure of both AC generators due to wire chafing, which could result in loss of power to the anti-icing heaters for the elevator horn, engine inlet, and propeller, and consequent ice accumulation in these areas, which could adversely affect the controllability of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD: Incorporate tasks for performing a general visual inspection of the wiring and associated electrical wiring interconnection system (EWIS) components into the airplane maintenance or inspection program, as applicable, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA.

Note 1 to paragraph (g) of this AD: For Model DHC–8–100 series airplanes, the instructions provided in de Havilland Dash 8 Maintenance Task Cards 531X1 and 631X1, ''General visual inspection of the wiring and associated electrical wiring interconnection system (EWIS) components,'' in Section 8, ''Electrical Wiring Interconnection System Inspection Program,'' of the Bombardier (de Havilland) Dash 8 Series 100 Maintenance Review Board Report of the Bombardier (de Havilland) Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7, Revision 25, dated February 20, 2012, provides guidance for revising the maintenance program to include general visual inspections of the wiring and associated EWIS components. This service information is not incorporated by reference in this AD.

Note 2 to paragraph (g) of this AD: For Model DHC–8–200 series airplanes, the instructions provided in de Havilland Dash 8 Maintenance Task Cards 531X1 and 631X1, ''General visual inspection of the wiring and associated electrical wiring interconnection system (EWIS) components,'' in Section 8, ''Electrical Wiring Interconnection System Inspection Program,'' of the Bombardier (de Havilland) Dash 8 Series 200 Maintenance Review Board Report of the Bombardier (de Havilland) Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7, Revision 16, dated February 20, 2012, provides guidance for revising the maintenance program to include general visual inspections of the wiring and associated EWIS components. This service information is not incorporated by reference in this AD.

Note 3 to paragraph (g) of this AD: For Model DHC–8–300 series airplanes, the instructions provided in de Havilland Dash 8 Maintenance Task Cards 531X1 and 631X1, ''General visual inspection of the wiring and associated electrical wiring interconnection system (EWIS) components,'' in Section 8, ''Electrical Wiring Interconnection System Inspection Program,'' of the Bombardier (de Havilland) Dash 8 Series 300 Maintenance Review Board Report of the Bombardier (de Havilland) Dash 8 Series 300 Bombardier Maintenance Program Manual PSM 1–83–7, Revision 25, dated February 20, 2012, provides guidance for revising the maintenance program to include general visual inspections of the wiring and associated EWIS components. This service information is not incorporated by reference in this AD.

(h) Initial Task Compliance Time

The initial compliance time for the tasks incorporated into the maintenance or inspection program, as applicable, specified in paragraph (g) of this AD, is at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes with 45,000 total flight hours or more as of the effective date of this AD: Within 1,000 flight hours after the effective date of this AD.

(2) For airplanes with less than 45,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD, but not to exceed 46,000 total flight hours.

(i) No Alternative Actions or Intervals

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

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–25, dated August 28, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0298.

(2) For service information identified in this AD that is not incorporated by reference, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

(l) Material Incorporated by Reference

None

Issued in Renton, Washington, on July 12, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21770 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0216; Directorate Identifier 2013–SW–045–AD; Amendment 39–17964; AD 2014–07–04R1]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising airworthiness directive (AD) 2014–07–04 that published in the **Federal Register** to correct certain errors. AD 2014–07–04 applied to certain Sikorsky Model S–92A helicopters. The range of serial numbers in the Applicability section and a reference to the service information in the Required Actions section of the regulatory text are incorrect. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule is effective September 30, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of May 1, 2014 (79 FR 21385, April 16, 2014).

We must receive comments on this AD by November 14, 2014.

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

Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Caspar Wang, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *caspar.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

AD 2014–07–04, Amendment 39–17818 (79 FR 21385, April 16, 2014), applied to certain Sikorsky Model S–92A helicopters and required, in part, repetitively inspecting each clamp for correct installation. Due to typographical errors when the AD was published, an incorrect serial number and an incorrect reference to the service information appeared in the text of the rule.

Specifically, AD 2014–07–04 included the following under paragraph (a) in the Applicability section: ''This AD applies to Model S–92A helicopters, serial numbers 92006 through 920084, certificated in any category.'' As published, the reference to serial number ''92006'' is incorrect and should be serial number ''920006.''

AD 2014–07–04 also included the following under paragraph (e)(2) in the Required Actions section: ''(2) Within 5 hours TIS, inspect each clamp for correct installation as shown in Figures 1 through 14 of Sikorsky Aircraft Corporation Alert Service Bulletin No. 92–20–001, dated October 27, 2005 (ASB). If clamps are incorrectly installed or missing, before further flight, install clamps by following the Accomplishment Instructions, paragraphs 3.A.(4) through 3.A.(17) of the ASB.'' As published, the reference to ''Figures 1 through 14'' is incorrect because there are only 13 figures in the service information.

The FAA has determined that it is appropriate to take action to revise AD 2014–07–04 to correct the serial numbers and figure reference. This revision ensures that this AD only applies to those aircraft subject to the unsafe condition and that it is possible for operators to comply with the AD by referencing the correct portions of the service information.

No other part of the preamble or regulatory information has been changed. The final rule is being reprinted in its entirety for the convenience of affected operators.

Impact of the Correction

Since this action reduces the number of helicopters to which the AD is applicable and corrects an obvious error in referencing the service information, it has no adverse economic impact and imposes no additional burden on any person. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–07–04, Amendment 39–17818 (79 FR 21385, April 16, 2014), and by adding the following new AD:

2014–07–04R1 Sikorsky Aircraft Corporation: Amendment 39–17964; Docket No. FAA–2014–0216; Directorate Identifier 2013–SW–045–AD.

(a) Applicability

This AD applies to Model S–92A helicopters, serial numbers 920006 through 920084, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly installed clamp that does not provide adequate clearance to prevent chafing between the high voltage electrical lines and the hydraulic hoses. This condition could result in a fire in an area of the helicopter without extinguishing capability and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD revises AD 2014–07–04, Amendment 39–17818 (79 FR 21385, April 16, 2014).

(d) Effective Date

This AD becomes effective September 30, 2014.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 5 hours time-in-service, inspect the electrical wires and the hydraulic lines in the upper deck of the helicopter for chafing between electrical wires and hydraulic lines. If there is chafing between electrical wires and hydraulic lines, before further flight, replace the unairworthy wires or lines with airworthy wires or lines.

(2) Within 5 hours TIS, inspect each clamp for correct installation as shown in Figures 1 through 13 of Sikorsky Aircraft Corporation Alert Service Bulletin No. 92–20–001, dated October 27, 2005 (ASB). If clamps are incorrectly installed or missing, before further flight, install clamps by following the Accomplishment Instructions, paragraph 3.A.(4) through 3.A.(17) of the ASB.

(3) After each maintenance that requires removing clamps, comply with paragraphs (f)(1) and (f)(2) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Caspar Wang, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7799; email *caspar.wang@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of

the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 2910 Main Hydraulic System.

(i) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 1, 2014 (79 FR 21385, April 16, 2014).

(i) Sikorsky Aircraft Corporation Alert Service Bulletin No. 92–20–001, dated October 27, 2005.

(ii) Reserved.

(4) For Sikorsky Aircraft Corporation service information identified in this AD, contact Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email *sikorskywcs@sikorsky.com.*

(5) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on August 21, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–21880 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0929; Directorate Identifier 2013–CE–031–AD; Amendment 39–17968; AD 2013–22–14 R1]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

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

ACTION: Final rule.

SUMMARY: We are revising an airworthiness directive (AD) 2013–22–14 for any DG Flugzeugbau GmbH Model DG–1000T glider equipped with a Solo Kleinmotoren Model 2350 C engine. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as engine shaft failure and consequent propeller detachment. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 20, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0929; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 60 01 52, D 71050 Sindelfingen, Germany; telephone: +49 07031–301–0; fax: +49 07031–301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com/.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to DG Flugzeugbau GmbH Model DG–1000T airplanes. The NPRM was published in the **Federal Register** on June 27, 2014 (79 FR 36440), and proposed to revise AD 2013–22–14, Amendment 39–17646 (78 FR 65869, November 4, 2013) (''AD 2013–22–14'').

Since we issued AD 2013–22–14, the manufacturer of the Solo Kleinmotoren Model 2350 C engine has developed an engine modification to restore engine operation.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2013–0217R1, dated May 5, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence of Solo 2350 C engine shaft failure and consequent propeller detachment was reported. The preliminary investigation revealed that the failed shaft was earlier modified in accordance with an approved method.
>
> This condition, if not corrected, could lead to additional cases of release of the propeller from the engine, possibly resulting in damage to the sailplane, or injury to persons on the ground.
>
> To address this potential unsafe condition, EASA issued Emergency AD 2013–0217–E to prohibit operation of the engine.
>
> Since that AD was issued, Solo Kleinmotoren GmbH developed a modification consisting of installing an improved eccenter axle—pulley assembly, allowing to resume operation of the engine.
>
> For the reason described above, this AD is revised to incorporate the optional modification, cancelling the operational restriction.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0929-0003.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 36440, June 27, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 36440, June 27, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 36440, June 27, 2014).

Costs of Compliance

We estimate that this AD will affect 2 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the retained requirement of placing a copy of AD 2013–22–14 into the Limitations section of the aircraft flight manual,

which prohibits engine operation. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this retained requirement on U.S. operators to be $85, or $42.50 per product.

In addition, we estimate that the optional engine modification will take about 1.5 work-hours and require parts costing $100, for a cost of $227.50. If both products of U.S. registry incorporated the engine modification, the cost of the modification on U.S. operators will be $455.

If the engine modification is done, it will also take about .5 work-hour per product to remove the engine operation restriction (copy of AD 2013–22–14) from the Limitations section of the aircraft flight manual. The average labor rate is $85 per work-hour, for a cost of $42.50 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0929; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–17646 (78 FR 65869, November 4, 2013), and adding the following new AD:

2013–22–14 R1 DG Flugzeugbau GmbH: Amendment 39–17968; Docket No. FAA–2013–0929; Directorate Identifier 2013–CE–031–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 20, 2014.

(b) Affected ADs

This AD revises AD 2013–22–14, Amendment 39–17646 (78 FR 65869, November 4, 2013) (''AD 2013–22–14'').

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Model DG–1000T gliders, all serial numbers, that are:

(1) Equipped with a Solo Kleinmotoren Model 2350 C engine; and

(2) certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 72: Engine.

(e) Reason

This AD was prompted by 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 engine shaft failure and consequent propeller detachment. We are issuing this AD to prevent engine shaft failure and propeller detachment, which could result in damage to the glider and injury to persons on the ground.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(4) of this AD.

(1) As of November 25, 2013 (the effective date retained from AD 2013–22–14), do not operate the engine unless the engine is modified following instructions that are approved by the FAA specifically for AD 2013–22–14. Contact the FAA office identified in paragraph (g)(1) of this AD to get more information about obtaining such instructions.

(2) As of November 25, 2013 (the effective date retained from AD 2013–22–14), place a copy of AD 2013–22–14 or this AD into the Limitations section of the aircraft flight manual (AFM).

(3) To remove the prohibited engine operation requirement in paragraph (f)(1) of this AD, modify the engine as specified in the Actions paragraph of Solo Kleinmotoren GmbH Technische Mitteilung Service Bulletin Nr. 4603–14, dated April 28, 2014, unless already modified with FAA-approved instructions as specified in paragraph (f)(1) of this AD.

Note 1 to paragraph (f)(3) of this AD: This service information contains German to English translation. The European Aviation Safety Agency (EASA) used the English translation in referencing the document. For enforceability purposes, we will refer to the Solo Kleinmotoren GmbH service information as the title appears on the document.

(4) Prior to further flight after modifying the engine as specified in paragraph (f)(1) or paragraph (f)(3) of this AD, remove the engine operation restriction (copy of AD 2013–22–14) from the Limitations section of the AFM.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI EASA AD No.: 2013–0217R1, dated May 5, 2014, for related information. You may examine the MCAI in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0929-0003.*

(i) Material Incorporated by Reference

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

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

(i) Solo Kleinmotoren GmbH Technische Mitteilung Service Bulletin Nr. 4603–14, dated April 28, 2014.

(ii) Reserved.

(3) For Solo Kleinmotoren GmbH service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 60 01 52, D 71050 Sindelfingen, Germany; telephone: +49 07031–301–0; fax: +49 07031–301–136; email: *aircraft@solo-germany.com;* Internet: *http://aircraft.solo-online.com.*

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

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

Issued in Kansas City, Missouri, on September 5, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21761 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0423; Directorate Identifier 2012–NM–176–AD; Amendment 39–17714; AD 2013–26–05]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. This AD was prompted by reports of a manufacturing defect in the charge indicator on fire extinguisher bottles. This AD requires repetitive weighing of fire extinguisher bottles having a certain part number, and eventual replacement of those bottles to terminate the repetitive weighing. We are issuing this AD to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, auxiliary power unit, or rear compartment.

DATES: This AD becomes effective October 20, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 20, 2014.

ADDRESSES: You may examine the AD on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0423;* or in person at the Docket Management Facility, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The NPRM published in the **Federal Register** on May 21, 2013 (78 FR 29669). The NPRM was prompted by reports of a manufacturing defect in the charge indicator on fire extinguisher bottles. The NPRM proposed to require repetitive weighing of fire extinguisher bottles having a certain part number, and eventual replacement of those bottles to terminate the repetitive weighing. We are issuing this AD to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, auxiliary power unit, or rear compartment.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0189, dated September 24, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The MCAI states:

> A manufacturing defect of the charge indicator of fire extinguisher bottles has been reported on Dassault Aviation Fan Jet Falcon and Mystère-Falcon 20 series aeroplanes.
>
> The results of the investigations concluded that this defect may lead to corrosion of the charge indicator, causing improper indication of loss of pressure inside the bottle. In addition, the Part Numbers (P/N) of the fire extinguishers and batch numbers of the affected charge indicators have been identified.
>
> This condition, if not detected and corrected, could constitute a dormant failure that might impact the capability to extinguish a fire, either in an engine or the Auxiliary Power Unit (APU) or the rear compartment, possibly resulting in damage to the aeroplane and injury to the occupants.

For the reasons described above, this [EASA] AD requires repetitive weighing of the affected fire extinguishers bottles and, ultimately replacement of the affected bottles with serviceable bottles. In addition, this [EASA] AD prohibits installation of an affected fire extinguisher bottle.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0423-0003.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 29669, May 21, 2013) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, EASA, or Dassault Aviation's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

Explanation of Changes to This AD

Paragraphs (h)(2), (h)(2)(i), (h)(2)(iii), (h)(2)(iv), (i), (i)(1), (i)(3), (i)(4), (j)(1), (j)(3), and (j)(4) of this AD were revised to state that required actions must be done in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. The service information previously referenced in those paragraphs is now referenced as guidance material in notes to the applicable paragraphs.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 29669, May 21, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 29669, May 21, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 185 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $6,400 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to $1,246,900, or $6,740 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0423;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–26–05 Dassault Aviation: Amendment 39–17714. Docket No. FAA–2013–0423; Directorate Identifier 2012–NM–176–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by reports of a manufacturing defect in the charge indicator on fire extinguisher bottles. We are issuing this AD to detect and correct a dormant failure in the fire suppression system, which could result in the inability to put out a fire in an engine, auxiliary power unit (APU), or rear compartment.

(f) Compliance

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

(g) Definitions

For the purposes of this AD, the following definitions apply.

(1) An affected fire extinguisher bottle is any fire extinguisher bottle having a part number (P/N) included in table 1 to paragraph (h) of this AD and having a manufacturing batch number 168 through 200 inclusive on the data plate of the charge indicator.

(2) A serviceable fire extinguisher bottle is any fire extinguisher bottle having a manufacturing batch number lower than 168 or higher than 200 on the data plate of the charge indicator.

(h) Determining Charge Indicator Batch Number

Within 30 days or 100 flight hours after the effective date of this AD, whichever occurs first: Determine the manufacturing batch number for the charge indicator installed on each engine and APU fire extinguisher bottle having a part number included in table 1 to the introductory text of paragraph (h) of this AD, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F20–785, also referred to as 785, dated June 11, 2012 (for Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Dassault Service Bulletin F200–131, also referred to as 131, dated June 11, 2012 (for Model MYSTERE–FALCON 200 airplanes).

TABLE 1 TO THE INTRODUCTORY TEXT OF PARAGRAPH (H) OF THIS AD—PART NUMBERS OF AFFECTED FIRE EXTINGUISHER BOTTLES

Type of bottle—	Part number—
Engine Fire Extinguisher Bottle.	111–1555–324–12A
Engine Fire Extinguisher Bottle.	811456
Engine Fire Extinguisher Bottle.	111–355–32142A
APU Fire Extinguisher Bottle.	111–011–324–12A
APU Fire Extinguisher Bottle.	811475

(1) For fire extinguisher bottles with part numbers that are not included in table 1 to the introductory text of paragraph (h) of this AD, no further action is required by this paragraph.

(2) For any affected charge indicator, as identified in paragraph (g)(1) of this AD: Before further flight, weigh each affected fire extinguisher bottle, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Weigh the fire extinguishers thereafter at intervals not to exceed 12 months until the applicable replacement specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), or (j) of this AD is accomplished. If it is determined that the fire extinguisher weighs less than the lowest weight limit indicated on the fire extinguisher's data plate, before further flight, replace any affected fire extinguisher bottle and charge indicator cartridge with a serviceable part, in accordance with the applicable method specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), or (h)(2)(iv) of this AD.

Note 1 to paragraph (h)(2) of this AD: The instructions specified in Dassault Maintenance Procedure, ''Weighing of Engine Freon Fire Extinguishers,'' (page 601, ''Inspection/Check'') of Subject 26–20–2, ''Extinguishing System—Description and Operation, of Chapter 26, ''Fire Protection,'' in Book 2 of the Dassault Falcon 20 Maintenance Manual, Phase 50, dated October 2011 (for Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes); or Procedure 2, ''Engine and Rear Compartment Extinguisher (14W1–14W2): Weighing'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection,'' in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011 (for Model MYSTERE–FALCON 200 airplanes); provide additional guidance for weighing affected fire extinguisher bottles. This service information is not incorporated by reference in this AD.

(i) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

Note 2 to paragraphs (h)(2)(i), (i), (i)(1), and (j)(1) of this AD: The instructions specified in Dassault Maintenance Procedure, ''Removal of Pyrotechnical Cartridge for Check/Replacement'' (pages 401–403, ''Removal/Installation''), of Subject 26–20–2 ''Extinguishing System—Description and Operation,'' of Chapter 26, ''Fire Protection,'' in Book 2 of the Dassault Falcon 20 Maintenance Manual, Phase 50, dated October 2011, are a source of guidance for the actions specified in paragraphs (h)(2)(i), (i), (i)(1), and (j)(1) of this AD. This service information is not incorporated by reference in this AD.

(ii) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(iii) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the

Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

Note 3 to paragraphs (h)(2)(iii), (i), (i)(3), and (j)(3) of this AD: Procedure 3, ''Engine and Rear Compartment Extinguisher (14W1–14W2): Check/Replacement of Percussion Cartridge,'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection'', in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011, is a source of guidance for paragraphs (h)(2)(iii), (i), (i)(3), and (j)(3) of this AD. This service information is not incorporated by reference in this AD.

(iv) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

Note 4 to paragraphs (h)(2)(iv), (i)(4), and (j)(4) of this AD: Procedure 1, ''Removal/Installation,'' of Falcon 200 Maintenance Requirement Card 171.0, Revised December 2011, of Chapter 26, ''Fire Protection'', in Book 1, ''Work Cards,'' of the Dassault Falcon 200 Maintenance Manual, Revision 30, dated December 2011, is a source of guidance for replacing the fire extinguisher bottle. This service information is not incorporated by reference in this AD.

(i) Repetitive Inspections To Determine if Charge Indicator Cartridge Was Fired

Within 6 months after the effective date of this AD: Do an inspection to determine if the charge indicator cartridge installed on each engine and APU fire extinguisher bottle, as identified in table 1 to the introductory text of paragraph (h) of this AD, was fired, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. Repeat the inspection thereafter at intervals not to exceed 6 months until the replacement specified in paragraph (i)(1), (i)(2), (i)(3), (i)(4), or (j) of this AD is accomplished. If it is determined that any charge indicator cartridge was fired, before further flight, replace the affected fire extinguisher bottle and charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(1) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 2–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(2) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(3) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(4) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(j) Replacement of Fire Extinguisher Bottle and Charge Indicator Cartridge

Unless previously accomplished as specified in paragraph (h) or (i) of this AD: Within 60 months after the effective date of this AD, replace any affected fire extinguisher bottle and charge indicator cartridge, as specified in paragraph (g)(1) of this AD, with a serviceable part, in accordance with the method specified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD, as applicable. Replacement of any affected fire extinguisher bottle and charge indicator cartridge with a serviceable part terminates the repetitive actions specified in paragraphs (h) and (i) of this AD.

(1) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(2) For Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(3) For Model MYSTERE–FALCON 200 airplanes: Replace the charge indicator cartridge with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(4) For Model MYSTERE–FALCON 200 airplanes: Replace the fire extinguisher bottle with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a fire extinguisher bottle having a part number included in table 1 to the introductory text of paragraph (h) of this AD, fitted with a charge indicator having a manufacturing batch number on the data plate of 168 through 200 inclusive.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1137. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0189, dated September 24, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0423-0003.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Dassault Service Bulletin F20–785, also referred to as 785, dated June 11, 2012.

(ii) Dassault Service Bulletin F200–131, also referred to as 131, dated June 11, 2012.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

(5) You may view this service information that is incorporated by reference at the

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

Issued in Renton, Washington, on August 29, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21772 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2014–0273; Airspace Docket No. 14–ANE–2

RIN 2120–AA66

Amendment of Air Traffic Service (ATS) Routes; Northeast ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VOR Federal airways V–93, V–314, and V–471; and RNAV route T–295 in northeastern Maine due to the scheduled decommissioning of the Princeton, ME, VOR facility. In addition, an analysis of the airway structure in that area found that some segments of the affected routes are rarely utilized and are therefore being removed.

DATES: Effective date 0901 UTC, November 13, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9X, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend three VOR Federal airways and one area navigation route in northeastern Maine (79 FR 29138, May 21, 2014). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 71 by modifying the descriptions of VOR Federal airways V–93, V–314, V–471 and RNAV route T–295 due to the planned decommissioning of the Princeton VOR in Maine.

An analysis of the airway structure in northeastern Maine found that some segments of the affected routes airways are rarely utilized. After coordination with Boston Air Route Traffic Control Center, Bangor Airport Traffic Control Tower, and Moncton Center (Canada), the FAA is removing the underutilized segments of the affected routes. The changes are described below.

V–93 extends between Patuxent River, MD, and the intersection of the Princeton, ME, 157° radial and the United States/Canadian border. The FAA is terminating the route at the Bangor, ME, VORTAC (BGR), eliminating the route segments between BGR and the United States/Canadian border.

V–314 extends from Quebec, PQ, Canada, through United States airspace, to St. John, NB, Canada. This action terminates the route at Millinocket, ME, and eliminates the segments between Millinocket, Princeton, ME, and St. John, NB, Canada.

V–471 extends between the intersection of the Princeton, ME, 208° and the Bangor, ME, 132° radials (i.e., the charted BARHA fix) and the intersection of the Houlton, ME, 085° radial and the United States/Canadian border. This action removes the route segment between the Bangor VORTAC and the BARHA fix.

T–295 extends between the LOUIE, MD, fix and the Princeton, ME, VOR. The amended route terminates at Bangor, ME, eliminating the segment between Bangor and Princeton, ME.

VOR Federal airways are published in paragraph 6010(a); and low altitude RNAV routes are published in paragraph 6011, respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways and area navigation route listed in this document will be subsequently published in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation because the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority because it modifies the route structure as required to preserve the safe and efficient flow of air traffic in northeastern Maine.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist

that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 6010(a)—VOR Federal Airways

V–93 [Amended]

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; to INT Wilkes-Barre 037° and Sparta, NJ 300° radials. From INT Sparta 018° and Kingston, NY, 270° radials; Kingston; Pawling, NY; Chester, MA, 12 miles 7 miles wide (4 miles E and 3 miles W of centerline); Keene, NH; Concord, NH; Kennebunk, ME; INT Kennebunk 045° and Bangor, ME, 220° radials; to Bangor.

V–314 [Amended]

From Quebec, PQ, Canada, 99 miles 55 MSL, to Millinocket, ME, excluding the airspace within Canada.

V–471 [Amended]

From Bangor, ME; Millinocket, ME; Houlton, ME; INT Houlton 085° radial and the United States/Canadian border.

* * * * *

Paragraph 6011 United States Area Navigation Routes

T–295 LOUIE, MD TO BANGOR, ME (BGR) [AMENDED]

LOUIE, MD	FIX	(Lat. 38°36′44″ N., long. 076°18′04″ W.)
BAABS, MD	WP	(Lat. 39°19′51″ N., long. 076°24′41″ W.)
Lancaster, PA (LRP)	VORTAC	(Lat. 40°07′12″ N., long. 076°17′29″ W.)
Wilkes-Barre, PA (LVZ)	VORTAC	(Lat. 41°16′22″ N., long. 075°41′22″ W.)
LAAYK, PA	FIX	(Lat. 41°28′33″ N., long. 075°28′57″ W.)
SAGES, NY	FIX	(Lat. 42°02′46″ N., long. 074°19′10″ W.)
SASHA, MA	FIX	(Lat. 42°07′59″ N., long. 073°08′55″ W.)
Keene, NH (EEN)	VORTAC	(Lat. 42°47′39″ N., long. 072°17′30″ W.)
Concord, NH (CON)	VORTAC	(Lat. 43°13′11″ N., long. 071°34′32″ W.)
Kennebunk, ME (ENE)	VOR/DME	(Lat. 43°25′32″ N., long. 070°36′49″ W.)
BRNNS, ME	FIX	(Lat. 43°54′09″ N., long. 069°56′43″ W.)
Bangor, ME (BGR)	VORTAC	(Lat. 44°50′30″ N., long. 068°52′26″ W.)

Issued in Washington, DC, on September 8, 2014.

Ellen Crum,

Acting Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–21801 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

[Docket Number—2014–0009]

RIN 2700–AE10

NASA Protective Services Enforcement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulations by adding a subpart for traffic enforcement regulations, authorities, and procedures at all NASA Centers and component facilities. Changes are being made to align this part with NASA objectives in the protection of its people and property. Establishing a traffic safety program is essential for the protection and security of NASA bases, stations, facilities laboratories and of its aircraft, spacecraft, missiles and similar vehicles and of its real and personal property, including property in the custody of NASA contractors and subcontractors.

DATES: *Effective Date:* September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Charles Lombard, 202–358–0891, *charles.e.lombard.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the **Federal Register** at 79 FR 37252 on July 1, 2014, to amend its regulations by adding a subpart to establish traffic enforcement regulations, authorities, and procedures at all NASA Centers and component facilities. Amendments to this rule aligns Part 1204 with NASA objectives in the protection of its people and property. The proposed rule published on July 1, 2014. No respondents submitted comments on the proposed rule. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011.

II. Regulatory Analysis Section

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because this rule only pertains to NASA employees.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because this rule relates solely to the internal operations of NASA. Therefore, the Office of Management and Budget did not review this rule.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain any information collection requirement that requires approval of the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

This rule relates to agency management or personnel, and therefore the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) does not cover the rule.

Executive Order 13132, Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, NASA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

List of Subjects in 14 CFR Part 1204

Federal buildings and facilities, Security measures.

Accordingly, under the authority of the National Aeronautics and Space Act, as amended, (51 U.S.C. 20113), 5 U.S.C. 301, and 18 U.S.C. 799, NASA amends 14 CFR part 1204 as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

■ 1. Add subpart 11 to read as follows:

Subpart 11—Enforcing Traffic Laws at NASA Centers and Component Facilities

Sec.

1204.1100 Scope of subpart.
1204.1101 Policy.
1204.1102 Responsibilities.
1204.1103 Procedures.
1204.1104 Violations.

Subpart 11—Enforcing Traffic Laws at NASA Centers and Component Facilities

Authority: The National and Commercial Space Program 51 U.S.C. 20132 and 20133 et seq; 5 U.S.C. 301, and 18 U.S.C. 799 (2014).

§ 1204.1100 Scope of subpart.

This subpart establishes policies pursuant to the requirements of National and Commercial Space Programs (51 U.S.C. 20132) authorizing the NASA Administrator to establish such security requirements, restrictions and safeguards as he deems necessary in the interest of national security, under 5 U.S.C. 301, ''Housekeeping statute,'' and 18 U.S.C. 799, making it criminal to violate published NASA regulations. The provisions of this subpart apply to all NASA installations, including NASA Headquarters, NASA Centers, and component facilities. NASA installations refers to all NASA-owned, controlled, or leased property, with exclusive or concurrent Federal jurisdiction, including non-contiguous or unfenced areas and including areas otherwise open to the public at large. These provisions are also applicable to all persons who operate or control a motor vehicle, or otherwise use the streets of a NASA installation, over which the United States exercises exclusive or concurrent legislative jurisdiction.

§ 1204.1101 Policy.

(a) It is NASA policy that an effective, standardized, and comprehensive traffic safety program be established and maintained at all NASA Centers, and component facilities, as prescribed in NASA Procedural Requirement (NPR) 8715.C, NASA General Safety Program Requirements. A traffic safety program is essential for the protection and security of NASA laboratories, stations, base, or other facilities, and for the protection of any of its aircraft, missiles, spacecraft, or similar vehicles, or part thereof, and/or of any property or equipment in the custody of any contractor, subcontractor, or the Administration.

(b) To ensure a safe and secure workplace and to provide better for preservation of life and property, all persons on a NASA Center or component facility shall comply with the vehicular and pedestrian traffic requirements of the installation per this Subpart, and the laws of the state in which the installation is located.

(c) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on NASA-owned, controlled or leased property shall be in possession of a current and valid state or territory issued driver's license and vehicle registration, and the vehicle shall display all current and valid tags and licenses required by the jurisdiction in which it is registered.

(2) Drivers who have had their privilege or license to drive suspended or revoked by any state or territory shall not drive any vehicle in or on property during such period of suspension or revocation.

(3) Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs, including speed limits.

(4) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited.

(5) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, parking continuously in excess of 18 hours without permission, or contrary to the direction of posted signs is prohibited. This section may be supplemented by the Center Director or installation officer in charge from time to time by the issuance and posting of specific traffic directives. When so issued and posted, such directives shall have the same force and effect as if made a part hereof.

(d) Center Directors are hereby delegated authority to determine if their respective Centers require the authority and ability to issue traffic and parking citations, which if implemented, must be in accordance with this Subpart. Should no traffic and parking citation authority and ability be necessary, the Center Director concerned will make a report of same to the Administrator via Associate Administrator for Protective Services. Prior to the effective date of Centers implementing, Centers and Headquarters Operations should transmit their proposed regulations to NASA Office of Protective Services for review and concurrence.

(e) Consistent with arrangements with Federal authorities as each Center and Headquarters may make, violators of such regulations may be issued a District Court Violation Notices for offenses by security officers, including contractor guards. In accordance with this regulation, Centers are authorized to make liaison and such arrangements for appropriate enforcement programs with the cognizant Office(s) of the United States Attorney. Additional information on processing violation notices and liaison necessary is available at: *http://www.cvb.uscourts.gov/.*

(f) A copy of this subpart shall be posted in an appropriate place at each NASA Center or component facility.

§ 1204.1102 Responsibilities.

(a) The Center Directors of NASA installations and the Executive Director for Headquarters Operations over which the United States has exclusive or concurrent legislative jurisdiction, and consistent with the foregoing, are delegated the authority to establish additional vehicular and pedestrian traffic rules and regulations for their installations.

(b) All persons on a NASA Center or component facility are responsible for compliance with locally established vehicular and pedestrian traffic rules and regulations.

§ 1204.1103 Procedures.

The Center Directors and the Executive Director for Headquarters Operations shall issue local policies and procedural requirements, subject to prior NASA Office of Protective Services approval, which will implement this regulation for their respective NASA Centers and component facilities.

§ 1204.1104 Violations.

A person found in violation, on a NASA installation, of any vehicular or pedestrian traffic law, or local installation vehicular or pedestrian traffic rule or regulation made applicable to the installation under the provisions of this subpart, is subject to punishment as provided for by 18 U.S.C. 799 (violation of regulations of NASA).

Nanette Jennings,

NASA Federal Register Liaison Officer.

[FR Doc. 2014–21784 Filed 9–12–14; 8:45 am]

BILLING CODE 7510–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the benefit payments regulation for valuation dates in October 2014 and interest assumptions under the asset allocation regulation for valuation dates in the fourth quarter of 2014. The interest assumptions are used for valuing and paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective October 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@PBGC.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulations are also published on PBGC's Web site (*http://www.pbgc.gov*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for October 2014 and updates the asset allocation interest assumptions for the fourth quarter (October through December) of 2014.

The fourth quarter 2014 interest assumptions under the allocation regulation will be 3.10 percent for the first 20 years following the valuation date and 3.29 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2014, these interest assumptions represent no change in the select period, (the period during which the select rate (the initial rate) applies), a decrease of 0.33 percent in the select rate, and a decrease of 0.37 percent in the ultimate rate (the final rate).

The October 2014 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for September 2014, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during October 2014, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 252, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
252	10–1–14	11–1–14	1.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 252, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
252	10–1–14	11–1–14	1.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for October–December 2014, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October–December 2014	0.0310	1–20	0.0329	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of September 2014.

Philip Hertz,

Deputy General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–21963 Filed 9–12–14; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0714]

RIN 1625–AA08

Special Local Regulation; Frogtown Races, Maumee River; Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation regulating vessel movement in all U.S. navigable waters of the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16. This special local regulated area is necessary to ensure the safety of life and property on navigable waters immediately prior to, during, and immediately after the Frogtown Races. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a portion of the Captain of the Port Detroit zone.

DATES: The regulations in 33 CFR 100.928 will be enforced from 5 a.m. to 7 p.m. on September 27, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST2 Daniel O'Leary, Marine Safety Unit Toledo, 420 Madison Ave. Suite 700, Toledo, OH, 43604; telephone (419) 418–6028; email *daniel.s.oleary@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations listed in 33 CFR 100.928 Special Local Regulation; Frogtown Races, Maumee River, Toledo, OH. This special local regulation will be enforced from 5 a.m. until 7 p.m. on September 27, 2014. This special local regulation will encompass all navigable waters of the United States on the Maumee River, Toledo, OH, from the Norfolk and Southern Railway Bridge at River Mile 1.80 to the Anthony Wayne Bridge at River Mile 5.16.

Under the provisions of 33 CFR 100.928, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for event participants and safety craft. Frogtown participants and event safety vessels will yield right of way to commercial

vessel traffic and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event. The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his on scene representative may be contacted via VHF Channel 16.

Dated: August 22, 2014.

R. Negron,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2014–21979 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–1018]

RIN 1625–AA08

Special Local Regulation; Seattle Seafair Unlimited Hydroplane Race, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the duration of the Seattle Seafair Unlimited Hydroplane Race special local regulation. This change will correctly reflect the time frame published by Seafair, ensuring the effectiveness of this regulation for the entirety of the event as outlined in the Seafair Notice to Boaters. This rule also makes stylistic revision to this Special Local Regulation.

DATES: This rule is effective October 15, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–1018]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Johnny Zeng, Coast Guard Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217–6175, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On July 2, 2001, the Coast Guard published a final rule (66 FR 34822) modifying the regulations in 33 CFR § 100.1301, for the safe execution of the Seattle Seafair Unlimited Hydroplane races on the waters of Lake Washington. On April 14, 2014, an NPRM, Safety Zone, Seattle Seafair Unlimited Hydroplane Race, Seattle, WA, was published. The Coast Guard received no comments on the NPRM and no requests for public meeting. No changes were made to the rule published in the NPRM.

B. Basis and Purpose

Coast Guard District Commanders are authorized to promulgate special local regulations necessary to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the approved regatta or marine parade. This rule makes stylistic revisions and amends the time in which the Special Local Regulation in 33 CFR 100.1301 is effective for each day of the Seafair Unlimited Hydroplane Race event located on Lake Washington, WA. This rule is necessary to ensure appropriate effectiveness of the rule in 33 CFR § 100.1301 by remaining effective during and immediately following the current time of marine event.

C. Discussion of Comments, Changes and the Final Rule

No comments were received by the Coast Guard on this rule. We are supplementing the regulatory text to provide additional information that clarifies our notice procedures.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the amendment of the effective period of the current regulation will be in place for a limited period of time and is minimal in duration.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters covered by the special local regulation while it is in effect. This rule would not have a significant economic impact on a substantial number of small entities because the amendment of the special local regulation would increase the duration in which the rule is in effect for a minimal amount of time.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business,

organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. 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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. 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.

10. Protection of Children From Environmental Health Risks

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the amendment of the special local regulation outlined in 33 CFR 100.1301. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.1301 revise paragraph (a) to read as follows:

§ 100.1301 Seattle seafair unlimited hydroplane race.

(a) This section will only be enforced during times announced by the Captain of the Port. The event, which is one week or less in duration, generally occurs during the last week of July or the first two weeks of August. The Captain of the Port will provide notice of the enforcement of this special local regulation by Notice of Enforcement in the **Federal Register**. Additional information may be available through Broadcast Notice to Mariners and Local Notice to Mariners.

* * * * *

Dated: September 3, 2014.

R.T. Gromlich,

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

[FR Doc. 2014–21981 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2004–19621]

RIN 1625–AA89

Dry Cargo Residue Discharges in the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule; information collection approval.

SUMMARY: The Coast Guard announces that it has received approval from the Office of Management and Budget for an information collection request associated with the January 2014 final rule on the discharge of bulk dry cargo residue on the U.S. waters of the Great Lakes. With this approval, all provisions of the final rule are now fully in effect and can be enforced. The final rule

promotes the Coast Guard's maritime safety and stewardship missions.

DATES: The requirements of 33 CFR 151.66(b)(5), published in the **Federal Register** on January 31, 2014 (79 FR 5261), will be enforceable beginning September 15, 2014.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Rich Walter, Coast Guard; telephone 202–372–3856, email *Richard.W.Walter@uscg.mil.* For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION: On January 31, 2014, the Coast Guard published a final rule titled ''Dry Cargo Residue Discharges in the Great Lakes.'' [1] In this final rule, the Coast Guard implemented new requirements related to the operation of U.S. and foreign vessels carrying bulk dry cargo such as limestone, iron ore, and coal on the U.S. waters of the Great Lakes, and the operation of U.S. bulk dry cargo vessels anywhere on the Great Lakes.

Our final rule delayed the effective date of 33 CFR 151.66(b)(5) because it contains collection of information provisions that require approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. On August 5, 2014, OMB approved the collection and assigned OMB Control Number 1625–0072. Accordingly, we announce that section 151.66(b)(5) is enforceable from September 15, 2014. The approval for this collection of information expires on August 31, 2017. This action completes the rulemaking associated with RIN 1625–AA89 and USCG–2004–19621.

This document is issued under the authority of 5 U.S.C. 552(a).

Dated: September 5, 2014.

J.G. Lantz

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2014–21893 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–04–P

[1] 79 FR 5261 (Jan. 31, 2014).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0271; FRL–9916–50–Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2008 Lead National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective October 15, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0271. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. Background
II. Summary of SIP Revision
III. Final Action
IV. Statutory and Executive Order Review

I. Background

On July 16, 2014, (79 FR 41476), EPA published a notice of proposed rulemaking (NPR) for the State of Kansas. The NPR proposed approval of Kansas' submission that provides the basic elements specified in section 110(a)(2) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 Pb NAAQS.

II. Summary of SIP Revision

On January 13, 2012, EPA received a SIP submission from the state of Kansas that addresses the infrastructure elements specified in section 110(a)(2) for the 2008 Pb NAAQS. This submission addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) of the CAA and the rationale for EPA's proposed action to approve the SIP submission are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Kansas' submission which provides the basic program elements specified in section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 Pb NAAQS, as a revision to the Kansas SIP. This action is being taken under section 110 of the CAA. As discussed in each applicable section of the NPR, EPA is not acting on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D and on the visibility protection portion of section 110(a)(2)(J).

VI. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, and Reporting and recordkeeping requirements.

Dated: August 28 2014.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart R—Kansas

■ 2. In § 52.870, in paragraph (e), the table is amended by adding entry (37) in numerical order at the end of the table to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	* *		* *	* *
(37) Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	Statewide	1/13/2012	9/15/2014 [*Insert Federal Register citation*].	This action addresses the following CAA elements: 110 (a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–21819 Filed 9–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0659; FRL–9916–43–Region–8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to the Wyoming Air Quality Standards and Regulations; Ambient Standards for Nitrogen Oxides and for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Wyoming. The revision affects Wyoming's Air Quality Standards and Regulations (WAQSR) regarding ambient standards for nitrogen oxides (NO_X) and for ozone. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective November 14, 2014 without further notice, unless EPA receives adverse comment by October 15, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0659, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-Mail: pratt.steven@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0659. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6575, *pratt.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CFR* mean the Code of Federal Regulations.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *NAAQS* mean National Ambient Air Quality Standard.

(v) The initials NO_X mean or refer to oxides of nitrogen (NO, NO_2, NO_3).

(vi) The initials *ppb* mean or refer to parts per billion.

(vii) The initials *ppm* mean or refer to parts per million.

(viii) The initials *SIP* mean or refer to State Implementation Plan.

(ix) The initials *WAQSR* mean Wyoming Air Quality Standards and Regulations.

(x) The words *Wyoming* and *State* mean the State of Wyoming.

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background of Wyoming's Submissions

On January 30, 2013 the State of Wyoming submitted to EPA a formal revision package detailing portions of rulemaking R–20 as revisions to Wyoming's SIP. These revisions amend the WAQSR. In particular, Wyoming has revised Chapter 2, ''Ambient Standards,'' section 3, ''Ambient standards for nitrogen oxides,'' section 6, ''Ambient standards for ozone,'' and section 12, ''Incorporation by reference.''

The Wyoming Environmental Quality Council made these changes by amending WASQR Chapter 2, including sections 3, 6 and 12, via rulemaking R–20 on October 5, 2012. In accordance with the Wyoming Administrative Procedures Act, the revisions were forwarded to the Wyoming Governor's Office where they were approved, and then transmitted to the Wyoming Secretary of State's office and became effective on December 19, 2012. All necessary State reviews and approvals have been secured.

Chapter 2, section 3, the nitrogen oxides ambient standard, was revised to make the State nitrogen oxides standard consistent with the federal regulations, but no more stringent than federal standards. Chapter 2, section 6, the ozone ambient standard, was revised to make the State ozone standard consistent with the federal regulations, but no more stringent than federal standards. Section 12 of Chapter 2, ''Incorporation by reference,'' was revised to adopt by reference Part 50—National Primary and Secondary Ambient Air Quality Standards, from the Code of Federal Regulations (CFR) revised as of July 1, 2011.

III. EPA's Evaluation of Wyoming's Submissions

The SIP revisions in the January 30, 2013 submittal that we are acting on in this document involve the WASQR Chapter 2, ''Ambient Standards,'' section 3, ''Ambient standards for nitrogen oxides,'' section 6, ''Ambient standards for ozone,'' and section 12, ''Incorporation by reference.'' To determine if Wyoming's submissions should be approved by EPA, EPA must evaluate the submissions for consistency with the CAA and EPA regulations.

Chapter 2, section 3, the nitrogen oxides ambient standard, was amended to make the State nitrogen oxides ambient standards consistent with federal standards, but no more stringent than federal standards. The section now sets the level of the primary annual ambient air quality standard for oxides of nitrogen as: 53 Parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide; the level of the primary 1-hour ambient air quality standard for oxides of nitrogen as 100 ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide; and, the level of the secondary ambient air quality standard for nitrogen dioxide as 0.053 parts per million (ppm), annual arithmetic mean concentration. The change defines that the levels of the standards are measured by: A reference method based on 40 CFR part 50, Appendix F; or, a federal equivalent method designated in accordance with 40 CFR part 53. The revision defines that the annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the annual standard, and that the 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the 1-hour standard. Further, the revision details that the secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, and finally that to demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter. These revisions correlate with 40 CFR 50.11(a) through (g), bringing the applicable portions of the WASQR in compliance with the requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

Also in the rulemaking, Chapter 2, section 6 was revised to make the State ozone standards consistent with federal standards, but no more stringent than federal standards. The section now sets the level of the 8-hour primary and secondary ambient air quality standards for ozone as 0.075 ppm daily maximum 8-hour average, measured by a reference method based on Appendix D to 40 CFR part 50 and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. It also defines that the 8-hour primary and secondary standard ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P. These revisions correlate with 40 CFR 50.15(a) and (b), bringing the applicable portions of the WASQR in compliance with the requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

Finally, in rulemaking R–20, Chapter 2, section 12 ''Incorporation by reference'' was revised to adopt by reference from the CFR for July 1, 2011. These changes correlate with the applicable requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

EPA has reviewed Wyoming's rule amendments and additions analyzed above. The rules mirror applicable language in 40 CFR part 50. The changes quoted above provide the regulation necessary for the State to determine compliance with the CAA for the nitrogen oxides and ozone NAAQS. Therefore, these WAQSR changes and additions are consistent with the CAA and EPA regulations. As a result, EPA is approving a SIP revision submitted by the State of Wyoming consisting of the above discussed applicable portions of rulemaking R–20 submitted on January 30, 2013 to EPA.

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by such state after reasonable notice and public hearing.

The Wyoming SIP revisions that EPA approves in this rulemaking do not

interfere with attainment of the NAAQS or any other applicable requirement of the Act. The applicable portions of Wyoming's rulemaking R–20 simply makes the State nitrogen oxides and ozone ambient standards consistent with federal standards, but no more stringent than federal standards, and adopts by reference as appropriate from the CFR for July 1, 2011. The revisions were adopted after reasonable public notice, and after a public hearing held on October 5, 2012. All necessary State reviews and approvals have been secured. Therefore, CAA section 110(l) requirements are satisfied.

V. Final Action

EPA is approving SIP revisions that Wyoming submitted to EPA on January 30, 2013. The Environmental Quality Council of the Wyoming Department of Environmental Quality adopted revisions to Chapter 2, ''Ambient Standards,'' section 3, ''Ambient standards for nitrogen oxides,'' section 6, ''Ambient standards for ozone,'' and section 12, ''Incorporation by reference,'' of the WAQSR as revisions to the SIP.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 14, 2014 without further notice unless we receive adverse comments by October 15, 2014. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

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

Dated: August 25, 2014.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (c)(1) is amended under Chapter 2 by revising the entries for sections 3 and 6

and section 12, as added at 79 FR 50840, August 26, 2014, and effective October 27, 2014, to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
	Chapter 2			
Section 3	Ambient standards for nitrogen oxides.	10/5/2012, 12/19/2012	09/15/2014, [insert **Federal Register** citation]	
*	*	*	*	*
Section 6	Ambient standards for ozone.	10/5/2012, 12/19/2012	09/15/2014, [insert **Federal Register** citation]	
*	*	*	*	*
Section 12	Incorporation by reference.	10/5/2012, 12/19/2012	09/15/2014, [insert **Federal Register** citation]	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the FEDERAL REGISTER cited in this column for that particular provision.

* * * * *

[FR Doc. 2014–21573 Filed 9–12–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flood source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + elevation in feet (NAVD) # depth in feet above ground ∧ elevation in meters (MSL) modified	Communities affected
St. Louis County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1062			
Bonhomme Creek (Backwater from the Missouri River).	At the confluence with Caulks Creek	+465	City of Chesterfield.
	Approximately 1,300 feet upstream of Chesterfield Airport Road.	+465	
Coldwater Creek	Approximately 400 feet downstream of Elsa Avenue	+554	City of Woodson Terrace
	Just upstream of Isolda Avenue	+557	
Dellwood Creek	Approximately 900 feet upstream of Bon Oak Drive	+485	City of Dellwood.
	Approximately 1,450 feet upstream of Bon Oak Drive	+487	
Engelholm Creek	Approximately 450 feet downstream of Bartmer Avenue.	+498	City of University City.
	Just upstream of Bartmer Avenue	+502	
Grand Glaize East Creek	Approximately 1,200 feet upstream of Barrett Station Road.	+472	City of Des Peres.
Lemay Creek (Backwater from the Mississippi River).	Approximately 700 feet upstream of Krumm Road	+416	Unincorporated Areas of St. Louis County.
	Approximately 2,000 feet upstream of Krumm Road	+416	
Maline Creek (Backwater from the Mississippi River).	Approximately 0.5 miles downstream of St Cyr Road	+431	City of Bellefontaine Neighbors, Village of Riverview.
	Approximately 1,300 feet downstream of St Cyr Road	+461	
Mattese Creek (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+415	Unincorporated Areas of St. Louis County.
	Just downstream of Old Baumgartner Road	+415	
Meramec River (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+415	Unincorporated Areas of St. Louis County.
	Approximately 2,000 feet upstream of Lemay Ferry Road.	+415	
Mississippi River Lower Reach.	At the confluence with the Meramec River	+415	Unincorporated Areas of St. Louis County.
	Approximately 1.0 mile upstream of Interstate 255	+420	
Mississippi River Upper Reach.	Approximately 3.9 miles downstream of confluence with the Missouri River.	+433	Unincorporated Areas of St. Louis County.
	At confluence with the Missouri River	+434	
Missouri River	At confluence with the Mississippi River	+434	Unincorporated Areas of St. Louis County, City of Bridgeton, City of Chesterfield, City of Florissant, City of Hazelwood, City of Maryland Heights, City of Wildwood.
	Approximately 5.8 miles upstream of Interstate 64	+476	
Watkins Creek (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+433	Unincorporated Areas of St. Louis County.
	Approximately 1,250 feet upstream of Coal Bank Road	+433	
Wildhorse Creek (Backwater from the Missouri River).	Just downstream of Centaur Road	+473	City of Wildwood.
	Approximately 0.6 miles downstream of Wild Horse Creek Road.	+473	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bellefontaine Neighbors
Maps are available for inspection at 9641 Bellefontaine Road, Bellefontaine Neighbors, MO 63137

City of Bridgeton
Maps are available for inspection at 11955 Natural Bridge Road, Bridgeton, MO 63044

City of Chesterfield:

Flood source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + elevation in feet (NAVD) # depth in feet above ground ∧ elevation in meters (MSL) modified	Communities affected
Maps are available for inspection at 690 Chesterfield Parkway West, Chesterfield, MO 63017			
City of Dellwood			
Maps are available for inspection at 1415 Chambers Road, Dellwood, MO 63135			
City of Des Peres			
Maps are available for inspection at 12325 Manchester Road, Des Peres, MO 63131			
City of Florissant			
Maps are available for inspection at 955 Rue Saint Francois Street, Florissant, MO 63031			
City of Hazelwood			
Maps are available for inspection at 415 Elm Grove Lane, Hazelwood, MO 63042			
City of Maryland Heights			
Maps are available for inspection at 11911 Dorsett Road, Maryland Heights, MO 63043			
City of University City			
Maps are available for inspection at 6801 Delmar Boulevard, University City, MO 63130			
City of Wildwood			
Maps are available for inspection at 183 Plaza Drive, Wildwood, MO 63040			
City of Woodson Terrace			
Maps are available for inspection at 9351 Guthrie Avenue, Woodson Terrace, MO 63134			
Unincorporated Areas of St. Louis County			
Maps are available for inspection at 121 South Meramec Avenue, Clayton, MO 63105			
Village of Champ			
Maps are available for inspection at 121 South Meramec Avenue, Clayton, MO 63105			
Village of Riverview			
Maps are available for inspection at 9699 Lilac Drive, Riverview, MO 63137			

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21925 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2014–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30,

1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Greene County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1176			
Beehunter Ditch	Approximately 245 feet downstream of Baseline Road	+480	City of Linton, Unincorporated.
	Approximately 450 feet upstream of Fairview Road	+508	Areas of Greene County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Linton

Maps are available for inspection at City Hall, 86 South Main Street, Linton, IN 47441.

Unincorporated Areas of Greene County

Maps are available for inspection at Greene County Courthouse, 1 East Main Street, Bloomfield, IN 47424.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21926 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03–44, RM–10650, RM–11396, DA 14–1254]

Radio Broadcasting Services; Noyack and Water Mill, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: The Audio Division approves the withdrawal of an Application for Review filed by Sacred Heart University (''SHU''), licensee of noncommercial educational Station WSUF(FM), Noyack, New York. *See also* Supplementary Information.

DATES: Effective September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* MB Docket No. 03–44; DA 14–1254, adopted August 28, 2014, and released August 29, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

SHU sought review of the *Reconsideration Decision* in this proceeding that had dismissed its Counterproposal. *See* 73 FR 52213 (September 9, 2008). The Audio Division approves the withdrawal request because it will resolve a proceeding that has been pending for ten years. The withdrawal complies with section 1.420(j) of the Commission's rules.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 2014–21988 Filed 9–12–14; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 79, No. 178

Monday, September 15, 2014

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0626; Directorate Identifier 2014–NM–017–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes. This proposed AD was prompted by our determination of the need for a revision to the airplane airworthiness limitations to introduce changes to the maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate a new airworthiness limitations section. We are proposing this AD to prevent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 30, 2014.

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

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

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0626; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket 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, WA 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–2014–0626; Directorate Identifier 2014–NM–017–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0021, dated January 20, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations and maintenance requirements for the Fan Jet Falcon type design are included in Dassault Aviation Falcon 20 (F20) Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). EASA issued AD 2008–0221 to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F20 AMM chapter 5–40 at revision 13.
>
> Since that AD was issued, Dassault Aviation issued F20 AMM chapter 5–40 at revision 15, which introduces new or more restrictive maintenance requirements and/or airworthiness limitations.
>
> Dassault Aviation AMM chapter 5–40 revision 15 contains among other changes the following requirements:
>
> —Specific instructions applicable to F20GF (serial number 397);
>
> —Check of overpressure tightness on pressurization control regulating valves;
>
> —Check of overpressure relief valve vacuum supply lines.
>
> A new document reference number which comes with DGT 131028 revision 15 is replacing DMD11755.
>
> The maintenance tasks and airworthiness limitations, as specified in the F20 AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the Fan Jet Falcon type design. Failure to comply with AMM chapter 5–40 at revision 15 might constitute an unsafe condition.
>
> For the reasons described above, this [EASA] AD requires implementation of the maintenance tasks and airworthiness limitations, as specified in Dassault Aviation F20 AMM chapter 5–40 at revision 15.

The unsafe condition is reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0626.

Relevant Service Information

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012,

of the Dassault Aviation Falcon 20 Maintenance Manual. 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.

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Dassault Aviation's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the: DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 168 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $14,280, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2014–0626; Directorate Identifier 2014–NM–017–AD.

(a) Comments Due Date

We must receive comments by October 30, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits and Maintenance Checks.

(e) Reason

This AD was prompted by our determination of the need for a revision to the airplane airworthiness limitations to introduce changes to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012, of the Dassault Aviation Falcon 20 Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012, of the Dassault Aviation Falcon 20 Maintenance Manual is at the applicable time specified in Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012, of the Dassault Aviation Falcon 20 Maintenance Manual, or within 60 days after the effective date of this AD, whichever occurs later. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012, of the Dassault Aviation Falcon 20 Maintenance Manual specifies a compliance time in flight hours, those compliance times are total flight hours. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 15, dated March 2012, of the Dassault Aviation Falcon 20 Maintenance Manual specifies a compliance time in years, those compliance times are since the date of issuance of the original French or EASA standard airworthiness certificate or date of issuance of the original French or EASA export certificate of airworthiness.

(h) No Alternative Actions and Intervals

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

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0021, dated January 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0626.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21915 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0701; Directorate Identifier 2014–CE–025–AD]

RIN 2120–AA64

Airworthiness Directives; Various de Havilland Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Harry E. Williams de Havilland Model DH 82A airplanes, all Cliff Robertson de Havilland Model DH 82A airplanes, and all de Havilland Model DH 83 airplanes. This proposed AD was prompted by reports of structural failure of the attachment of the wing to the fuselage that resulted from failed lateral fuselage tie rods. This proposed AD would require inspecting the aircraft maintenance records to determine the

date of installation or the date of last replacement of the lateral fuselage tie rods. This proposed AD would also require repetitively replacing all lateral fuselage tie rods and attaching nuts at a specified life limit interval. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 30, 2014.

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

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

For service information identified in this proposed AD, for de Havilland DH 82A airplanes, contact de Havilland Support Ltd., Building 213, Duxford Airfield, Cambridge, United Kingdom CB22 4QR, telephone: +44 (0) 1223 830090; fax: +44 (0) 1223 83008; email: *info@dhsupport.com,* Internet: *http://www.dhsupport.com/moth.php*.

For service information identified in this proposed AD, for de Havilland DH 83 airplanes, contact Air Stratus Ltd., Oaksey Park Airfield, Oaksey, Malmesbury, Wiltshite, United Kingdom SN 16 9SD, telephone: +44 (0) 1666 575111; no known Internet address.

You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0701; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: For airplanes covered under Type Certificate Data Sheet (TCDS) A5PC (Model de Havilland DH 82A airplanes built in Australia): Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov*.

For airplanes covered under TCDS A8EU (Model de Havilland DH 82A airplanes built in the United Kingdom): Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Suite 100, Lakewood, California 90712; phone (562) 627–5232; fax: (562) 627–5210; email: *fred.guerin@faa.gov*.

For airplanes covered under TCDS 2–439 (Model de Havilland DH 83 airplanes built in the United Kingdom): Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0701; Directorate Identifier 2014–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

During routine maintenance on a de Havilland Model DH 82 airplane, it was found that the lateral fuselage tie rod at the aft position had sheared at its location with the spar attachment fitting. Investigation revealed that the failure was a result of fatigue cracking in the thread root. In addition, the forward tie rod (which had not fractured) was distorted and found to have been manufactured from material of incorrect specification with a lower tensile strength.

During our review of the above-referenced cracking and the related mandatory service information, we determined that the life limit on the lateral fuselage tie rods is not currently addressed for airplanes on the U.S. registry. Mandatory service information is required for airplanes on the registry in certain other countries, but in the United States an AD must be issued to require the actions of a service bulletin for all airplanes.

De Havilland Model DH 82A airplanes (commonly referred to as Tiger Moths) are type certificated under two type certificates. TCDS A5PC, currently held by Harry E. Williams, is for airplanes built in Australia, and TCDS A8EU, currently held by Cliff Robertson, c/o Gadbois Business Management, is for airplanes built in the United Kingdom. This type certification approval was not by validation, but by an acceptance process; as such, the U.S. type certificate holders are not the manufacturers of the airplanes and the original manufacturers (de Havilland and its licensees) are not type certificate holders.

De Havilland Support Ltd (DHSL) holds the type certificate responsibility for de Havilland Model DH 82A airplanes (the type design for TCDS A8EU) in the United Kingdom.

DHSL is custodian of the airframe design data, manufacturing drawings, and repair schemes still in existence for de Havilland Model DH 82A Tiger Moth series airplanes only. In 2012, DHSL entered into a CAA Type Responsibility Agreement (TRA) so that the airplane remains eligible, if required, for an ICAO-compliant Certificate of Airworthiness to facilitate training and pleasure flying.

Similarly, Air Stratus Ltd holds the type certificate responsibility for de Havilland Model DH 83 airplanes (the type design for TCDS 2–439) in the United Kingdom.

This condition, if not corrected, could result in structural failure of the attachment of the wing to the fuselage. We are issuing this proposed AD to correct the unsafe condition on these products.

Relevant Service Information

We reviewed British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for de Havilland Moth Aircraft, Document Type and Ref No Technical News Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999, which was approved by the Civil Aviation Authority (CAA) for the United Kingdom to ensure the continued

airworthiness of these airplanes in the United Kingdom. The service information introduces a life limit for the lateral fuselage tie rods and describes procedures for repetitively replacing the lateral fuselage tie rods and attaching nuts.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 69 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the aircraft maintenance records to determine the date of installation or date of last replacement of the lateral fuselage tie rods and attaching nuts.	1 work-hour × $85 per hour = $85	Not applicable	$85	$5,865

We estimate the following costs to the necessary replacements.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Replace lateral fuselage tie rods and attaching nuts ...	30 work-hours × $85 per hour = $2,550	$825	$3,375

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Harry E. Williams, Cliff Robertson, and de Havilland Airplanes: Docket No. FAA–2014–0701; Directorate Identifier 2019–CE–019–AD.

(a) Comments Due Date

We must receive comments by October 30, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Harry E. Williams and Cliff Robertson Model de Havilland DH 82A airplanes, all serial numbers, and de Havilland Model DH 83 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 5341, Fuselage, Wing Attach Fittings.

(e) Unsafe Condition

This AD was prompted by reports of structural failure of the attachment of the wing to the fuselage that resulted from failed lateral fuselage tie rods. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified in paragraphs (g) through (h) of this AD, unless already done.

(g) Determine Date of Installation or Date of Last Replacement of the Lateral Fuselage Tie Rods and Attaching Nuts

Within the next 30 days after the effective date of this AD, review the aircraft records to determine the date of installation or date of last replacement of the lateral fuselage tie rods and attaching nuts.

(h) Replace the Lateral Fuselage Tie Rod and Attaching Nuts

Initially replace the lateral fuselage tie rod and attaching nuts at whichever of the compliance times specified in paragraph (h)(1) or paragraph (h)(2) of this AD that applies. Repetitively thereafter replace the lateral fuselage tie rod and attaching nuts every 2,000 hours TIS or 18 years, whichever occurs first. Do the replacement following the procedures in paragraph 2.C. of the Accomplishment Instructions and the table on Figure 1 in British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for De Havilland Moth Aircraft, Document Type and Ref No Technical News Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999.

(1) *If the date of lateral fuselage tie rod installation or date of last replacement is known:* Do the initial replacement at whichever of the following compliance times in paragraph (h)(1)(i) or paragraph (h)(1)(ii) of this AD that occurs later:

(i) Upon accumulating 2,000 hours TIS on the lateral fuselage tie rod or upon reaching 18 years from the last lateral fuselage tie rod replacement, whichever occurs first; or

(ii) Within the next 6 months after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs first.

(2) *If the date of lateral fuselage tie rod installation or date of last replacement is not known:* Do the initial replacement within the next 6 months after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs first.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager of the Fort Worth Airplane Certification Office (ACO), the Manager of the Los Angeles Aircraft Certification Office (ACO), and the Manager of the Standards Office, FAA, have the authority to approve AMOCs for their respective products covered by this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the applicable FAA office, send it to the attention of the person identified in paragraphs (j)(1), (j)(2), or (j)(3), as applicable.

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

(j) Related Information

(1) For more information about this AD for airplanes covered under Type Certificate Data Sheet (TCDS) A5PC (Model de Havilland DH 82A airplanes built in Australia), contact Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth ACO, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov*.

(2) For more information about this AD for airplanes covered under TCDS A8EU (Model de Havilland DH 82A airplanes built in the United Kingdom), contact Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Suite 100, Lakewood, California 90712; phone (562) 627–5232; fax: (562) 627–5210; email: *fred.guerin@faa.gov*.

(3) For more information about this AD for airplanes covered under TCDS 2–439 (Model de Havilland DH 83 airplanes built in the United Kingdom), contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov*.

(4) For British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for De Havilland Moth Aircraft, Technical New Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999, service information identified in this AD, contact:

(i) For de Havilland DH 82A airplanes: de Havilland Support Ltd, Building 213, Duxford Airfield, Cambridge, United Kingdom CB22 4QR, telephone: +44 (0) 1223 830090; fax: +44 (0) 1223 83008; email: *info@dhsupport.com;* Internet: *http://www.dhsupport.com/moth.php*.

(ii) For de Havilland DH 83 airplanes: Air Stratus Ltd., Oaksey Park Airfield, Oaksey, Malmesbury, Wiltshite, United Kingdom SN 16 9SD, telephone: +44 (0) 1666 575111; no known Internet address.

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 8, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21916 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0643; Directorate Identifier 2013–SW–059–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2001–13–51 for Bell Model 206L–4, 407, and 427 helicopters. AD 2001–13–51 currently requires inspecting certain driveshafts for a crack, a loose bolt or nut, or red powder residue and replacing a driveshaft if there is a crack, a loose bolt or nut, or red powder residue. AD 2001–13–51 also requires notifying the FAA within 10 days if a crack is found in the driveshaft. Since we issued AD 2001–13–51, the Model 429 helicopter has been certificated, and the reporting requirement is no longer necessary. This proposed AD would retain the inspection requirement of AD 2001–13–51, expand the applicability to include the Model 429 helicopter, and remove the reporting requirement. These proposed actions are intended to prevent failure of a driveshaft, loss of drive to the main rotor system, and a subsequent emergency landing.

DATES: We must receive comments on this proposed AD by November 14, 2014.

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

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

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 foreign authority's AD, the economic 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 service information identified in this proposed AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or

(800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Matthew Fuller, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On June 27, 2001, the FAA issued Emergency AD 2001–13–51, which we published by issuing a Final rule; request for comment on September 21, 2001 (66 FR 48535 FR), for Bell Model 206L–4, 407 and 427 helicopters. AD 2001–13–51 requires visually inspecting driveshaft, part number (P/N) 206–340–300–105, for a crack, a loose bolt or nut, or red powder residue and replacing a driveshaft if there is a crack, a loose bolt or nut, or red powder residue. AD 2001–13–51 also requires notifying the FAA within 10 days if a crack is found in the driveshaft, and prohibits interchanging a driveshaft between different models if the driveshaft has ever been installed on a Bell Model 407 helicopter. AD 2001–13–51 was prompted by a driveshaft failure on a Bell Model 407 helicopter that resulted in an engine shutdown and an emergency landing, as well as three other incidents of a cracked flex frame on the forward end of the driveshaft on other Model 407 helicopters. AD 2001–13–51 was prompted by AD No. CF–2001–24, dated June 11, 2001, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada. TCCA AD No. CF–2001–24 required a one-time visual inspection of the driveshaft.

Actions Since AD 2001–13–51 Was Issued

Since we issued AD 2001–13–51 (66 FR 48535, September 21, 2001), the Model 429 helicopter was certificated, and TCCA issued Revision 3, dated September 26, 2013, to AD No. CF–2001–24. Revision 3 adds Model 429 helicopters to the applicability section and requires removing any driveshaft, P/N 206–340–300–105, if it has ever been installed on a Bell Model 407 helicopter.

This proposed AD would expand the applicability to include the Bell Model 429 helicopter because the driveshaft, P/N 206–340–300–105, can also be installed on the Bell Model 429 helicopter. Also, we have removed the requirement to notify the FAA if a crack is found in the driveshaft because we did not receive any reports of driveshaft problems. This proposed AD would retain the one-time inspection, if not previously accomplished, for a crack, a loose bolt or nut, and red powder residue, and if there is a crack, a loose bolt or nut, or red powder residue, replacing each unairworthy driveshaft with an airworthy driveshaft before further flight. The one-time inspection is not required for Bell Model 429 helicopters because that model would have had the inspection done when it was certificated. Lastly, this proposed AD would require for all applicable models, within 1,250 hours time-in-service (TIS), removing from service any driveshaft, P/N 206–340–300–105, if it has ever been installed on a Bell Model 407 helicopter.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCAA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) No. 206L–01–123, Revision A, dated February 22, 2006, for Bell Model 206L–4 helicopters and ASB No. 427–01–04, Revision A, dated March 31, 2006, for Bell Model 427 helicopters. Both ASBs describe inspecting the Historical Service Record of the engine-to-transmission driveshaft, P/N 206–340–300–105, to determine whether the driveshaft has ever been installed on a Bell Model 407 helicopter and removing the driveshaft if it has ever been installed on a Model 407 helicopter. We also reviewed Bell ASB No. 407–01–45, Revision B, dated April 23, 2013, for Bell Model 407 helicopters, which describes an engine-to-transmission driveshaft 1,250-Hour overhaul. TCCA classified these ASBs as mandatory and issued AD No. CF–2002–03R3, dated September 26, 2013, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require:

- Within 50 hours TIS, determining whether driveshaft, P/N 206–340–300–105, has ever been installed on a Bell Model 407 helicopter and making a note on the component history card or equivalent record. If a driveshaft has ever been installed on a Model 407 helicopter:
  - Within 25 hours TIS, inspecting each Model 206L–4, 407, and 427 helicopter with an affected driveshaft installed for a crack, loose bolts or nuts, and red powder residue. If there is a crack, a loose bolt or nut, or red powder residue, replacing the driveshaft with an airworthy driveshaft before further flight.
  - For each helicopter with an affected driveshaft installed, on or before accumulating 1,250 hours TIS, replacing the driveshaft with an airworthy driveshaft.

This proposed AD would also prohibit installing driveshaft, P/N 206–340–300–105, on any helicopter if it has ever been installed on a Bell Model 407 helicopter.

Differences Between the Proposed AD and the TCCA AD

The TCCA AD requires following the compliance time specified in the Bell ASBs, which allows more time, based on the hours TIS, for removing the driveshaft. This proposed AD would require replacing the driveshaft before accumulating 1,250 hours TIS. The proposed AD would also prohibit the

use of driveshaft, P/N 206–340–300–105, on the Model 407 helicopter.

Costs of Compliance

We estimate that this proposed AD would affect 970 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour. We estimate 0.25 work-hour to determine whether the driveshaft has ever been installed on a Bell Model 407 helicopter for a total cost of $22 per helicopter or $21,340 for the fleet. If a driveshaft has been installed on a Model 407 helicopter, we estimate 1 work hour to inspect the driveshaft for a cost of $85 per helicopter, and 2 work hours and $39,724 for required parts to replace a driveshaft for a cost of $39,894 per helicopter.

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 proposed 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, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic 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 Airworthiness Directive (AD) 2001–13–51, Amendment 39–12443 (66 FR 48535, September 21, 2001), and adding the following new AD:

Bell Helicopter Textron Canada (Bell): Docket No. FAA–2014–0643; Directorate Identifier 2013–SW–059–AD.

(a) Applicability

This AD applies to Model 206L–4, 407, 427, and 429 helicopters with an engine-to-transmission driveshaft assembly (driveshaft), part number (P/N) 206–340–300–105, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a driveshaft due to cracking of the flex frame on the forward end of the driveshaft. This condition could result in loss of drive to the main rotor system and a subsequent emergency forced landing.

(c) Affected ADs

This AD supersedes AD 2001–13–51, Amendment 39–12443, Docket No. 2001–SW–29–AD (66 FR 48535, September 21, 2001).

(d) Comments Due Date

We must receive comments by November 14, 2014.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 50 hours time-in-service (TIS), determine whether driveshaft, P/N 206–340–300–105, has ever been installed on a Bell Model 407 helicopter, and record this on the component history card or equivalent record. If driveshaft, P/N 206–340–300–105, has ever been installed on a Bell Model 407 helicopter:

(i) For Bell Model 206L–4, 407, and 427 helicopters, within 25 hours TIS, inspect each driveshaft for a crack, a loose bolt or nut, and red powder residue. If there is a crack, a loose bolt or nut, or red powder residue, replace the driveshaft with an airworthy driveshaft before further flight.

(ii) For all affected Bell model helicopters, on or before accumulating 1,250 hours TIS, replace each driveshaft with an airworthy driveshaft.

(2) Do not install driveshaft, P/N 206–340–300–105, on any helicopter if it has ever been installed on a Bell Model 407 helicopter.

(g) Special Flight Permit

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matthew Fuller, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matthew.fuller@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Bell Alert Service Bulletin (ASB) No. 206L–01–123, Revision A, dated February 22, 2006; ASB No. 427–01–04, Revision A, dated March 31, 2006; and ASB No. 407–01–45, Revision B, dated April 23, 2013, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation (TCCA) AD No. CF–2002–03R3, Revision 3, dated September 26, 2013. You may view the TCCA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0643.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6300 Main Rotor Drive System.

Issued in Fort Worth, Texas, on August 22, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–21919 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0646; Directorate Identifier 2013–SW–053–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters, Inc. (Previously Eurocopter France) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters, Inc. (previously Eurocopter France) Model AS355E, AS355F, AS355F1, and AS355F2 helicopters with a Fueltron flowmeter installed. This proposed AD would require removing each flowmeter, replacing the fuel system hoses, and disabling the electrical connections for the flowmeter installation. This proposed AD is prompted by a report of particle contamination creating an obstruction in a flowmeter which resulted in an uncontrolled flame-out of the engine. The proposed actions are intended to prevent obstruction of the fuel supply to the flowmeter, which could result in engine flame-out and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by November 14, 2014.

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

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

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 European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this proposed AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *james.blyn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2013–0205, dated September 9, 2013, to correct an unsafe condition for Eurocopter (now Airbus Helicopters, Inc.) Model AS355 E, AS355 F, AS355 F1, and AS355 F2 helicopters with modification 350A070791 (installation of the Fueltron flowmeter), except helicopters with modification 355A085801 (removal of the Fueltron flowmeter). EASA advises that, after landing, an AS355 helicopter experienced an uncontrolled flame-out of the No. 1 engine. Following an analysis, EASA states that particle contamination in the fuel had obstructed the Fueltron flowmeter because the cross-section areas of the passages in the flowmeter are smaller than the mesh in the upstream fuel pump strainer, allowing particles to pass through the strainer and into the flowmeter. EASA further states that the flowmeter installation is identical on both engines, and that this condition could lead to flame-out of both engines in flight, possibly resulting in reduced control of the helicopter. EASA AD No. 2013–0205 requires removing the flowmeter from each engine, modifying the fuel line system with a new fuel line part number (P/N) 704A34–416–029 for the left-hand (LH) engine and P/N 704A34–416–030 for the right-hand (RH) engine, removing the flowmeter indicator, and disabling the flowmeter electrical connections.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. AS355–28.00.20, Revision 0, dated June 6, 2013, for Model AS355 E, AS355 F, AS355 F1, and AS355 F2 helicopters, which describes procedures for removing and disabling the Fueltron flowmeter installation. The ASB corresponds to Eurocopter modification 355A085801.

Proposed AD Requirements

This proposed AD would require, within 750 hours time-in-service, removing the flowmeter from each engine, replacing the fuel line with P/N 704A34–416–029 for the LH engine and P/N 704A34–416–030 for the RH engine, removing the flowmeter indicator, and disabling the flowmeter electrical connections by complying with certain procedures in ASB No. AS355–28.00.20.

Interim Action

We consider this proposed AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 47 helicopters of U.S. Registry. We estimate that operators would incur the following costs in order to comply with this AD. At an average labor rate of $85 per work-hour, removing the flowmeter installation would require about 4 work-hours, and required parts would cost $1,600, for a cost per helicopter of $1,940 and a total cost of $91,180 for the fleet.

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 proposed 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, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus Helicopters, Inc. (Previously Eurocopter France) Helicopters: Docket No. FAA–2014–0646; Directorate Identifier 2013–SW–053–AD.

(a) Applicability

This AD applies to Airbus Helicopters, Inc. Model AS355E, AS355F, AS355F1, and AS355F2 helicopters, certificated in any category, with a Fueltron flowmeter part number (P/N) 704A37–670–001 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as obstruction of the fuel supply to the flowmeter, which could result in engine shutdown and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by November 14, 2014.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 750 hours time-in-service:

(i) Remove each flowmeter.

(ii) Remove each left-hand hose, P/N 704A34.4160.31, and install hose, P/N 704A34–416–029, as depicted in Figures 1 and 2 of Eurocopter Alert Service Bulletin No. AS355–28.00.20, Revision 0, dated June 6, 2013 (ASB AS355–28.00.20).

(iii) Remove each right-hand hose, P/N 704A34.4160.32, and install hose, P/N 704A34–416–030, as depicted in Figures 1 and 2 of ASB AS355–28.00.20.

(iv) Remove each flowmeter indicator and disable the flowmeter wiring as described in the Accomplishment Instructions, paragraph 3.B.2.b., of ASB AS355–28.00.20.

(2) After the effective date of this AD, do not install a flowmeter, P/N 704A37–670–001, on any helicopter.

(f) Special Flight Permit

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Regulations and Policy Group, FAA, may approve AMOCs for this AD. Send your proposal to: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *james.blyn@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD 2013–0205, dated September 9, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0646.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 7333: Fuel Flow Sensor.

Issued in Fort Worth, Texas, on September 2, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0650]

Cardiovascular Devices; Withdrawal of Proposed Rule of Reclassification of External Pacemaker Pulse Generator Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposed rule the Agency issued in the **Federal Register** of October 17, 2011. In that document, FDA proposed to reclassify the external pacemaker pulse generator (EPPG) devices, a preamendments class III device into class II (special controls). In response to the requirements under the Food and Drug Administration Safety and Innovation Act (FDASIA) and new information received during a panel meeting, FDA is withdrawing the proposed rule and issuing a proposed administrative order to reclassify EPPGs.

DATES: The proposed rule is withdrawn on September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Hina Pinto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1652, Silver Spring, MD 20993, 301–796–6351.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

On October 17, 2011, FDA published in the **Federal Register** (76 FR 64223) a proposed rule proposing the reclassification of external pacemaker pulse generator (EPPG) devices from class III to class II with special controls. FDA identified special controls that the Agency believed would provide reasonable assurance of safety and effectiveness for the device type. FDA considered EPPGs in accordance with the reserved criteria and determined that the device type does require premarket notification.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA (Pub. L. 112–144) amended section 513(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(e)) changing the process for reclassifying a device from rulemaking to an administrative order. Subsequent to the publication of the proposed rule, FDASIA's amendments to section 513 of the FD&C Act required FDA to hold a classification panel (an FDA advisory committee) meeting on the classification of this device. On September 11, 2013, a meeting of the Circulatory System Devices Panel (the Panel) was held to discuss whether EPPG devices should be reclassified or remain in class III (Ref. 1). There was Panel consensus that EPPG devices did not fit the regulatory definition of a class III device. Coupled with the rationale that special controls could be established to reasonably demonstrate an assurance of safety and effectiveness, the Panel recommended class II (special controls) for EPPG when intended for cardiac rate control or prophylactic arrhythmia prevention.

II. Withdrawal of the Proposed Rule

FDA provided an opportunity for interested parties to comment on the proposed rule for EPPG (76 FR 64223). FDA received three comments to the docket in response to the 2011 proposed rule. These comments were received and have been considered during the presentations to the Panel and in developing the proposed order. In response to these comments and findings at the Panel meeting, FDA is withdrawing the proposed rule for these devices and is issuing a proposed administrative order.

III. Proposed Reclassification

Elsewhere in this issue of the **Federal Register,** FDA is proposing in an order to reclassify EPPG devices, currently a preamendments class III device, into class II (special controls). FDA continues to review the merits of the submissions for requests for reclassification that meet the requirements under 21 CFR 860.123, submitted in response to the proposed rule.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. The panel transcript and other meeting materials for the September 11, 2013, Circulatory System Devices Panel are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/ucm342357.htm.*

Dated: September 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21816 Filed 9–12–14; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0650]

Cardiovascular Devices; Reclassification of External Pacemaker Pulse Generator Devices; Reclassification of Pacing System Analyzers

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is proposing in this administrative order to reclassify the external pacemaker pulse generator (EPPG) devices, a preamendments class III device into class II (special controls), and to amend the device identification and reclassify the pacing system analyzers (PSAs) into class II (special controls). Specifically, single and dual chamber PSAs, which are currently classified with EPPG devices, and triple chamber PSAs (TCPSAs), which are postamendments class III devices, are proposed to be reclassified to class II devices. FDA is proposing this reclassification based on new information pertaining to the device. This proposed action would implement certain statutory requirements.

DATES: Submit either electronic or written comments on the proposed order by December 15, 2014. See section XII for the effective date of any final order that may publish based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0650, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0650 for this order. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hina Pinto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1652, Silver Spring, MD 20993, 301–796–6351.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Food, Drug, and Cosmetic Act (the FD&C Act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (Public Law 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Section 513(a)(1) of the FD&C Act defines class II devices as those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance.

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type may be marketed without submission of a premarket approval (PMA) application until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval or until the device is subsequently reclassified into class I or class II.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended the device reclassification procedures under section 513(e) of the FD&C Act, changing the process for reclassifying a device from rulemaking to an administrative order. Prior to the enactment of FDASIA, FDA published a proposed rule under section 513(e) of the FD&C Act proposing the reclassification of EPPG devices (76 FR 64223, October 17, 2011). Three sets of comments were received on the proposed rule. The three sets of comments submitted in response to the proposed rule on EPPG devices will be considered under this proposed administrative order and do not need to be resubmitted. FDA is issuing this proposed administrative order to comply with the new procedural requirement created by FDASIA when reclassifying a preamendments class III device, as well as to reclassify a postamendments class III device. Also, as required by section 513(e) of the FD&C Act for preamendment devices, FDA convened a device classification panel meeting which discussed the proposed reclassification on September 11, 2013 (78 FR 49272). This action is intended solely to fulfill the procedural requirements for reclassification implemented by FDASIA.

Section 513(e) of the FD&C Act provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Dep't of Health, Educ., & Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified later into class I or class II under section 513(f)(3) of the FD&C Act. Section 513(f)(3) provides that FDA acting by administrative order can reclassify the device into class I or class II on its own initiative under section 513(f)(1) of the FD&C Act, or in response to the petition of the manufacturer or importer of the device. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of these class III devices. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Reevaluation of the data previously before the Agency is an appropriate

basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Flinch* supra, 422 F.2d at 951.) Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and § 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Manufacturers Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payors, and providers. In addition, the proposed order must set forth the proposed reclassification, and a substantive summary of the valid scientific evidence concerning the proposed reclassification, including the public health benefits of the use of the device, and the nature and incidence (if known) of the risk of the device. (See section 513(e)(1)(A)(i) of the FD&C Act.)

Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to reasonably assure the safety and effectiveness of EPPG and PSA devices.

II. Regulatory History of the Device

A. EPPG Devices

On March 9, 1979, FDA published a proposed rule in the **Federal Register** for classification of EPPG devices into class III based on the recommendation of the Cardiovascular Devices Panel (the Panel) (44 FR 13284 at 13372). The Panel meeting recommended EPPG devices be classified into class III because the device provided temporary life support and that certain kinds of failures could cause this device to emit inappropriate electrical signals, which could cause cardiac irregularities and death. The Panel indicated that general controls alone would not be sufficient and that there was not enough information to establish a performance standard. Consequently, the Panel believed that premarket approval was necessary to reasonably assure the safety and effectiveness of the device. In 1980, FDA classified EPPG into class III under § 870.3600 (21 CFR 870.3600) after receiving no comments on the proposed rule (45 FR 7907, February 5, 1980). In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for EPPG devices (52 FR 17732, May 11, 1987).

In 2009, FDA published an order in the **Federal Register** under section 515(i) of the FD&C Act to call for information on the remaining class III 510(k) preamendment devices, including EPPG devices (74 FR 16214, April 9, 2009). In response to that order, FDA received two reclassification petitions from one device manufacturer who requested that EPPG devices be reclassified into class II. The manufacturers stated that safety and effectiveness of these devices may be assured by performance standards, the intended use environment, postmarket surveillance to include Medical Device Reporting (MDRs), FDA inspections of manufacturing facilities, and premarket review of performance testing in a 510(k) submission. The manufacturers specifically noted that the FDA recognized consensus standard, International Electrotechnical Commission (IEC) 60601–2–31: 'Particular requirements for the basic safety and essential performance of external cardiac pacemakers with internal power source' provides adequate design and testing parameters for EPPG devices.

On October 17, 2011, FDA published a proposed rule proposing the reclassification of EPPG devices from class III to class II (76 FR 64223) and announcing the availability of a draft Special Controls Guidance Document that, if finalized, would serve as a special control, if FDA reclassified these devices. FDA believed that the special controls described in the draft special controls guidance document entitled ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator'' would be sufficient to mitigate the risks to health associated with EPPG (Ref. 1).

The proposed rule provided for a comment period that was open until January 17, 2012. FDA received three sets of comments. These comments stated that: (1) FDA should retain EPPG in class III, (2) FDA's reclassification proposed rule was not adequately supported by new publicly valid scientific evidence, (3) MDR data showed that existing performance standards are insufficient, (4) there were no publicly available performance standards that would apply to EPPG, (5) FDA should convene an advisory committee (the Panel) to seek a recommendation on the classification of EPPG, and (6) the recall process after reclassification of EPPG would need to be clarified. These comments were considered by FDA in drafting this proposed order.

B. PSA Devices

Single and dual chamber PSAs have historically been classified with EPPG devices. These devices combine the functionality of a single or dual chamber EPPG, which is currently class III and the functionality of a pacemaker electrode function tester, which is regulated as a class II device (under § 870.3720 (21 CFR 870.3720)). Single and dual chamber PSA devices have been found substantially equivalent to EPPG devices through the 510(k) process. Triple chamber PSA (TCPSA) devices have not been determined to be substantially equivalent through the 510(k) process, and since this technology was not on the market in 1976, TCPSAs have been reviewed through the PMA process as postamendment class III devices.

On July 9, 2012, FDASIA was enacted, which amended the device reclassification procedures under sections 513 and 515 of the FD&C Act. Accordingly, FDA is issuing a proposed administrative order to comply with the new procedural requirement created by FDASIA when reclassifying a preamendments class III device. Further, FDA intends to codify the proposed special controls within the § 870.3600 classification regulation for EPPG and to create a separate

classification regulation for PSA devices.

As explained further in section VII, a meeting of the Circulatory System Devices Panel (the 2013 Panel) took place on September 11, 2013, to discuss whether EPPG and TCPSA devices should be reclassified or remain in class III (Ref. 2). FDA included a discussion of TCPSA devices in the 2013 Panel discussion because the risks to health and proposed special controls were very similar to those being proposed for the EPPG devices already under consideration. The 2013 Panel recommended that EPPG devices be reclassified to class II with special controls when intended for cardiac rate control or prophylactic arrhythmia prevention. The 2013 Panel also recommended that TCPSA devices be reclassified to class II with special controls when intended for use during the pulse generator implant procedure. FDA is not aware of new information that would provide a basis for a different recommendation or finding.

III. Device Description

A. EPPG Devices

An EPPG is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. This device, which is used outside the body, is used as a temporary substitute for the heart's intrinsic pacing system until a permanent pacemaker can be implanted, or to control irregular heartbeats in patients following events such as cardiac surgery or a myocardial infarction. The device may have adjustments for pacing rate, pulse amplitude, pulse width (duration), R-wave sensitivity, and other pacing variables.

An EPPG device is designed to be used with cardiac pacing lead systems for temporary atrial and/or ventricular pacing. An EPPG system generally includes the pulse generator, extension cables, and adaptors which connect the extension cable to the implanted pacing lead and are critical to the functionality of the EPPG system. The pacing leads for use with EPPG may be for temporary or permanent use for either tranvenous or epicardial uses. The pacing leads are not considered part of the EPPG device because they have their own regulatory designations (21 CFR 870.3680) depending on their design and intended use.

EPPG devices are used exclusively in hospital environments with the patients supervised by qualified medical personnel. The electrical and heart rhythm of patients are continuously monitored using EPPG-independent electrocardiogram (ECG) monitors usually with alarm functions. Independent ECG monitoring requirements are identified in international standards, such as IEC 60601–2–31 for device design.

FDA is also proposing in this order to slightly modify the identification language from the way it is presently written in § 870.3600(a) to clarify that these are prescription devices in accordance with § 801.109 (21 CFR 801.109).

B. PSA Devices

A PSA combines the functionality of a pacemaker electrode function tester (under § 870.3720) and an EPPG. A pacemaker electrode function tester is a device that is connected to an implanted pacemaker lead that supplies an accurately calibrated, variable pacing pulse for measuring the patient's pacing threshold and intracardiac R-wave potential. A PSA can temporarily take over pacing functions while simultaneously testing one or more implanted pacing leads. PSA devices can be single, dual, or triple chamber, translating into the measurement capabilities/functionalities of the device. Single chamber PSAs typically measure pacing capture threshold, whereas in the case of dual chamber PSAs, the device can also measure conduction times or intrinsic atrioventricular delay. In the case of a TCPSA, the device can also function as a biventricular external pacemaker and measure the intrinsic intra-ventricular (VV) interval.

IV. Proposed Reclassification

A. EPPG Devices

FDA is proposing that EPPG devices be reclassified from class III to class II. In this proposed order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls (including prescription-use restrictions) applicable to the devices, would provide reasonable assurance of their safety and effectiveness. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness of the device. Since the time of the 1979 classification, new information about use and pacing technology for this device has become sufficiently available to establish special controls. FDA believes that this new information is sufficient to demonstrate that the proposed special controls, when finalized, can effectively mitigate the risks to health identified in section V, and that these special controls, together with general controls, will provide a reasonable assurance of safety and effectiveness for EPPG devices.

B. PSA Devices

FDA is proposing to create a separate classification regulation for PSA devices, including single, dual, and triple chamber PSA devices that will be reclassified from class III to class II. In this proposed order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls (including prescription-use restrictions) applicable to the devices, would provide reasonable assurance of their safety and effectiveness. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness of the device. Since the 1979 classification of temporary external pacing devices, new information about device use and pacing technology has become available to establish special controls. FDA believes that this new information is sufficient to demonstrate that the proposed special controls can effectively mitigate the risks to health identified in section V, and that these special controls, together with general controls, will provide a reasonable assurance of safety and effectiveness for PSA devices.

Section 510(m) of the FD&C Act authorizes the Agency to exempt class II devices from premarket notification (510(k)) submission. FDA has considered EPPG and PSA devices in accordance with the reserved criteria set forth in section 513(a) and determined that both devices require premarket notification (510(k) of the FD&C Act). Therefore, the Agency does not intend to exempt these proposed class II devices from premarket notification (510(k)) submission as provided under section 510(m) of the FD&C Act.

V. Risks to Health

A. EPPG Devices

After considering available information for the classification of these devices, including the recommendations of the advisory committees (panels) for the classification of these devices, FDA has evaluated the risks to health associated with the use of EPPG devices and determined the following risks to health are associated with its use:

- *Failure to pace:* Improper settings, electromagnetic interference, or failure

of mechanical/electrical components of the device can prevent pacing of the patient's heart.

• *Improperly high pacing rate:* Undersensing during demand pacing, unintended asynchronous pacing, or improper use of burst/overdrive pacing can cause harmful acceleration of heart rate or induce harmful arrhythmias such as ventricular tachycardia.

• *Improperly low pacing rate:* Oversensing or use error can result in stimulation pulses being delivered at an unwanted low pacing rate, which can result in untreated symptomatic bradycardia.

• *Improper pacing leading to unwanted stimulation:* Pacing during vulnerable periods of the cardiac cycle or at higher than programmed amplitude can induce arrhythmias.

• *Micro/macro shock:* Uncontrolled leakage currents or patient auxiliary currents can cause an electric shock resulting in an arrhythmia or cardiac tissue damage.

B. PSA Devices

After considering available information for the classification of these devices, including the recommendations of the advisory committees (panels) for the classification of these devices, FDA has evaluated the risks to health associated with the use of PSA devices and determined the following risks to health are associated with its use:

• *Failure to pace:* Improper settings, electromagnetic interference, or failure of mechanical/electrical components of the device can prevent pacing of the patient's heart.

• *Improperly high pacing rate:* Undersensing during demand pacing, unintended asynchronous pacing, or improper use of burst/overdrive pacing can cause harmful acceleration of heart rate or induce harmful arrhythmias such as ventricular tachycardia.

• *Improperly low pacing rate:* Oversensing or use error can result in stimulation pulses being delivered at an unwanted low pacing rate, which can result in untreated symptomatic bradycardia.

• *Improper pacing leading to unwanted stimulation:* Pacing during vulnerable periods of the cardiac cycle or at higher than programmed amplitude can induce arrhythmias. For TCPSAs, this risk includes VV dyssynchrony.

• *Micro/macro shock:* Uncontrolled leakage currents or patient auxiliary currents can cause an electric shock resulting in an arrhythmia or cardiac tissue damage.

• *Misdiagnosis:* If the zero or calibration of the device is inaccurate or unstable the device may generate inaccurate diagnostic data. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the patient at risk unnecessarily.

VI. Summary of Reasons for Reclassification

FDA believes that EPPG devices and PSA devices should be reclassified from class III to class II because special controls, in addition to general controls, can be established to provide reasonable assurance of the safety and effectiveness of the devices, and because general controls themselves are insufficient to provide reasonable assurance of their safety and effectiveness. In addition, there is now sufficient information to establish special controls to provide such assurance. FDA also believes that TCPSA devices—as a subset of PSA devices—can achieve a reasonable assurance of safety and effectiveness using the same special controls proposed for EPPG and PSA devices with the addition of limiting use to the duration of the implant procedure in order to mitigate the risk of unwanted interventricular stimulation leading to arrhythmia (captured as misdiagnosis and improper pacing leading to unwanted stimulation in the list of risks to health in section V).

VII. Summary of Data Upon Which the Reclassification Is Based

A. EPPG Devices

FDA believes that the identified special controls, in addition to general controls, are necessary to provide reasonable assurance of safety and effectiveness of these devices. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and § 860.130, based on new information with respect to the device and taking into account the public health benefit of the use of the device and the nature and known incidence of the risk of the device, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. EPPG are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device. Since 1979 when FDA classified EPPG devices into class III, sufficient evidence has been developed to support a reclassification to class II with the establishment of special controls. FDA has been reviewing these devices for many years and their risks are well known. The risks to health are identified in section V, and FDA believes these risks can be adequately mitigated by special controls.

EPPG devices that use temporary cardiac pacing for the purposes of rate control or treatment of bradycardia use mature technology with well-established evidence of effectiveness (Refs. 3, 8, 9, 11, 13). A review of 14 clinical studies published over four decades shows that temporary external pacing is generally safe and has an electrophysiologic as well as hemodynamic benefit when used as indicated (Refs. 3 to 17).

The low frequency of serious adverse events as evidenced through FDA's Manufacturer and User Facility Device Experience (MAUDE) database, the low rate of postmarket recalls, the established scientific evidence to support pacing for specific indications, the hospital use environment, and FDA's review experience with these devices, all support the reclassification of these devices to class II. In addition, several key performance standards (such as IEC 60601–1 and IEC 60601–2–31) that address various aspects of design and performance have been developed and used to support marketing applications since the original classification. In light of these considerations, FDA has tentatively concluded that the identified special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of EPPG devices.

FDA's presentation to the 2013 Panel included a summary of the available safety and effectiveness information for EPPG devices, including adverse event reports from FDA's MAUDE database and available literature. Based on the available scientific literature, which supports that use of EPPG devices may be beneficial for patients needing temporary atrial and/or ventricular pacing, FDA recommended to the 2013 Panel that EPPG devices be reclassified to class II (special controls). The 2013 Panel discussed and made recommendations regarding the regulatory classification of EPPG devices to either reconfirm to class III (subject to premarket approval application) or reclassify to class II (subject to special controls). The 2013 Panel agreed with FDA's conclusion that the available scientific evidence is adequate to support the safety and effectiveness of EPPG devices. The 2013 Panel also acknowledged that EPPG devices are life-supporting devices and provided the following rationale per

§ 860.93 for recommending that EPPG devices be reclassified to class II: (1) These devices are used exclusively in the hospital environment where backup monitoring is available, hazards can be recognized and treated immediately, and where there is a reasonable expectation that users are adequately trained; (2) there is sufficient clinical experience that attests to the benefit of the device; and (3) the recommended special controls will mitigate the health risks associated with the device.

The 2013 Panel also agreed with the identified risks to health presented at the meeting; however, it recommended that FDA consider rewording some of the language for clarity and also to ensure that certain hazards, such as asynchronous pacing and arrhythmia induction, are included in the risks to health. FDA agrees with the 2013 Panel's recommendations and modified the risks to health accordingly as outlined in section V. The 2013 Panel also agreed with FDA's proposed special controls outlined in section VIII; however, the 2013 Panel further recommended that FDA add labeling requirements for proper training, proper maintenance of the device, and remedial actions for failures due to lead connections. FDA agrees with the 2013 Panel and the proposed special controls have been modified to reflect more specific labeling requirements.

The 2013 Panel transcript and other meeting materials are available on FDA's Web site (Ref. 2).

B. PSA Devices

FDA believes that the identified special controls, in addition to general controls, are necessary to provide reasonable assurance of safety and effectiveness of these devices. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and § 860.130, based on new information with respect to the device and taking into account the public health benefit of the use of the device and the nature and known incidence of the risks of the device, FDA, on its own initiative, is proposing to reclassify these class III devices into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness.

Single and dual chamber PSA devices combine the functions of a pacemaker electrode function tester (class II) and an EPPG device (proposed class II). No new risks have been identified from the combination of these devices and the 2013 Panel likewise did not identify new concerns with regulating single and dual chamber PSAs in a manner consistent with EPPG devices. The low frequency of serious adverse events as evidenced through FDA's MAUDE database, the low rate of postmarket recalls, the established scientific evidence to support pacing for specific indications, the hospital use environment, and FDA's review experience with these devices, all supports the reclassification of these devices to class II. These devices are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device.

Sufficient evidence has been developed to support a reclassification of single and dual chamber PSA devices, to class II with special controls. FDA has been reviewing these devices for many years and their risks are well known. The risks to health are identified in section V, and FDA believes these risks can be adequately mitigated by general and special controls.

Sufficient evidence has also been developed to support a reclassification of TCPSA devices. FDA has not identified any additional risks to the patient due to the availability to pace three chambers in terms of failure to pace or improper pacing rate during the implant procedure. The longer-term hemodynamic issues associated with biventricular pacing are not relevant to the acute implant procedure. The use of TCPSAs is limited by labeling to use only during implant of a pacemaker or implantable cardioverter defibrillator (ICD). Accordingly, the proposed special controls for TCPSA devices contain the same requirements as EPPG devices with the addition of labeling that indicates TCPSA use only during the implant procedure.

FDA's presentation to the 2013 Panel included a summary of the available safety and effectiveness information for TCPSA devices, including adverse event reports from FDA's MAUDE database and a search of the available literature. The searches did not identify any safety issues for this device type.

Based on the available evidence, FDA recommended to the 2013 Panel that TCPSA devices be reclassified to class II (special controls). The 2013 Panel discussed and made recommendations regarding the regulatory classification of TCPSA devices to either reconfirm to class III (subject to premarket approval application) or reclassify to class II (subject to special controls) as directed by section 513(e) of the FD&C Act. The 2013 Panel agreed with FDA's conclusion that the available scientific evidence is adequate to support the safety and effectiveness of TCPSA devices and reclassify them to class II. The 2013 Panel also acknowledged that TCPSA devices are life-supporting devices and provided the following rationale per § 860.93 for recommending that TCPSA devices be reclassified to class II: (1) These devices are used only during the implant procedure where backup monitoring is continuous, hazards can be recognized and treated immediately, and where there is a reasonable expectation that users are adequately trained; (2) these devices are not intended to provide the long-term hemodynamic benefit of biventricular pacing or cardiac resynchronization therapy; and (3) the recommended special controls will mitigate the health risks associated with the device.

The 2013 Panel also agreed with the identified risks to health presented at the meeting; however, the 2013 Panel recommended that FDA consider the same modifications as recommended for EPPG devices. FDA agrees with the 2013 Panel's recommendations and modified the risks to health accordingly as outlined in section V. The 2013 Panel also agreed with FDA's proposed special controls outlined in section VIII; however, the 2013 Panel further recommended that FDA add labeling requirements for proper training, proper maintenance of the device, and remedial actions for failures due to lead connections. FDA agrees with the 2013 Panel.

The 2013 Panel transcript and other meeting materials are available on FDA's Web site (Ref. 2).

VIII. Proposed Special Controls

A. EPPG Devices

FDA believes that the following special controls, together with general controls (including applicable prescription-use restrictions and continuing 510(k) notification requirements), are sufficient to mitigate the risks to health described in section V for EPPG devices:

1. Appropriate analysis/testing must validate electromagnetic compatibility (EMC) within a hospital environment.

2. Electrical bench testing must demonstrate device safety during intended use. This must include testing with the specific power source (i.e., battery power, AC mains connections, or both).

3. Non-clinical performance testing data must demonstrate the performance characteristics of the device. Testing must include the following:

- Testing must demonstrate the accuracy of monitoring functions, alarms, measurement features, therapeutic features, and all adjustable

or programmable parameters as identified in labeling;

• mechanical bench testing of material strength must demonstrate that the device and connection cables will withstand forces or conditions encountered during use;

• simulated use analysis/testing must demonstrate adequate user interface for adjustable parameters, performance of alarms, display screens, interface with external devices (e.g. data storage, printing), and indicator(s) functionality under intended use conditions; and

• methods and instructions for cleaning the pulse generator and connection cables must be validated.

4. Appropriate software verification, validation, and hazard analysis must be performed.

5. Labeling must include the following:

• The labeling must clearly state that these devices are intended for use in a hospital environment and under the supervision of a clinician trained in its use;

• connector terminals should be clearly, unambiguously marked on the outside of the EPPG device. The markings should identify positive (+) and negative (−) polarities. Dual chamber devices should clearly identify atrial and ventricular terminals;

• the labeling must list all pacing modes available in the device;

• labeling must include a detailed description of any special capabilities (e.g., overdrive pacing or automatic mode switching); and

• appropriate electromagnetic compatibility information must be included.

Table 1 shows how FDA believes that the risks to health identified in section V can be mitigated by the proposed special controls.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR EPPG DEVICES

Identified risk	Mitigation measures
Failure to Pace	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Improper High Rate Pacing	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Pacing at an Improperly Low Rate	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Improper Pacing Leading to Unwanted Stimulation.	Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Micro/Macro Shock	Electrical Safety Testing. Non-Clinical Performance Evaluation. Labeling.

In addition, under § 801.109, the sale, distribution, and use of EPPG devices are restricted to prescription use. Prescription use restrictions are a type of general control in section 513(a)(1)(A)(i) of the FD&C Act. Also, under § 807.81, the device would continue to be subject to 510(k) notification requirements.

B. PSA Devices

FDA believes that the following special controls, together with general controls (including applicable prescription-use restrictions and continuing 510(k) notification requirements), are sufficient to mitigate the risks to health described in section V for single, dual, and triple chamber PSA devices:

1. Appropriate analysis/testing must validate EMC within a hospital environment.

2. Electrical bench testing must demonstrate device safety during intended use. This must include testing with the specific power source (i.e., battery power, AC mains connections, or both).

3. Non-clinical performance testing data must demonstrate the performance characteristics of the device. Testing must include the following:

• Testing must demonstrate the accuracy of monitoring functions, alarms, measurement features, therapeutic features, and all adjustable or programmable parameters as identified in labeling;

• mechanical bench testing of material strength must demonstrate that the device and connection cables will withstand forces or conditions encountered during use;

• simulated use analysis/testing must demonstrate adequate user interface for adjustable parameters, performance of alarms, display screens, interface with external devices (e.g. data storage, printing), and indicator(s) functionality under intended use conditions; and

• methods and instructions for cleaning the pulse generator and connection cables must be validated.

4. Appropriate software verification, validation, and hazard analysis must be performed.

5. Labeling must include the following:

• The labeling must clearly state that these devices are intended for use in a hospital environment and under the supervision of a clinician trained in its use;

• connector terminals should be clearly, unambiguously marked on the outside of the EPPG device. The markings should identify positive (+) and negative (−) polarities. Dual

chamber devices should clearly identify atrial and ventricular terminals. Triple chamber devices should clearly identify atrial, right ventricular, and left ventricular terminals;

- the labeling must list all pacing modes available in the device;
- labeling must include a detailed description of any special capabilities (e.g., overdrive pacing or automatic mode switching);
- labeling must limit the use of external pacing to the implant procedure; and
- appropriate electromagnetic compatibility information must be included.

Table 2 shows how FDA believes that the risks to health identified in section V can be mitigated by the proposed special controls.

TABLE 2—HEALTH RISKS AND MITIGATION MEASURES FOR PSA DEVICES

Identified risk	Mitigation measures
Misdiagnosis	Non-Clinical Performance Evaluation. Labeling.
Failure to Pace	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Improper High Rate Pacing	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Pacing at an Improperly Low Rate	Use Environment. EMC Testing. Electrical Safety Testing. Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Improper Pacing Leading to Unwanted Stimulation.	Non-Clinical Performance Evaluation. Software Verification, Validation & Hazards Analysis. Labeling.
Micro/Macro Shock	Electrical Safety Testing. Non-Clinical Performance Evaluation. Labeling.

In addition, under § 801.109, the sale, distribution, and use of these single and dual chamber PSA devices are restricted to prescription use. Prescription use restrictions are a type of general controls in section 513(a)(1)(A)(i) of the FD&C Act. Also, under § 807.81, the device would continue to be subject to 510(k) notification requirements.

IX. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Paperwork Reduction Act of 1995

This proposed order refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

XI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended authorizes FDA to issue orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this proposed order we are proposing to: (1) Revoke the requirements in § 870.3600 related to the classification of EPPG devices as class III devices and to codify the reclassification of EPPG devices into class II (special controls) and (2) codify the reclassification of PSA devices into class II (special controls).

XII. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order.

XIII. Comments

Comments already submitted to the docket (FDA–2011–N–0650) have been officially noted and do not need to be resubmitted. FDA will consider previous docket comments in issuing any final orders for these devices. Interested persons may submit either electronic comments regarding this document or the associated guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received

comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

XIV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Class II Special Controls Draft Guidance Document: External Pacemaker Pulse Generator, available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM275703.pdf.*
2. The panel transcript and other meeting materials for the September 11, 2013, Circulatory System Devices Panel are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/ucm342357.htm.*
3. ''ACC/AHA Guidelines for the Management of Patients with ST-Elevation Myocardial Infarction,'' *Circulation,* 110:e82-e292, 2004.
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5. Braun, M. U., T. Rauwolf, M. Bock, et al., ''Percutaneous Lead Implantation Connected to an External Device in Stimulation-Dependent Patients With Systemic Infection—A Prospective and Controlled Study,'' *Pacing and Clinical Electrophysiology,* August; 29(8):875–879, 2006.
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8. Eberhardt, F., T. Hanke, M. Heringlake, et al., ''Feasibility of Temporary Biventricular Pacing in Patients With Reduced Left Ventricular Function After Coronary Artery Bypass Grafting,'' *Pacing and Clinical Electrophysiology,* January; 30 Suppl 1:S50–53, 2007.
9. Ferguson, T. B. Jr. and J. L. Cox, ''Temporary External DDD Pacing After Cardiac Operations,'' *The Annals of Thoracic Surgery,* May; 51(5):723–732, 1991.
10. Halldorsson, A. O., W. T. Vigneswaran, F. J. Podbielski, and D. M. Evans, ''Electrophysiological and Clinical Comparison of Two Temporary Pacing Leads Following Cardiac Surgery,'' *Pacing and Clinical Electrophysiology,* August; 22(8):1221–1225, 1999.
11. Hindman, M. C., G. S. Wagner, M. JaRo, et al., ''The Clinical Significance of Bundle Branch Block Complicating Acute Myocardial Infarction. Indications for Temporary and Permanent Pacemaker Insertion,'' *Circulation,* October; 58(4):689–699, 1978.
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13. Kratz, J. and J. Tyler, ''Clinical Experience with a New DDD External Pacemaker,'' *Pacing and Clinical Electrophysiology,* December; 16(12):2227–2234, 1993.
14. Nimetz, A. A., S. J. Shubrooks, A. M. Hutter, and R. W. DeSanctis, ''The Significance of Bundle Branch Block During Acute Myocardial Infarction,'' *American Heart Journal,* October; 90(4):439–444, 1975.
15. Pinneri, F., S. Frea, K. Najd, et al., ''Echocardiography-Guided Versus Fluoroscopy-Guided Temporary Pacing in the Emergency Setting: An Observational Study,'' *Journal of Cardiovascular Medicine* (Hagerstown), March; 14(3):242–246, 2013.
16. Siddons, H., ''Transvenous Long-Term Pacing With an External Pacemaker. What Are the Risks?'', *Pacing and Clinical Electrophysiology,* April; 1(2):163–165, 1978.
17. Voigtländer T., B, Nowak, P. Bärenfänger, et al., ''Feasibility and Sensing Thresholds of Temporary Single-Lead VDD Pacing in Intensive Care,'' *American Journal of Cardiology,* May 15; 79(10):1360–1363, 1997.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 870.3600 is revised to read as follows:

§ 870.3600 External pacemaker pulse generator.

(a) *Identification.* An external pacemaker pulse generator (EPPG) is a prescription device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. This device, which is used outside the body, is used as a temporary substitute for the heart's intrinsic pacing system until a permanent pacemaker can be implanted, or to control irregular heartbeats in patients following cardiac surgery or a myocardial infarction. The device may have adjustments for impulse strength, duration, R-wave sensitivity, and other pacing variables.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Appropriate analysis/testing must validate electromagnetic compatibility (EMC) within a hospital environment.

(2) Electrical bench testing must demonstrate device safety during intended use. This must include testing with the specific power source (i.e., battery power, AC mains connections, or both).

(3) Non-clinical performance testing data must demonstrate the performance characteristics of the device. Testing must include the following:

(i) Testing must demonstrate the accuracy of monitoring functions, alarms, measurement features, therapeutic features, and all adjustable or programmable parameters as identified in labeling;

(ii) Mechanical bench testing of material strength must demonstrate that the device and connection cables will withstand forces or conditions encountered during use;

(iii) Simulated use analysis/testing must demonstrate adequate user interface for adjustable parameters, performance of alarms, display screens, interface with external devices (e.g. data storage, printing), and indicator(s) functionality under intended use conditions; and

(iv) Methods and instructions for cleaning the pulse generator and connection cables must be validated.

(4) Appropriate software verification, validation, and hazard analysis must be performed.

(5) Labeling must include the following:

(i) The labeling must clearly state that these devices are intended for use in a hospital environment and under the supervision of a clinician trained in their use; and

(ii) Connector terminals should be clearly, unambiguously marked on the outside of the EPPG device. The markings should identify positive (+) and negative (-) polarities. Dual chamber devices should clearly identify atrial and ventricular terminals; and

(iii) The labeling must list all pacing modes available in the device;

(iv) Labeling must include a detailed description of any special capabilities (e.g., overdrive pacing or automatic mode switching); and

(v) Appropriate electromagnetic compatibility information must be included.

■ 3. In Subpart D, add § 870.3605 to read as follows:

§ 870.3605 Pacing system analyzer.

(a) *Identification.* A pacing system analyzer (PSA) is a prescription device that combines the functionality of a pacemaker electrode function tester (§ 870.3720) and an external pacemaker pulse generator (EPPG) (§ 870.3600). It is connected to a pacemaker lead and uses a power supply and electronic circuits to supply an accurately calibrated, variable pacing pulse for measuring the patient's pacing threshold and intracardiac R-wave potential. A PSA may be a single, dual, or triple chamber system and can simultaneously deliver pacing therapy while testing one or more implanted pacing leads.

(b) *Classification.* Class II (special controls) for PSAs. The special controls for this device are:

(1) Appropriate analysis/testing must validate electromagnetic compatibility (EMC) within a hospital environment.

(2) Electrical bench testing must demonstrate device safety during intended use. This must include testing with the specific power source (i.e., battery power, AC mains connections, or both).

(3) Non-clinical performance testing data must demonstrate the performance characteristics of the device. Testing must include the following:

(i) Testing must demonstrate the accuracy of monitoring functions, alarms, measurement features, therapeutic features, and all adjustable or programmable parameters as identified in labeling;

(ii) Mechanical bench testing of material strength must demonstrate that the device and connection cables will withstand forces or conditions encountered during use;

(iii) Simulated use analysis/testing must demonstrate adequate user interface for adjustable parameters, performance of alarms, display screens, interface with external devices (e.g. data storage, printing), and indicator(s) functionality under intended use conditions; and

(iv) Methods and instructions for cleaning the pulse generator and connection cables must be validated.

(4) Appropriate software verification, validation, and hazard analysis must be performed.

(5) Labeling must include the following:

(i) The labeling must clearly state that these devices are intended for use in a hospital environment and under the supervision of a clinician trained in their use;

(ii) Connector terminals should be clearly, unambiguously marked on the outside of the EPPG. The markings should identify positive (+) and negative (-) polarities. Dual chamber devices should clearly identify atrial and ventricular terminals. Triple chamber devices should clearly identify atrial, right ventricular, and left ventricular terminals;

(iii) The labeling must list all pacing modes available in the device;

(iv) Labeling must include a detailed description of any special capabilities (e.g., overdrive pacing or automatic mode switching);

(v) Labeling must limit the use of external pacing to the implant procedure; and

(vi) Appropriate electromagnetic compatibility information must be included.

Dated: September 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21814 Filed 9–12–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

[145A2100DD.AADD001000.A0E501010.999900]

RIN 1076–AF08

Grants to Tribally Controlled Colleges and Universities, Diné College, and Tribally Controlled Postsecondary Career and Technical Institutions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation sessions.

SUMMARY: The Bureau of Indian Education provides financial and technical assistance to tribally controlled colleges and universities and Diné College. In collaboration with the American Indian Higher Education Consortium, we have prepared a discussion draft that updates the policies and procedures for administration and oversight of these assistance programs and revises regulatory language to conform to statutory amendments. This notice announces tribal consultation sessions and a comment period on the preliminary discussion draft.

DATES: Comments must be received by November 15, 2014. See the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the tribal consultation sessions.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for locations of the tribal consultation sessions and the Web site where the preliminary discussion draft is available. You may submit comments by either of the following methods:

—Federal Rulemaking Portal: *http://www.regulations.gov.* This rule is listed under the agency name ''Bureau of Indian Affairs'' and Docket ID ''BIA–2011–0002.''

—Mail or Hand-Delivery: Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1951 Constitution Ave. NW., MS 312, Washington, DC 20240. Include ''1076–AF08'' on the cover of the submission.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1951 Constitution Ave. NW., MS 312, Washington, DC 20240; or email to *juanita.mendoza@bie.edu.*

SUPPLEMENTARY INFORMATION: The BIE supports and encourages the establishment, operation, and improvement of tribally controlled colleges and universities (TCUs) to ensure continued and expanded educational opportunities for Indian students. The TCUs are both integral and essential to their communities, creating environments that foster American Indian culture, languages, and traditions. The TCUs serve a variety of people from young adults to senior citizens. The TCUs offer 358 total programs, including apprenticeships, diplomas, certificates, and degrees. These programs include 181 associate degree programs at 23 TCUs, 40 bachelor's degree programs at 11 TCUs, and 5 master's degree programs at 2 TCUs.

The BIE is revising the regulations at 25 CFR Part 41 and has prepared a preliminary discussion draft. Subpart B of the preliminary discussion draft concerns financial and technical assistance to tribal colleges and universities funded under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 et seq.). Subpart B does not concern financial assistance to Diné College or to tribally controlled postsecondary career and technical institutions. Subpart C of the

preliminary discussion draft applies to financial assistance to Diné College under the Navajo Nation Higher Education Act of 2008. Subpart A includes general provisions and applies to both subparts B and C.

This notice announces the availability of the preliminary discussion draft of potential revisions for public view at *www.bie.edu/consultation/index.htm.* Comments on the preliminary discussion draft are due by the date indicated in the **DATES** section of this notice. BIE will host five meetings to obtain input on the preliminary discussion draft.

The meetings to obtain input will be held on the dates and at the locations shown below. All times are local.

Date	Time	Location	Venue
October 16, 2014	5:00 p.m.–8:00 p.m	Anchorage, Alaska	NIEA Conference, Anchorage Convention Center, Room TBD, Anchorage, AK 99501.
October 20, 2014	12 p.m.–3 p.m	Webinar	Register at web link: *https://dcma100.webex.com/dcma100/k2/j.php?MTID=tf8923c96f8b2d86dc23136f450688e77.*
October 22, 2014	12 p.m.–3 p.m	Gallup, NM	Navajo Regional Office, Bureau of Indian Affairs, Conference Room 162, 301 West Hill Street, Gallup, NM 87301.
October 27, 2014	9 a.m.–12 p.m	Billings, MT	Department of Interior Building, 2021 4th Avenue North, 4th Floor, Plenty Coup Room, Billings, MT 59101.
October 29, 2014	9 a.m.–12 p.m	Bloomington, MN	Bureau of Indian Education, Associate Deputy Director's Office, 2001 Killebrew Dr., Ste. 122, Bloomington, MN 55425.

Following the first round of consultation, we will review the comments received and then prepare a proposed rule for publication in the **Federal Register**. This will open a second round of consultation and a formal comment period to allow for further refining of the proposed rule before we publish a final rule.

Dated: September 10, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–21966 Filed 9–12–14; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0040]

RIN 1625–AA87

Revision of Safety/Security Zone Regulations; 2014 Tampa Bay; Captain of the Port St. Petersburg Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to consolidate three security zone regulations into one regulation. In addition, the Coast Guard is proposing to disestablish two safety zone regulations, and convert those safety zones into security zones for all navigable waterways of Big Bend, Boca Grande, Crystal River, East Bay, Hillsborough Bay, MacDill Air Force Base, Manbirtee Key, Old Port Tampa, Port Manatee, Port Tampa, Port St. Petersburg, Port Sutton, Rattlesnake, and Weedon Island, FL. The purpose of these revisions is to ensure the security of vessels, facilities, and the surrounding areas within these zones. Entry into the area encompassed by these revised security zones is prohibited without permission of the Captain of the Port St. Petersburg or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before October 15, 2014.

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

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Brett Sillman, Sector St. Petersburg Waterways Management Division, U.S. Coast Guard; telephone (813) 228–2191, email *brett.s.sillman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collings, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if

we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0040 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. 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,* type the docket number USCG–2013–0040 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

3. 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).

4. Public Meeting

We do not plan to hold a public meeting, but you may submit a request for one using one of the 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**.

B. Regulatory History and Information

Existing security zones were established in 2003 and codified in 33 CFR 165.760 and 165.764 by the Captain of the Port Tampa. The Coast Guard proposes to revise the following established safety and security zones for the purpose of enhancing port security for the region:

- § 165.703 Tampa Bay, Florida—Safety Zone;
- § 165.704 Tampa Bay, Florida—Safety Zone;
- § 165.760 Security Zones; Tampa Bay, Port of Tampa, Port of St. Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island and Crystal River, Florida;
- § 165.767 Security Zone; Manbirtee Key, Port of Manatee, Florida;
- § 165.768 Security Zone; MacDill Air Force Base, Tampa, FL;
- § 165.760 Remove; (a)(6) Piers, seawalls, and facilities, Port of Tampa, East Bay and the eastern side of Hooker's Point;
- § 165.760 Remove; (a)(8) Piers, seawalls, and facilities, Port of Manatee.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish limited access areas: 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, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the regulation is to reorganize and consolidate three existing security zones in 33 CFR 165.760, 33 CFR 165.767 and 33 CFR 165.768 into a single regulation and to combine the safety zones in 33 CFR 165.703 and 33 CFR 165.704 into a single security zone regulation to ensure the security of vessels, facilities, and the surrounding areas and provide safety of life on the navigable waters in the Captain of the Port St. Petersburg Zone.

D. Discussion of Proposed Rule

The Coast Guard is proposing to consolidate security zones in 33 CFR 165.760, 33 CFR 165.767, and 33 CFR 165.768 into one section under 33 CFR 165.703. The Coast Guard is also proposing to disestablish all local safety zone regulations under 33 CFR 165.703 and 33 CFR 165.704 and convert those safety zones into new security zones under section 33 CFR 165.703 regulations for all navigable waterways of Big Bend, Boca Grande, Crystal River, East Bay, Hillsborough Bay, MacDill Air Force Base, Manbirtee Key, Old Port Tampa, Port Manatee, Port Tampa, Port St. Petersburg, Port Sutton, Rattlesnake, and Weedon Island, FL, within the Captain of the Port St. Petersburg Zone. The security zones created by this proposed rule will

The Coast Guard's ports, waterways and coastal security mission gives priority to ensuring the safe transit of vessels carrying especially hazardous cargos.

There are currently no security zones for vessels carrying especially hazardous cargos within Tampa Bay. In consideration of the potential risks to the aforementioned public and commercial interests from especially hazardous cargos such as an ammonium nitrate or liquefied petroleum gas explosion, toxic release of anhydrous ammonia, or disruption of any vessel's transit due to an attack, and using the Maritime Security Risk Analysis Tool, there is a compelling public safety interest to:

(1) Establish a 500-yard security zone around all vessels carrying especially hazardous cargos during transit through Tampa Bay and while moored with cargo onboard; and,

(2) Establish a 500-yard security zone around cruise ships, during transit through Tampa Bay and at all times while moored.

Establishing 500-yard security zones increases the area of federally enforceable jurisdiction around the protected vessel, thereby providing vital additional space for law enforcement vessels to react to potential surface threats. The current zone is insufficient to allow law enforcement vessels to effectively respond to such threats. These proposed regulations will impose operating, inspection, and reporting requirements for vessels and will create regulated areas surrounding vessels in commercial service, including ferries. Owners, agents, masters, operators, or persons in charge of vessels will be subject to the reporting requirements contained in 33 CFR part 160, subpart C, Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargos.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulation is not a significant regulatory action because this change constitutes merely the merging of, and increased size of existing regulations. This proposed rule may have some impact on the public, but these potential impacts will be minimized for the following reasons: There is ample room for vessels to navigate around security zones, and there are several locations for recreational and commercial fishing vessels to fish throughout the Tampa Bay region.

Also, vessels wishing to enter, transit through, or anchor in the regulated areas may do so with the permission of the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this proposed rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the commandant instruction. A preliminary environmental analysis checklist supporting this determination are not required because the project seeks to only merge and remove existing regulations. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.703 to read as follows:

§ 165.703 Security Zones; Tampa Bay: Big Bend, Boca Grande, Crystal River, East Bay, Hillsborough Bay, MacDill Air Force Base, Manbirtee Key, Old Port Tampa, Port Manatee, Port Tampa, Port St. Petersburg, Port Sutton, Rattlesnake, and Weedon Island, FL.

(a) *Regulated areas.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984) are security zones:

(1) *Security Zones for Facilities and Structures*—(i) *Rattlesnake, Tampa, FL.* All water, from surface to bottom, in Old Tampa Bay east and south of the waters encompassed within position 27°53.32′ N, 082°32.05′ W; thence to; 27°53.38′ N, 082°32.05′ W, including on land portions of Chemical Formulators Chlorine Facility, where the fenced area is bounded by a line connecting the following points: 27°53.21′ N, 082°32.11′ W; thence to; 27°53.22′ N, 082°32.23′ W; thence to; 27°53.25′ N, 082°32.23′ W; thence to; 27°53.25′ N, 082°32.27′ W; thence to; 27°53.29′ N, 082°32.25′ W; thence to; 27°53.30′ N, 082°32.16′ W; thence to; 27°53.21′ N, 082°32.11′ W.

(ii) *Old Port Tampa, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay encompassed within the following points: 27°51.62′ N, 082°33.14′ W; thence to; 27°51.71′ N, 082°32.5′ W; thence to; 27°51.76′ N, 082°32.5′ W; thence to 27°51.73′ N, 082°33.16′ W; thence to; 27°51.62′ N, 082°33.14′ W, closing off the Old Port Tampa channel.

(iii) *Sunshine Skyway Bridge, FL.* All waters in Tampa Bay, from surface to bottom, in Cut ''A'' channel beneath the bridge's main span encompassed within the following points: 27°37.30′ N, 082°39.38′ W; 27°37.13′ N, 082°39.26′ W; and the bridge structure columns, base and dolphins. This zone is specific to the bridge structure and dolphins and does not include waters adjacent to the bridge columns or dolphins outside of the bridge's main span. Any vessel may transit through this zone but, may not loiter, anchor, or conduct operations, including dredging, dive operation, surveying, or maintenance, unless otherwise directed by the Captain of the Port. Anyone wanting to conduct these operations must submit a request via email to *WWMTampa@uscg.mil* or contact the Sector Command Center after hours at 727.824.7506.

(iv) *Manbirtee Key, Port of Manatee, FL.* All waters, from surface to bottom, surrounding, surrounding Manbirtee Key, Tampa Bay, FL extending 500 yards from the island's shoreline, in all directions, not to include the Port Manatee Channel.

(v) *MacDill Air Force Base, Tampa Bay, FL.* All waters encompassed within the following coordinates: 27°51′52.901″ N, 082°29′18.329″ W; thence to 27°52′00.672″ N, 082°28′51.196″ W; thence to 27°51′28.859″ N, 082°28′10.412″ W; thence to 27°51′01.067″ N, 082°27′45.355″ W; thence to 27°50′43.248″ N, 082°27′36.491″ W; thence to 27°50′19.817″ N, 082°27′35.466″ W; thence to 27°49′38.865″ N, 082°27′43.642″ ; W; thence to 27°49′20.204″ N, 082°27′47.517″ W; thence to 27°49′06.112″ N, 082°27′52.750″ W; thence to 27°48′52.791″ N, 082°28′05.943″ W; thence to 27°48′45.406″ N, 082°28′32.309″ W; thence to 27°48′52.162″ N, 082°29′26.672″ W; thence to 27°49′03.600″ N, 082°30′23.629″ W; thence to 27°48′44.820″ N, 082°31′10.000″ W; thence to 27°49′09.350″ N, 082°32′24.556″ W; thence to 27°49′38.620″ N, 082°33′02.444″ W; thence to 27°49′56.963″ N, 082°32′45.023″ W; thence to 27°50′05.447″ N, 082°32′48.734″ W; thence to 27°50′33.715″ N, 082°32′45.220″ W; thence to 27°50′42.836″ N, 082°32′10.972″ W.

(vi) *Piers, seawalls, and facilities, Port of Tampa and Port Sutton, Tampa, FL.* All waters, from surface to bottom, extending 50 yards from the shore, seawall, and piers around facilities in Port Sutton within the Port of Tampa encompassed by a line connecting the following points: 27°54.15′ N, 082°26.06′ W; thence to; 27°54.46′ N, 082°25.71′ W; closing off all Port Sutton Channel.

(vii) *Piers, seawalls, and facilities, Port of Tampa, on the western side of Hooker's Point, Tampa, FL.* All waters, from surface to bottom, extending 50 yards from the shore, seawall, and piers around facilities on Hillsborough Bay northern portion of Cut ''D'' Channel, Sparkman Channel, Ybor Turning Basin, and Ybor Channel within the Port of Tampa encompassed by a line connecting the following points: 27°54.74′ N, 082°26.47′ W; thence to 27°55.25′ N, 082°26.73′ W; thence to 27°55.60′ N, 082°26.80′ W; thence to 27°56.00′ N, 082°26.75′ W; thence to 27°56.58′ N, 082°26.53′ W; thence to 27°57.29′ N, 082°26.51′ W; thence to 27°57.29′ N, 082°26.61′ W; thence to 27°56.65′ N, 082°26.63′ W; thence to 27°56.58′ N, 082°26.69′ W; thence to 27°56.53′ N, 082°26.90′ W.

(viii) *St. Petersburg Harbor, FL.* All waters, from surface to bottom, extending 50 yards from the seawall and around all moorings and vessels in St. Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at day beacon ''10'' (LLNR 24995) in approximate position 27°45.56′ N, 082°37.55′ W, and westward along the seawall to the end of the cruise terminal in approximate position 27°45.72′ N, 082°37.97′ W. The zone will also include the Coast Guard south moorings in St. Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27°45.51′ N, 082°37.99′ W; to 27°45.52′ N, 082°37.57′ W. The southern boundary of the zone is shoreward of a line between the entrance to Salt Creek easterly towards day beacon ''11'' (LLNR 24990).

(ix) *Crystal River Nuclear Power Plant.* All waters, from surface to bottom, around the FL, Power Crystal River Nuclear Power Plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassed by a line connecting the following points: 28°56.87′ N, 082°45.17′ W; thence to 28°57.37′ N, 082°41.92′ W; thence to 28°56.79′ N, 082°45.13′ W; thence to 28°57.32′ N, 082°41.92′ W.

(x) *Crystal River Demory Gap Channel.* All waters, from surface to bottom, in the Demory Gap Channel in Crystal River, Florida, encompassed by the following points: 28°57.61′ N, 082°43.42′ W thence to; 28°57.55′ N, 082°41.88′ W thence to; 28°57.58′ N, 082°43.42′ W thence to; 28°57.51′ N, 082°41.88′ W.

(xi) *Big Bend Power Plant, FL.* All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by the following points: 27°48.08′ N, 082°24.88′ W; thence to; 27°48.15′ N, 082°24.96′ W; thence to; 27°48.10′ N, 082°25.00′ W; thence to; 27°47.85′ N, 082°25.03′ W; thence to; 27°47.58′ N, 082°24.89′ W; thence to; 27°47.58′ N, 082°24.06′ W; thence to; 27°47.62′ N, 082°24.04′ W; thence to; 27°47.63′ N, 082°24.71′ W; thence to; 27°48.03′ N, 082°24.70′ W; thence to; 27°48.08′ N, 082°24.88′ W, closing off entrance to Big Bend Power Facility and the attached cooling canal.

(xii) *Weedon Island Power Plant, FL.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by the following points: 27°51.52′ N, 082°35.82′ W; thence along the shore to; 27°51.54′ N, 082°35.78′ W; thence to; 27°51.89′ N, 082°35.82′ W; thence to; 27°51.89′ N, 082°36.14′ W, closing off the entrance to both canals.

(2) *Vessel Specific Security Zones*—(i) *Moving security zones for Cruise Ships and vessels carrying Especially Hazardous Cargos.* The following security zones and procedures are established for all waters, from surface to bottom, within a 500-yard radius, as outlined below:

(A) For inbound vessels commencing at Egmont Channel Lighted Buoys ''9'' (LLNR 22270) and ''10'' (LLNR 22275) through to berth.

(B) For shifting vessels from their departure berth to destination berth.

(C) For outbound vessels commencing at berth through to Egmont Channel Lighted Buoys ''9'' (LLNR 22270) and ''10'' (LLNR 22275).

(D) All subject vessels operating in the Captain of the Port St. Petersburg Zone shall follow the reporting requirements in 33 CFR part 160, subpart C.

(E) Any vessel desiring to enter or transit the security zone shall obtain permission from the Captain of the Port St. Petersburg or a designated representative. If permission is granted, all persons and vessels must comply with any given instructions.

(3) *Fixed Security Zones for moored Cruise Ships and moored vessels carrying Especially Hazardous Cargos.* A security zone is established for all waters, from surface to bottom, within a 200-yard radius around moored cruise ships and moored vessels carrying especially hazardous cargos, as outlined below:

(i) All subject vessels operating in the Captain of the Port St. Petersburg Zone shall follow reporting requirements in 33 CFR part 160, subpart C.

(ii) Any vessel desiring to enter or transit the security zone shall obtain permission from the Captain of the Port St. Petersburg or a designated representative. If permission is granted, all persons and vessels must comply with any given instructions.

(iii) No vessel may loiter, anchor, or conduct maintenance operations within the security zone, unless otherwise directed by the Captain of the Port St. Petersburg or a designated representative. This includes, but is not limited to dredging operations, dive operations, and surveying. Anyone wanting to conduct these operations must submit a request via email to *WWMTampa@uscg.mil* or contact the Sector Command Center after hours at 727.824.7506.

(b) *Definitions.* As used in this section:

Ammonium Nitrate means ammonium nitrate and ammonium nitrate based fertilizers listed as Division 5.1 (oxidizing) materials as defined in 33 CFR 172.101 except when carried as CDC residue.

Captain of the Port (COTP) for the purpose of this section means the Commanding Officer of Coast Guard Sector St. Petersburg.

Captain of the Port St. Petersburg Zone means any navigable waters or tributaries between or within Fenholloway River through Chokoloskee Pass, Florida, including Big Bend, Boca Grande, Crystal River, East Bay, Hillsborough Bay, MacDill Air Force Base, Manbirtee Key, Old Port Tampa, Port Manatee, Port Tampa, Port St. Petersburg, Port Sutton, Rattlesnake, Tampa Bay, and Weedon Island, FL.

Certain Dangerous Cargo includes *Division 1.5D* blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of Research and Special Programs Administration exemption. This includes ammonium nitrate fuel oil mixture.

Commercial Vessels means any tank, bulk, container, cargo, cruise ships, pilot vessels, or tugs. This definition excludes fishing vessels, salvage vessels, dead ship tow operations.

Cruise Ship means the same as defined 33 CFR Part 101.105.

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the COTP, in the enforcement of regulated navigation areas, safety zones, and security zones.

Especially Hazardous Cargo means anhydrous ammonia, ammonium nitrate, chlorine, liquefied natural gas, liquefied petroleum gas, and any other substance, material, or group or class in a particular amount and form that the Secretary determines by regulation poses a significant risk of creating a transportation security incident while being transported in maritime commerce.

(c) *Regulations.* (1) Entry into or remaining on or within the zones described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Any changes to the requirements for these regulated areas will be given by Broadcast Notice to Mariners on VHF–FM Channel 22A.

Note to paragraph (c)(2): A graphical representation of all fixed security zones will be made available through nautical charts via the Coast Pilot.

(3) The Captain of Port St. Petersburg has provisions for escorting especially hazardous cargos as described in the above sections of this subchapter, but reserves the right to establish additional provisions for any potentially hazardous cargos.

(4) *Enforcement.* Under general the general provisions in 33 CFR 165.33, no person may authorize the operation of a vessel in the security zones contrary to the provisions of this section.

(5) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) The Captain of the Port St. Petersburg may waive any of the requirements of this subpart for any vessel, facility, or structure upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of port safety and security or environmental safety.

■ 3. Remove and reserve §§ 165.704, 165.760, 165.767, and 165.768.

Dated: June 4, 2014.

G.D. Case,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2014–21999 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0659; FRL–9916–42–Region–8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to the Wyoming Air Quality Standards and Regulations; Ambient Standards for Nitrogen Oxides and for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Wyoming. The revision affects Wyoming's Air Quality Standards and Regulations (WAQSR) regarding ambient standards for nitrogen oxides (NO_X) and for ozone. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 15, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0659, by one of the following methods:

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

• *E-Mail: pratt.steven@epa.gov.*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Director, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6575, *pratt.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving Wyoming's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: August 25, 2014.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2014–21572 Filed 9–12–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[WC Docket No. 14–130; FCC 14–123]

Comprehensive Review of the Uniform System of Accounts

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) initiated a proceeding to review Uniform System of Accounts (USOA) to consider ways to minimize burdens on carriers while ensuring that the agency retains access to the information it needs to fulfill regulatory duties.

DATES: Comments are due on or before November 14, 2014. Reply comments are due on or before December 15, 2014.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Robin Cohn, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1540 or *robin.cohn@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket 14–130, FCC 14–123, adopted August 19, 2014, and released on August 20, 2014. The full text of this document may be downloaded at the following Internet address: *http://www.fcc.gov/document/fcc-seeks-comment-streamlining-telephone-co-accounting-rules.* The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room Cy–B402, Washington, DC 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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

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

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The proceeding the *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

I. Introduction

1. In the Notice of Proposed Rulemaking (*NPRM*), we initiate a proceeding to review our part 32 Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on carriers while ensuring that the agency retains access to the information it needs to fulfill its regulatory duties. Section 220 of the Communications Act of 1934, as amended (the Act), authorizes the Commission to prescribe the system of accounts to be used by carriers subject to the Act, and the USOA and its predecessors have historically performed this function for regulated telephone companies. In the *USTelecom Forbearance Order,* the Commission denied the request that the Commission forbear completely from applying the requirement that price cap carriers maintain the USOA. At the same time, the Commission recognized that, in light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, it is likely appropriate to streamline the existing rules even though those reforms may not have eliminated the need for accounting data for some purposes. Accordingly, we seek comment now on streamlining Part 32 to reduce regulatory burdens while maintaining access to the data the Commission needs to fulfill its statutory and regulatory obligations. We will complete this proceeding no later than the end of 2015.

II. Background

2. Section 220 of the Act requires the Commission to ''prescribe a uniform system of accounts for use by telephone companies.'' The Commission adopted its first accounting system in 1935 as parts 31 and 33 of the Commission's rules ''when a rigid institutionalized regulatory environment was expected to continue forever.'' In 1986, the Commission adopted the USOA contained in part 32 to respond to the ''introduction of competition and an explosion of new products and services to which the existing systems could not respond without massive modification.''

3. The Commission intended the USOA to ''accommodate generally accepted accounting principles (GAAP) to the extent regulatory considerations permit.'' As the Commission explained:

> GAAP is that common set of accounting concepts, standards, procedures and conventions which are recognized by the accounting profession as a whole and upon which most nonregulated enterprises base their external financial statements and reports. It directs the recording of financial events and transactions and relates to how assets, liabilities, revenues and expenses are to be identified, measured, and reported.

While Part 32 specifies a chart of accounts and the types of transactions to be maintained in each account, GAAP allows companies to determine their own system of accounts subject to certain principles.

4. The Commission adopted the USOA ''at a time when regulators were required or inclined to organize telecommunications costs in a manner that allowed a logical mapping of these costs to telecommunications rate structures.'' At that time, virtually all interstate access rates were subject to rate-of-return regulation, under which rates are set to cover an entity's regulated operating expenses and provide a pre-specified return on the capital the company uses to provide regulated services.

5. Accordingly, Part 32 deviated from GAAP to the extent needed to support cost-based regulatory activities such as jurisdictional separations, cost assignment, and rate-of-return ratemaking. Part 32 specifies the revenue and expense accounts that must be maintained to record amounts for preparation of a carrier's income statement for its regulated activities, as well as accounts that must be used for recording nonregulated activities. Carriers then directly assign, or allocate if direct assignment is not possible, the investment, expenses, and revenues between regulated and nonregulated activities using the cost assignment rules in part 64. The regulated investment, expenses and revenues are then separated between the interstate and intrastate jurisdictions as specified in part 36. The Commission and each state regulatory jurisdiction applies its own ratemaking processes to the amounts assigned to its jurisdiction. In the interstate jurisdiction, the access charge rules in part 69 specify how carriers assign or allocate regulated costs among the interexchange service category and access categories. These rules, taken together, were designed to permit incumbent LECs to comply with rate-of-return regulation.

6. In 1991, the Commission adopted price cap regulation for the largest incumbent LECs while making it optional for other incumbents. Price cap regulation is a form of incentive regulation that relies on a series of Price Cap Indexes (PCIs) to limit the prices carriers charge for services to levels that are presumed to be just and reasonable. Unlike rate-of-return regulation, ''price cap regulation eliminates the direct link between changes in allocated accounting costs and change in price [but] it does not sever the connection between accounting costs and prices entirely.'' Today, fewer than five percent of access lines are served by rate-of-return carriers—the incumbent LEC for most consumers is a price cap carrier.

7. The Commission has reviewed and streamlined its accounting rules on several occasions in the years following passage of the Telecommunications Act of 1996. The Commission clarified that ''only incumbent local exchange carriers'' are subject to the USOA and other accounting rules. In 2000, the Commission streamlined part 32 obligations by eliminating the expense

matrix filing requirement, reducing the cost allocation manual audit requirement, relaxing certain affiliate transactions requirements for services, and eliminating the reclassification requirement for certain plant under construction. In 2001, it consolidated and streamlined Class A accounting requirements, relaxed additional aspects of the affiliate transactions rules, reduced the cost of regulatory compliance with cost allocation rules for mid-sized carriers, and reduced financial reporting requirements. And in 2008, the Commission forbore from applying its cost assignment rules and financial reporting rules to AT&T, Verizon, and Qwest, finding that its need for cost data had significantly diminished with continuing refinement of price cap ratemaking and universal service reforms.

8. *USTelecom Forbearance Order.* On February 16, 2012, USTelecom filed a petition pursuant to section 10 of the Act requesting that the Commission forbear from enforcing certain ''legacy telecommunications regulations.'' The Commission resolved that petition on May 17, 2013 in the *USTelecom Forbearance Order.* There, the Commission extended the forbearance it had granted to AT&T, Verizon, and Qwest to other price cap carriers, but declined to forbear altogether from applying the USOA to price cap carriers. Nevertheless, the Commission ''acknowledge[d] that further streamlining of our rules is likely appropriate,'' and promised to ''conduct a comprehensive review of the part 32 Uniform System of Accounts'' through a Notice of Proposed Rulemaking, with the aim of ''minimiz[ing] the compliance burdens of our regulations while ensuring our continued access to the relevant financial information necessary to fulfill our duties.''

III. Discussion

9. In this proceeding, we seek comment on the extent to which we can reform our accounting rules. We divide our analysis and proposals into three parts. First, we propose to streamline our USOA accounting rules while preserving their existing structure. Second, we seek more focused comment on the accounting requirements needed for price cap carriers to address our statutory and regulatory obligations. Third, we seek comment on several related issues, including state requirements, rate effects, implementation, continuing property records, and legal authority.

A. Streamlining the USOA

10. In this section, we propose rules to streamline our part 32 accounting rules. First, we propose to collapse the Class A and Class B distinctions in our rules, which would reduce the number of accounts required to be maintained by Class A carriers by over 40 percent. Second, we examine the differences between GAAP and the part 32 USOA and propose to better align part 32 with modern accounting standards where feasible.

1. Consolidating the Class A and Class B Accounts

11. Part 32 divides incumbent LECs into two classes for accounting purposes: Class A (carriers with annual revenues exceeding $150.2 million) and Class B (smaller carriers). Class A carriers that do not qualify as mid-sized incumbent LECs are required to maintain 138 Class A accounts, which provide more detailed records of investment, expense, and revenue than the 80 Class B accounts that Class B carriers are required to maintain. When the Commission adopted this regime, it drew this line to ''adopt a far less burdensome system'' for smaller carriers—but one that was nevertheless sufficient to meet its statutory obligations.

12. We propose to eliminate the classification of carriers, so that all carriers subject to part 32 would be required to keep the streamlined Class B accounts. Collapsing the distinction between Class A and Class B carriers would simplify our rules and reduce the number of accounts that Class A carriers must keep by one third. Furthermore, it appears that using only Class B accounts should be sufficient to meet our regulatory needs, since no rate-of-return carrier is required today to keep Class A accounts. We seek comment on this proposal and this analysis. To the extent commenters believe that this proposal would compromise any of the Commission's specific data needs, it should specify the particular accounts or subaccounts at issue, their use, and explain why the benefit of maintaining such accounts or subaccounts outweighs the cost.

13. We note there are other differences in the treatment of Class A carriers and Class B carriers for purposes of part 32. For example, § 32.2000(b) sets different thresholds for Class A and Class B carriers for when to account for assets using original cost or acquisition cost. Section 32.2682(c) requires Class A carriers to maintain additional records for amortized leasehold improvements. And § 32.2690(b) requires Class A carriers to maintain ''subsidiary records for general purpose computer software and for network software.'' We propose to use the Class B treatment in all such circumstances, since the Commission designed the Class B requirements to reduce the burdens of compliance while maintaining the detail necessary for regulatory purposes. We seek comment on this proposal, and whether there are any particular requirements where the distinction between Class A and Class B treatment continues to be important to the Commission's statutory obligations, or where the Class A treatment would actually reduce the burden on affected companies.

2. Aligning the USOA With GAAP

14. In this section, we seek to develop a record on how our rules differ from GAAP accounting and the extent to which GAAP or other accounting principles or systems provide a basis for further streamlining of the USOA. In the following paragraphs, we identify several instances in which the USOA and GAAP accounting differ. We seek comment on the differences articulated here between GAAP accounting principles and our current accounting rules and whether there are other differences that we should be aware of. To the extent that parties are shifting from GAAP to International Financial Reporting Standards (IFRS), we also seek comment on the differences among USOA, GAAP, and IFRS generally, and as relevant to specific issues raised below.

15. We also invite parties to identify other areas in which the USOA and GAAP requirements vary, or where the USOA provides definition to a particular data point whereas GAAP would not. For each such item, parties should specify the difference(s) between the USOA and GAAP treatment, the implications of these differences, and whether such differences are material to the Commission's ability to carry out our statutory and regulatory obligations. Parties should also address the extent to which GAAP or IFRS accounting would affect the Commission's ability to make accurate comparisons among carriers in carrying out our statutory and regulatory responsibilities, as well as whether any changes proposed would require revision of any existing reports.

16. *Asset Accounting.* Carriers acquire assets to be used in providing service to customers, and both the USOA and GAAP generally require assets to be recorded at cost. But the two part ways (to some degree) when it comes to determining the specific cost of certain assets.

17. For example, the USOA requires acquired assets to be accounted for at ''original cost'' except for assets where the purchase price is below a set threshold, in which case they are to be accounted for at ''acquisition cost.'' The USOA in turn defines original cost to mean ''the actual money cost of (or the current money value of any consideration other than money exchanged for) property at the time when it was first dedicated to use by a regulated telecommunications entity, whether the accounting company or by predecessors.'' Thus, original cost is the cost when the asset was first used for regulated activities—even if that use does not occur until long after its purchase. By comparison, GAAP accounting allows a company to carry an asset at its purchase price when it was acquired, even if its value has increased or has declined when it goes into regulated service. Similarly, GAAP allows a carrier to re-price an asset at market value after a merger or acquisition. Thus, under a GAAP-based approach, a carrier's recorded amounts can vary from that recorded under the USOA. Different asset values also result in depreciation expense being different under GAAP going forward.

18. We propose to revise the USOA's asset accounting to better align with GAAP. Do carriers generally record assets based on acquisition costs or original costs under GAAP? What regulatory purpose is served by requiring certain assets to be accounted for using original cost and others using acquisition cost? If the Commission gave carriers discretion to account for assets based on acquisition or original costs, so long as they acted consistent with GAAP, what effect would that have, if any, on our regulatory needs? We seek comment on this proposal.

19. *Depreciation.* The USOA and GAAP both require assets to be depreciated over their useful lives. The USOA requires that the loss in service value of the plant be distributed under the straight-line method during the service life of the property. For example, if an asset has a 10-year expected life, a depreciation rate of 10 percent would be applied to the original cost each year to calculate the depreciation. Today, a carrier may use a depreciation rate (which may vary by year) that is within a prescribed range of rates for a particular plant category. In contrast, GAAP accounting does not require the use of straight-line depreciation and allows depreciation rates that are not restricted by the ranges like those prescribed by the Commission. Specifically, GAAP allows carriers to use shorter lives, as well as accelerated depreciation methods. Depreciation expense under GAAP is also higher because early retirements and other losses are recognized under GAAP when they occur rather than being amortized over a longer period of time.

20. We seek comment on whether to revise the USOA's depreciation procedures to better align with GAAP. We invite parties to comment on how doing so would affect depreciation rates for new investment in today's telecommunications market, including how projected service lives today vary from those underlying those used in developing the depreciation ranges. If possible, parties should quantify and attribute the effects among lives, salvage, and cost of removal effects by class of depreciable plant. We seek comment on whether these differences are materially relevant to our ability to achieve our statutory and regulatory obligations.

21. *Cost of Removal and Salvage.* The USOA requires that estimates of cost of removal and salvage be included in the calculation of depreciation rates, so that upon actual retirement of the plant, the original cost of the plant and the actual cost of removal are charged (debited) to Account 3100, Accumulated Depreciation, and the actual value of salvage received, if any, is credited to Account 3100. In effect, this practice results in an accrual for cost of removal and salvage. Conversely, GAAP requires that the cost of removal and salvage not be included in the calculation of depreciation rates; cost of removal would be charged to expense at the time the expense is incurred, while salvage would be recognized as current income when received. Thus, the differences between the USOA and GAAP approaches are essentially timing differences.

22. We seek comment on whether to revise the USOA's removal-and-salvage accounting rules to better align with GAAP. If we adopted the GAAP approach, a carrier's depreciation expense would be lower (since it would no longer include cost of removal) but its operating expenses would be higher whenever plant is actually removed (because those expenses would not have been pre-accrued in the depreciation process). Companies would also see increased current income from current salvage. What would the effect of these changes be on consumers? Specifically, we recognize that the removal-and-salvage rules are particularly pertinent for developing pole-attachment rates. Would those rates generally be higher or lower if we adopted this change? We invite parties to address this aspect of any changes that might be adopted in this area.

23. *Calculation of AFUDC.* The USOA uses imputed interest on equity funds in addition to interest on debt when calculating Interest During Construction (Allowance for Funds Used During Construction, or AFUDC). GAAP uses the cost of debt in determining AFUDC.

24. We propose to revise the USOA's AFUDC rules to better align with GAAP. If the Commission were to rely on GAAP accounting instead of the USOA, it would negligibly decrease recorded asset values and depreciation expense. We seek comment on this analysis and this proposal.

25. *Materiality.* The USOA requires that all transactions be booked regardless of any materiality consideration. By contrast, as used in GAAP, materiality means that the nature of the economic event(s), including the dollar amount being accounted for and the overall economic environment, should be considered in determining how a particular transaction should be treated for reporting purposes. An item is considered to be material if the accounting and reporting will affect the decision of a user of financial statements.

26. We propose to revise the USOA's treatment of materiality to better align with GAAP. We tentatively conclude that the Commission's current approach to materiality is more restrictive than necessary to meet our statutory obligations. We specifically seek comment on whether the Commission should incorporate the concept of materiality into the USOA, and how it could do so. For example, should the Commission set dollar threshold amounts for classes of assets, costs, or income to draw the materiality line, or should we establish a more general baseline of materiality that can be refined through case-by-case adjudication as needed?

27. Parties asking the Commission to adopt a particular materiality standard should provide a clear definition of the proposed standard, explain how the definition would be implemented, including examples of the major types of occurrences it would affect, and propose specific language for our rules. Would failure to continue to record all transactions possibly result in any material distortions of accounting data?

28. *Pre-Approval of PPAs and Extraordinary Items.* The Commission requires that carriers submit all prior period adjustments (PPAs) and unusual or extraordinary items to the Commission for review and approval before booking to insure that allowable costs are recovered by the carriers and

gains and other credits are given to the ratepayers. Under GAAP, companies typically account for such transactions consistent with accounting principles, which generally recognize materiality concepts.

29. We propose to revise the USOA's treatments of PPAs and extraordinary items to better align with GAAP. Specifically, we propose to relax our requirement so that carriers only need to seek Commission review and approval for material changes. We seek comment on this proposal, and whether materiality should be more specifically defined for these purposes.

30. *Effect on Rate-of-Return Carriers.* Unlike carriers subject to price cap regulation, those subject to rate-of-return regulation maintain cost-based rates for many interstate services. For these services, rates are based on costs and are developed today using the regulatory process that begins with standardized accounting under the USOA. The changes proposed in this section would directly affect the accounting data used by rate-of-return carriers in establishing tariffed rates for services that remain subject to rate-of-return regulation. We invite parties to comment on whether the streamlining proposals discussed in this section should be limited to price cap regulated carriers. How would modifying the accounting systems affect the rates assessed by rate-of-return carriers, or the Commission's ability to evaluate rates for services that remain subject to rate-of-return regulation consistent with its statutory obligations? As noted above, many of the changes affect the timing of the recognition of certain amounts. For example, the proposals would alter the recognition of the cost of removal and salvage. Some of these amounts have already been accrued. Parties should address whether any accounting or ratemaking requirements should be adopted to ensure that any rate revisions do not adversely affect either customers or carriers. We seek comment on whether any of the changes could require adjustments to a carrier's universal service support. If the Commission applies these changes to rate-of-return carriers, should we consider variations for rate-of-return carriers, which typically have much smaller operations than price cap carriers? For example, should the Commission consider adopting a different materiality threshold for these carriers if a specific dollar amount is used to define materiality? Are there other proposals that should be adjusted for rate-of-return carriers? Should the Commission consider specific transitional rules for these carriers? Finally, we ask whether there are implications for the National Exchange Carrier Association pooling process.

B. Accounting Requirements for Price Cap Carriers

31. We next turn to the specific accounting requirements that should be applied to price cap carriers. Unlike rate-of-return carriers, price cap carriers do not directly rely on reported costs to set rates. And as the Commission has previously said, the ''need for cost data for the purposes of price caps has been significantly decreased with the adoption of various reforms that eliminated features of the original price cap regime that required rate-of-return regulation accounting inputs.''

32. Nevertheless the *USTelecom Forbearance Order* identified ''a variety of current circumstances for which the Commission relies on Part 32 accounting,'' specifically, determining pole attachment rates under section 224, preventing cross-subsidization between local and long distance service under section 272(e), and ensuring no cross-subsidization between competitive and non-competitive services under section 254(k). The Commission also noted that it would need to consider the impact of forbearing from the USOA accounting rules on its previous decisions to forbear from its cost assignment rules and ARMIS reporting requirements.

33. In this section, we explore options for reducing the accounting burdens on price cap carriers while securing the data we need for federal regulatory purposes. We see two primary options for doing so: Maintaining the USOA for price cap carriers, streamlining it as proposed in section III.A, or eliminating the requirement that price cap carriers comply with the USOA and imposing targeted accounting requirements that fit our specific statutory needs. We seek comment on whether we should adopt targeted accounting requirements in lieu of the continued maintenance of the USOA for price cap carriers and, if so, what those targeted requirements should be. We explore each option in turn and seek comment on its benefits and costs in the modern communications marketplace. Alternatively, we seek comment on whether the Commission has other means to meet these specific needs, or if there are safe harbors we could adopt to further streamline any remaining requirements.

1. Requiring Price Cap Carriers To Comply With the USOA

34. One option is to require price cap carriers to comply with the USOA, streamlining it as proposed in section III.A. We invite carriers to describe their current accounting systems and the relationship between the accounting systems they use to comply with the USOA requirements and their accounting for other purposes (such as financial reporting), including whether and how they derive GAAP financial statements from the current USOA accounting records. We seek detailed descriptions of the accounting process used by price cap carriers to convert the USOA financial data to GAAP-equivalent data. For example, are adjusting entries actually booked in the accounting system to get to GAAP, or is there simply an overlay of GAAP amounts? If the former, how are the adjusting entries calculated and what is the basis for the adjustments? If the latter, where and how are the GAAP amounts determined? We are also interested in obtaining information regarding how price cap carriers keep the USOA information necessary to convert to GAAP. Is the information maintained through the use of subsidiary records, separate subaccounts, or some other mechanism?

35. If the Commission were to pursue this option, what further reforms, if any, of the USOA would be appropriate for price cap carriers? For example, we propose several reforms to the USOA generally above, but we seek specific comment on whether any of those reforms would be appropriate only for price cap carriers. We also seek comment on other differences between GAAP accounting and the USOA that could be eliminated for price cap carriers. For example, could we eliminate the requirement to include jurisdictional accounts (1500, 4370, and 7910) for price cap carriers? Or could we eliminate the specific rules for accounting for nonregulated activities in favor of GAAP principles?

2. Requiring Price Cap Carriers To Comply With Targeted Accounting Rules

36. A second option is to require price cap carriers to comply with a more limited set of accounting rules targeted to our particular statutory needs. In this section, we review the statutory needs identified in the *USTelecom Forbearance Order* and explore whether targeted accounting rules could satisfy those ends. We also seek comment on whether we need targeted accounting data for any other particular statutory obligations.

37. *Pole Attachment Rates.* Section 224 of the Act allows state commissions to regulate pole attachment rates so long as they certify to the FCC that they will do so; elsewhere, the Commission's

rules apply. Under the Commission's rules, pole attachment rates are set in the first instance through private negotiation using cost data reported by carriers. Because many poles and conduits are owned by electric or other utilities not regulated by the Commission, our rules do not require all pole attachments to be based on USOA data, but instead require that the ''data and information should be based upon historical or original methodology'' and ''should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies.'' For incumbent LECs, however, the Commission has relied on data from ''various part 32 accounts (*e.g.,* gross pole investment, gross plant investment, accumulated depreciation—poles, maintenance expense—poles etc.).'' And the Commission has used the USOA data to modify the formula by which pole attachment rates are calculated.

38. We seek comment on whether a targeted accounting rule would provide the Commission and the public with sufficient information to set pole attachment rates in compliance with section 224. One such targeted requirement would be to require the USOA accounting for price cap carriers only to the extent necessary to produce relevant pole attachment data. The Commission has previously recognized that pole attachment data may be severable from other data for accounting purposes. Would such a targeted part 32 requirement be feasible for price cap carriers to implement? How burdensome would such a requirement be?

39. Another targeted accounting requirement could be to require price cap carriers to publicly report the same information, but do so using expense information maintained in accordance with GAAP. Presumably, such a requirement would be less burdensome for price cap carriers. What would be the impact of such a change on pole attachment rates? If we were to institute such a change, should we cap price cap carriers' pole attachment rates at current levels for a reasonable period of time, such as five years, to minimize the burden on attaching parties? Should we require price cap carriers to maintain the USOA data for a shorter duration, such as two years, so that the Commission can audit and understand any discrepancies between pole attachment rates under GAAP and under the USOA rules?

40. *Section 272(e)(3) Imputation.* Before 1996, Bell Operating Companies (BOCs) were prohibited from entering the long-distance market (i.e., from offering interexchange service) out of concern that they could use their local monopoly to subsidize competitive operations in the long-distance market. The Telecommunications Act created a path for BOCs to enter that market, requiring, among other things, that a BOC that offers its long-distance service to ''impute to itself . . . an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' In 2007, the Commission permitted BOCs to offer interexchange and exchange access services on an integrated basis, and later relieved BOCs from complying with the Commission's cost assignment rules so long as those carriers could ''demonstrate that [their] access charge imputation methodologies remain consistent with section 272(e)(3).''

41. We invite parties to comment on the use of USOA data for purposes of section 272(e)(3) enforcement or whether alternative approaches would suffice to meet the requirements of our rules.

42. We propose to adopt a targeted accounting rule that ensures our ability to continue to enforce section 272(e)(3), such as requiring price cap carriers that must comply with section 272(e)(3) to use a subsidiary record or some other identifier in their accounting books to track imputation transactions. Would such a targeted requirement be less onerous than the historical requirement to include such imputed charges in account 5280? If we were to institute this change, should we require price cap carriers to certify that they will be able to report such imputed charges to the Commission upon reasonable request?

43. We also seek comment on the continued applicability of section 272(e)(3). In the historic *USF/ICC Transformation Order,* the Commission placed terminating intercarrier compensation charges on a path toward bill and keep, which may reduce the need for imputation charges in the future. Furthermore, we note that many other local exchange carriers that provide integrated long-distance service, such as cable operators, over-the-top voice over Internet Protocol companies, and commercial mobile radio service providers, are not required to impute charges between their local and long-distance affiliates (to the extent they offer those service through separate affiliates). We seek comment on whether the harm to be addressed by section 272(e)(3) continues to be a concern, or whether the Commission should consider forbearing from section 272(e)(3)'s imputation requirement, either now or at the end of the transition path laid out by the *USF/ICC Transformation Order.*

44. *Section 254(k).* Section 254(k) of the Act prohibits a telecommunications carrier from ''us[ing] services that are not competitive to subsidize services that are subject to competition.'' Prior forbearance from the Cost Assignment Rules was conditioned on the requirements that price cap carriers annually certify that they have complied with section 254(k) and will maintain and provide any requested cost accounting information necessary to prove such compliance in the event of an administrative action, investigation, or audit. To the extent the Commission has reason to believe a particular carrier has violated section 254(k), it can order the carrier to provide any requested information necessary to prove compliance with the statute. Today, that data would likely come from a price cap carrier's USOA accounts. While the Commission has been presented with allegations of violations of section 254(k) in the past, it never found it necessary to seek accounting data to address those specific allegations.

45. We invite parties to comment on the use of USOA data for purposes of Section 254(k) enforcement or whether alternative approaches would suffice to meet the requirements of our rules.

46. We propose to adopt a targeted accounting rule that ensures our ability to continue to enforce section 254(k), such as requiring price cap carriers to certify continued compliance with section 254(k) and certify that they can and will provide any requested cost accounting information necessary to prove compliance to the Commission upon reasonable request. Would such a requirement be sufficient to meet our statutory obligation without incurring the burden of requiring each carrier to maintain all of the USOA? Should such certifications occur annually, perhaps on a form carriers must already file with certain accounting information, such as the FCC Form 499–A?

47. *The USOA as a Condition to Other Forbearance Decisions.* The *USTelecom Forbearance Order* noted that the Commission had conditioned previous forbearance grants on the assumption that carriers would maintain their USOA accounts. For example, the *AT&T Cost Assignment Forbearance Order* made forbearance contingent on AT&T filing a compliance plan that ''ensure[s] that accounting data requested by the Commission in the future will be available and reliable.'' Although the Commission noted that the USOA accounting data would ''continue to be maintained and available to the Commission on request,'' AT&T had not

sought relief from the USOA requirements. The *USTelecom Forbearance Order* stated that ''the Commission concluded that there may be a 'federal need for this accounting information in the future to adjust our existing price cap regime or in our consideration of reforms moving forward.' '' And the Commission has stated that the USOA provides the raw data used to ''gauge whether improper cost accounting has occurred.''

48. If the Commission were to replace the USOA with targeted accounting requirements for price cap carriers, should the Commission require all such carriers to file a compliance plan ensuring that the Commission can continue to request the accounting data it needs for regulatory purposes? How should we weigh our prior decisions to condition forbearance on continued access to accounting data, and continued compliance with the USOA, in reforming our accounting rules?

49. What, if any, special accounting rules are necessary for price cap carriers that have received forbearance conditioned on access to the USOA or other accounting data? We invite parties to comment on the extent to which the Commission's ability to enforce carriers' commitments in compliance plans filed in connection with forbearance proceedings that rely on the USOA accounting data would be affected if the USOA requirements were altered. What revisions to those compliance plans would be required if we were to adopt targeted accounting requirements for price cap carriers?

C. Other Issues

50. We seek comment on several issues related to reforming part 32 below. We also seek comment on any other issue, not specifically addressed herein, that relates to updating the USOA to minimize the burdens on carriers.

51. *State Requirements.* We note that several state commissions require USOA accounting data for use in performing their regulatory functions. We invite comment on how many states have adopted, or otherwise mirror, the USOA accounting requirements. As the Commission noted in the *USTelecom Forbearance Order,* federal regulation does not preclude states from requiring accounting data and we do not propose to preempt states here.

52. *Rate Effects.* If we adopt revisions that adopt GAAP in whole or in part, or that revise the USOA in some other manner, those changes could alter the amount a carrier records in its accounts. Price cap carriers' rates may change through exogenous adjustments, which are designed to reflect changes outside the carrier's control. We invite parties to address the extent to which they believe any changes should have ratemaking effects through exogenous adjustments to existing rates. Because carriers contend that the changes are necessary to reduce existing burdens, should any changes be adopted on the condition that no rate increases occur simply as a result of the accounting changes, or should rate changes be addressed in some other matter?

53. *Implementation.* We invite parties to comment on the timing of any changes that may be adopted. Section 220(g) of the Act requires that six months' notice of accounting changes be given to carriers. Parties should address whether any proposed change would require more than six months' notice to implement, and, if so, should indicate how much more time is needed and explain the reason why more time is needed. Should any of the changes be transitioned in and, if so, over what time period? Should the changes be implemented at the beginning of a calendar year or midyear, when annual tariffs are filed?

54. *Continuing Property Records.* The *USTelecom Forbearance Order* found forbearance from the continuing property records requirements found in § 32.2000(e) and (f) was warranted for price cap carriers, so long as they could demonstrate in compliance plans how they would ''maintain the records necessary to track substantial assets and investment in an accurate, auditable manner that enables them to verify account balances in their part 32 Uniform System of Accounts, make such property information available to the Commission upon request, and ensure maintenance of such data.'' Notably, the only requirement of § 32.2000(e) that is applicable today to rate-of-return carriers is § 32.2000(e)(7)(i)(A), which requires that a carrier's ''continuing property records shall be compiled on the basis of original cost (or other book cost consistent with this system of accounts)'' and ''maintained . . . in such manner as will . . . [p]rovide for the verification of property record units by physical examination.'' We accordingly propose to consolidate this one remaining rule from paragraph (e) into subsection (f), and to replace paragraph (e) with a rule that price cap carriers ''maintain property records necessary to track substantial assets and investments in an accurate, auditable manner that enables them to verify their accounting books, make such property information available to the Commission upon request, and ensure the maintenance of such data'' and for each price cap carrier to file a compliance plan with the Commission to that effect. We seek comment on this proposal.

55. *Legal Authority.* Section 220 of the Act gives the Commission broad authority to establish a uniform system of accounts, while section 219 authorizes the Commission to require annual reports from carriers. These provisions are cited in § 32.3 of our rules. Coupled with our clear authority to implement our statutory obligations, this appears to provide sufficient authority to make such changes as are being considered here. We seek comment on this view. Would any of the proposals made herein require revisions to § 32.3? Also, would anything proposed herein require us to invoke, or be more readily achievable if we invoke, our section 10 forbearance authority?

IV. Procedural Matters

A. Ex Parte Rules—Permit-but Disclose

56. The proceeding the NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Information regarding these rules is in the full copy, which may be accessed at the following Internet address: *http://www.fcc.gov/document/fcc-seeks-comment-streamlining-telephone-co-accounting-rules.*

B. Comment Filing Procedures

57. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Information regarding these rules is in the full copy, which may be accessed at the following Internet address: *http://www.fcc.gov/document/fcc-seeks-comment-streamlining-telephone-co-accounting-rules.*

C. Initial Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking. The analysis is found in the Appendix of the full copy, which may be accessed at the following Internet address: *http://www.fcc.gov/document/fcc-seeks-comment-streamlining-telephone-co-accounting-rules.* We request written public comment on the analysis. Comments

must be filed by the same dates as listed in the first page of this document, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Analysis

59. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

V. Ordering Clauses

60. Accordingly, IT IS ORDERED that pursuant to sections 1, 10, 201(b), 219–220, 224, 254(k), 272(e)(3), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 160, 201(b), 219–220, 224, 254(k), 272(e)(3), 303(r), 403, the NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

61. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the NOTICE OF PROPOSED RULEMAKING, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–21983 Filed 9–12–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAR Case 2014–010; Docket 2014–0010, Sequence 1]

RIN 9000–AM79

Federal Acquisition Regulation; Enhancements to Past Performance Evaluation Systems

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to accommodate the Architect-Engineer Contract Administration Support System (ACASS) and Construction Contractor Appraisal Support System (CCASS) modules within the Contractor Performance Assessment Reporting System (CPARS) database.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before November 14, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2014–010 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–010''. Select the link ''Comment Now'' that corresponds with FAR Case 2014–010. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–010'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2014–010, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at (202) 501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2014–010.

SUPPLEMENTARY INFORMATION:

I. Background

Effective July 1, 2014, the CPARS, ACASS, and CCASS modules were merged into a single application under the CPARS name in order to standardize the contractor performance evaluation process across the entire Federal Government. DoD, GSA, and NASA are proposing to revise the language at FAR 42.1502, Policy, to remove references to the ACASS and CCASS modules. This action will standardize the past performance reporting requirements under the CPARS database in FAR subpart 42.15.

II. Executive Orders 12866 and 13563

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

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule removes references to the ACASS and CCASS modules since these modules were merged into CPARS on July 1, 2014. This action will standardize the past performance reporting requirements for architect-engineer contracts and construction contracts under the CPARS database. This change does not place any new requirements on small entities. Therefore, an initial regulatory flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the

expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610, FAR Case 2014–010, in correspondence.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: September 9, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 42.1502 by revising paragraph (a) to read as follows:

42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for all contracts and orders that exceed the specified thresholds, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at *http://www.cpars.gov/.*

* * * * *

[FR Doc. 2014–21853 Filed 9–12–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140528460–4460–01]

RIN 0648–BE25

Fisheries Off West Coast States; Highly Migratory Fisheries; California Swordfish Drift Gillnet Fishery; Vessel Monitoring System and Pre-Trip Notification Requirement

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to require use of a NMFS-approved vessel monitoring system (VMS) and institute a 48-hour pre-trip call-in notification requirement for West Coast Large-mesh Swordfish Drift Gillnet (DGN) vessel owners. The DGN fishery operates under authority of the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The VMS requirement is a mandatory term and condition in the 2013 Endangered Species Act (ESA) Section 7 biological opinion (Opinion) that authorizes the DGN fishery to take certain threatened and endangered species incidental to fishing operations. Installing and operating VMS on vessels in this fishery would provide NMFS and law enforcement personnel the ability to monitor the fishery for compliance with time/area closures, facilitate the deployment of agents to inspect vessels for compliance with conservation measures, and more closely examine and compare the distribution of observed and unobserved fishing effort in the fishery. The pre-trip notification would assist NMFS with timely and efficient placement of NMFS observers onboard DGN vessels.

DATES: Comments must be received on or before September 30, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2014–2013–0131, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-2013-0131*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Craig Heberer, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2014- in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal e-Rulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–140528460–4460–01 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Craig Heberer, NMFS, 706–431–9440 (#303), *craig.heberer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the HMS FMP, which was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801, et seq., by regulations at 50 CFR part 660.

Background

On September 4, 2013, NMFS published in the **Federal Register** a temporary rule (78 FR 54548) for emergency action to modify the DGN fishery for the 2013–2014 fishing season under authority of section 305(c)(1) of the MSA, 16 U.S.C. 1855(c). NMFS issued the temporary rule as a result of the observed entanglement of two Endangered Species Act (ESA) listed sperm whales by a DGN fishing vessel in 2010 and the recommendations made to NMFS by the Pacific Offshore Cetacean Take Reduction Team (TRT) to reduce sperm whale bycatch in the fishery for the 2013–2014 fishing

season, in accordance with the MSA, ESA, and the Marine Mammal Protection Act (MMPA). Implementation of the temporary regulations allowed NMFS to issue an MMPA section 101(a)(5)(E) permit authorizing the incidental take of sperm whales by the DGN fishery. The temporary regulations implemented, among other measures, mandatory monitoring (VMS) and observer requirements (pre-trip notification and a 100 percent deep water closure zone unless a NMFS-certified observer was on board), and would have immediately shut down the fishery for the calendar year in the event of a sperm whale interaction.

The temporary rule expired on January 31, 2014, which corresponded with the traditional end of the DGN fishing season. At its March 2014 meeting, the Council requested that NMFS extend the emergency actions contained in the temporary rule while permanent rulemaking under the MMPA to reduce sperm whale interactions in the DGN fishery is under consideration. NMFS published in the **Federal Register** a second temporary rule (79 FR 29377, May 22, 2014) renewing the conservation measures contained in the original temporary rule. That rule expired on August 5, 2014. Since publication of the second emergency rule, the stock assessment for sperm whales and the methodology for estimating bycatch rates have been revised. The revisions are based on analyses prepared by scientists from the NMFS Southwest Fisheries Science Center and included in the proposed draft 2014 Stock Assessment Report presented at the NMFS Scientific Review Group meeting in April, 2014. Based on those revisions, on August 25, 2014, NMFS published in the **Federal Register** its draft amended Negligible Impact Determination (NID), for the proposed issuance of a MMPA section 101(a)(5)(E) permit for federally managed commercial fisheries off the U.S. West Coast. The **Federal Register** notice regarding the proposed NID explains the analyses and rationale for determining that mortality and serious injury incidental to commercial fisheries, including the DGN fishery, will have a negligible impact on the stock of sperm whales on which the emergency regulations had been focused. Because the stock assessments and bycatch estimates for sperm whales have been revised, using peer-reviewed and scientifically sound methodology, restrictions on the DGN fishery which had been implemented in the emergency regulations are not required under the draft amended NID. In addition, under section 118 of the MMPA, the Pacific Offshore Cetacean Take Reduction Plan continues to meet its mandated short-term goal of reducing serious injury/mortality of strategic stocks, including sperm whales, to below the Potential Biological Removal levels.

The revisions to the sperm whale stock assessment and bycatch methodologies also prompted the TRT to reconvene and revisit their February recommendations to NMFS. At their June 2014 meeting, the Council recommended that NMFS move forward with the VMS and pre-trip notification requirements suggested in the original TRT recommendation and promulgate regulations to make those requirements permanent under the MSA. Based on the Council recommendation and because the VMS requirement addresses a mandatory term and condition specified in the Opinion issued on May 2, 2013, NMFS is proposing this rule to make permanent the VMS and the pre-trip notification requirements so that these measures are in place for the 2014–2015 DGN fishing season, which typically commences after August 15 of each year. Certain restrictions on the DGN fishery that had been implemented in the emergency regulations, but are no longer required under the draft amended NID, are not incorporated in this rule. The TRT is continuing to meet and discuss recommendations to NMFS for any additional conservation measures that would further benefit the stocks in question.

Information for current NMFS type-approved VMS units can be obtained by contacting: NMFS, Office of Law Enforcement (OLE), 1315 East West Hwy, Suite 3301, Silver Spring, MD 20910–3282; telephone: (888) 210–9288; fax: (301) 427–0049. Or, by contacting NMFS OLE VMS Helpdesk: telephone: (888) 219–9228; email: *ole.helpdesk@noaa.gov.* The business hours of the VMS Helpdesk are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

The vessel owner would be responsible for all costs associated with the purchase, installation, and maintenance of the VMS mobile transceiver unit (VMS unit), and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS. The unit cost, physical size, available features, transmission fees, and service packages vary among the different type-approved VMS mobile transceiver units. Vessel owners may choose the type-approved VMS unit that best fits their needs. Federal funds are currently available for reimbursement of type-approved VMS units up to $3,100, as determined within the VMS Reimbursement Program. The availability of these funds for reimbursement for the cost of purchasing a VMS unit is not guaranteed, but is anticipated to be available on a first-come first-served basis. To be eligible to receive reimbursement, the owner must submit proof of professional installation of the VMS unit to NMFS Office of Law Enforcement (OLE) in compliance with the requirements of the VMS Reimbursement Program. More information on the VMS Reimbursement Program can be obtained by calling the NMFS OLE VMS Helpdesk: telephone: (888) 219–9228, and online: *http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms?pid=17.*

Prior to fishing, the vessel owner, or the vessel operator on the owner's behalf, will be required to send an activation report to NMFS OLE to verify that the VMS unit was installed correctly and has been activated. Activation of a VMS unit would be required any time the unit is installed or reinstalled, any time the mobile communications service provider has changed, and any other time directed by NMFS. Activation would involve submitting to NMFS a report via mail, facsimile or email with information about the vessel, its owner or operator, and the VMS unit, as well as receiving confirmation from NMFS that the VMS unit is transmitting position reports properly. For issues related to day-to-day operation of VMS units, including declaration reports, activation reports and exemption reports, the (Special Agent-in-Charge's (SAC's) designee is the OLE VMS Program Manager's office located at 7600 Sand Point Way NE., Seattle, WA 98115–6349; phone: (888) 585–5518; fax: (206) 526-6528); and email: *wcd.vms@noaa.gov.*

Classification

Pursuant to the MSA, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

National Environmental Policy Act

This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6. A memorandum for the file that sets forth the decision to use a categorical

exclusion will be prepared prior to the issuance of a final rule.

Executive Order 12866

Regulatory Flexibility Act (RFA)

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would apply to the large-mesh drift gillnet (DGN) fishery in California. Temporary regulations (78 FR 54548, September 4, 2013, and 79 FR 29377, May 22, 2014) required owners and operators of DGN vessels to install and operate VMS units and to notify NMFS 48 hours in advance of a fishing trip, for which NMFS may assign an observer, during the 2013–2014 fishing season. DGN fishermen complied with the temporary provisions for operating VMS units and notifying NMFS prior to departure. These temporary regulations expired in August of 2014.

Under the proposed rule, all DGN vessels will be required to install and operate VMS units and notify NMFS 48 hours prior to taking a fishing trip. The small entities that would be affected by the proposed action are all fishing vessels operating as part of the DGN fleet. The U.S. Small Business Administration (SBA) defines small fishing businesses as vessels with annual revenues of or below $19 million from finfish fishing; however, this definition changed to $20.5 million effective on July 14, 2014 following a recent final rule published by the SBA on June 12, 2014 (79 FR 33647). The vessels in the DGN fleet have never achieved annual revenue of $20.5 million per vessel from finfish fishing whether considering an individual vessel or per vessel average. The aggregate annual ex-vessel revenues for the entire fleet during the last 15 years have been fewer than three million dollars. In recent years (2008 through 2013), about 26 DGN vessels of 65 current permits (active and latent) have been operating annually under the *Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species.* From 2008 through 2013, the average annual per vessel revenue for the DGN fleet from finfish fishing has been about $126,000, a number well below a threshold value of $20.5 million from finfish fishing to be considered a large business per the SBA size definition.

All of the entities impacted by this proposed rule are considered small business entities. All impacted vessels will be affected in a similar way and disproportional economic effect between small and large businesses will not exist. The VMS units that have been type-approved range in cost and service features. This allows the vessel owner flexibility in choosing the model that best fits the needs of their vessel. Compliance for each of the projected small entities would involve the following approximate annualized costs: $1,000 for the purchase and installation of VMS units (based on $4,000 per unit and a lifespan of 4 years per unit), $250 for VMS unit maintenance, and, based on estimated communication costs of about $1.50 per day (based on hourly reporting cost of some service providers), $547.50 for VMS unit operation (i.e., the transmission of automatic vessel position reports to NOAA). Thus, the total compliance cost (during the 4-year lifespan of VMS unit) and annualized compliance cost would be about $7,190 and $1,797.50 per vessel, respectively. The analysis assumes that vessel owners will pay for the required VMS units. However, Federal funds may be available for reimbursement of certain costs associated with type-approved units up to $3,100 (or $775 annualized amount).[1] The recurring financial burden to a fisherman after a subsidy on the VMS unit will be about $1,025 annually, or about 0.81 percent of the annual average fishing revenue. In the absence of a VMS subsidy, the recurring financial burden to a fisherman would be about 1.42 percent of the annual average fishing revenue. Based on these figures, none of the DGN small business entities will be significantly impacted by the provisions in the proposed rule. Further, NMFS concludes that all of these small business entities will be affected in similar ways. The average revenue of $126,000 per annum during 2008–13 is representative of the fishery. While outlier vessel revenue values have ranged from about three to five times the average annual per vessel revenue during 2008–13, variability among the small entities is not very large since the mean and standard deviation of the annual revenues among fishermen are nearly similar in each year during 2008–13.

The financial burden of operating a VMS unit is trivial relative to the average annual gross revenue that a DGN fisherman generates from fishing. The financial cost to a fisherman, either with the subsidy or without, is less than two percent of the annual average fishing revenue, which does not constitute a significant impact. In addition, the DGN fleet has already been operating under (now-expired) emergency rules that required the use of VMS units, so vessel owners are already aware of and complying with these requirements.

[1] The availability of these funds for reimbursement for the cost of purchasing a VMS unit is not guaranteed, but the funds are anticipated to be available on a first-come first-served basis.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 9, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for 50 CFR part 660 continues to read as follows:

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

■ 2. In § 660.702, the definitions for ''Regional Administrator,'' ''Special-Agent-In-Charge (SAC),'' and ''Vessel monitoring system unit (VMS unit)'' are revised to read as follows:

§ 660.702 Definitions.

* * * * *

Regional Administrator means the Regional Administrator for the West Coast Region, National Marine Fisheries Service, or a designee.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, West Coast Region, or a designee of the Special Agent-In-Charge.

* * * * *

Vessel monitoring system unit (VMS unit) means an automated, remote system and mobile transceiver unit that is approved by NMFS and provides information about a vessel's identity, location, and activity for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

* * * * *

■ 3. In § 660.705, paragraphs (l), (o), and (p) are revised and paragraphs (rr) and (ss) are added to read as follows:

§ 660.705 Prohibitions.

* * * * *

(l) Fail to install, activate, repair, replace, carry, operate or maintain a

VMS unit as required under § 660.712 and § 660.713.

* * * * *

(o) Fish for, catch, or harvest HMS with longline or drift gillnet gear without an operating VMS unit on board the vessel after installation of the VMS unit.

(p) Possess on board a vessel without an operating VMS unit HMS harvested with longline or drift gillnet gear after installation of the VMS unit.

* * * * *

(rr) Fail to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departure on a fishing trip using drift gillnet gear as required under § 660.713.

(ss) Fail to submit a declaration report to the NMFS Office of Law Enforcement prior to departure on a fishing trip using drift gillnet gear as required under § 660.713.

■ 4. In § 660.713, paragraphs (f) and (g) are added to read as follows:

§ 660.713 Drift gillnet fishery.

* * * * *

(f) *Pre-trip Notification Requirements.* (1) Drift gillnet vessel owners or operators are required to notify NMFS or the NMFS designated observer provider at least 48 hours prior to departing on each fishing trip. The vessel owners or operators must communicate to the observer provider: the owner or operator's name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (Monday through Friday between 0800 and 1700 Pacific Time) to indicate whether an observer will be required on the subject fishing trip. Contact information for the current observer provider can be obtained by calling the NMFS West Coast Region Sustainable Fisheries Division at 562–980–4030.

(2) The drift gillnet vessel owners or operators must provide the NMFS West Coast Region Office of Law Enforcement (OLE) with a declaration report before the vessel leaves port to fish for thresher shark/swordfish with large-mesh drift gillnet gear in the state and federal waters between 0 and 200 nm offshore of California, Oregon, or Washington. OLE's declaration hotline is 1–888–585–5518. The business hours for the OLE are Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Pacific Standard Time; voice messages left on the hotline will be retrieved at the start of the next business day.

(g) *Vessel Monitoring System (VMS) Requirements.* Drift gillnet vessel owners are required to install an OLE type-approved VMS mobile transceiver unit (VMS unit) and to arrange for a OLE type-approved communications service provider to receive and relay transmissions to the OLE prior to fishing for thresher shark/swordfish with large-mesh drift gillnet gear.

(1) *What is a VMS?* A VMS consists of an OLE type-approved VMS unit that automatically determines the vessel's position and transmits it to an OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to the OLE.

(2) *What Vessels are Required to Have a VMS?* Any vessel registered for use with a limited entry California state large-mesh thresher shark/swordfish drift gillnet permit and a federal highly migratory species permit that fishes in state or Federal waters off the coasts of California, Oregon, or Washington (0–200 nm offshore).

(3) *How are VMS Units and Communications Service Providers Approved by OLE?*

(i) VMS unit manufacturers or communication service providers will submit products or services to the OLE for evaluation based on the published specifications.

(ii) OLE will publish a list of OLE type-approved VMS units and communication service providers for the DGN fishery in the **Federal Register** or notify the public through other appropriate media; and the OLE may publish amendments to the list as necessary.

(4) *What are the Vessel Owner's Responsibilities?* If you are a vessel owner that must participate in the VMS program, you or the vessel operator on your behalf must:

(i) Obtain an OLE type-approved VMS unit and have it installed on board your vessel in accordance with the instructions provided by the OLE. You may obtain a copy of the VMS installation and operation instructions from the Special-Agent-In-Charge (SAC).

(ii) Activate the VMS unit, submit an activation report, and receive confirmation from OLE that the VMS transmissions are being received at least 72 hours prior to leaving port on a fishing trip for which VMS is required. Instructions for submitting an activation report may be obtained from the SAC. An activation report must again be submitted to the OLE following reinstallation of a VMS unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(A) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS unit for the first time or reactivating a VMS unit following a reinstallation or change in service provider, you or the vessel operator on your behalf must fax to the OLE an activation report that includes: vessel name, vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; and, if applicable, the relevant state and federal permit numbers for which vessel or owner is registered, VMS unit manufacturer, VMS communications service provider, VMS unit identification, and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by the SAC and identifying whether the VMS unit is primary or backup.

(B) *Transferring ownership of the VMS unit.* Ownership of the VMS unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to the OLE: a new activation report, which identifies that the VMS unit was previously registered to another vessel, a notarized bill of sale showing proof of ownership of the VMS unit, and documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

(iii) Continuously operate and maintain the VMS unit in good working order, 24 hours a day throughout the fishing year. The VMS unit must accurately transmit a signal indicating the vessel's position at least once every hour, 24 hours a day throughout the year, unless a valid exemption report, as described in paragraph (g)(4)(iv)(F) of this section, has been confirmed by the OLE. Less frequent position reporting, at least once every 4 hours, may be authorized by OLE when a vessel remains in port for an extended period of time.

(iv) Submit an exemption report to be confirmed by the OLE as valid, as described at paragraph (g)(4)(iv)(F) of this section, and comply with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report for a vessel to be exempted from the requirement of continuously operating and maintaining the VMS unit 24 hours a day throughout the fishing year.

(A) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and the OLE has confirmed a valid exemption report

has been received for the vessel, electrical power to the VMS unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(B) *Outside areas exemption.* When the vessel will be continuously operating seaward of the U.S. exclusive economic zone (EEZ; beyond 200 nm) off the coasts of California, Oregon, or Washington for more than 7 consecutive days and the OLE has confirmed a valid exemption report has been received for the vessel, the VMS unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of California, Oregon, or Washington until the time that the vessel re-enters the EEZ off the coasts of California, Oregon, or Washington. If the vessel is equipped with a VMS unit that OLE has approved for this exemption and after the OLE has received an exemption report for the vessel, the vessel owner or operator can request that the OLE reduce or discontinue the VMS transmissions.

(C) *Long-term departure exemption.* A vessel participating in the DGN fishery that is required to have VMS under paragraph (g) of this section may be exempted from VMS provisions after the end of the fishing season in which it fished, provided that a completed exemption report including a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess or land swordfish taken in state or federal waters off the coasts of California, Oregon, or Washington during the upcoming fishing year is submitted to OLE.

(D) *Emergency exemption.* Vessels required to have VMS under paragraph (g) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may request an emergency exemption from the VMS requirements specified in paragraph (g) of this section for his/her vessel by contacting the OLE and submitting the following information in writing: The reasons for seeking an exemption including any supporting documents (e.g., repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.), the time period for which the exemption is requested, and the location of the vessel while the exemption is in effect. The OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until the OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the OLE determination.

(E) *Submission of exemption reports.* Long-term departure exemption reports must be signed by the vessel owner and submitted by fax or by emailing an electronic copy of the actual report to the OLE. If an emergency exemption request will be submitted, initial contact with OLE must be made by telephone, fax or email within 24 hours from when the emergency incident occurred. All emergency exemption requests must be submitted in writing within 72 hours from when the incident occurred. Submission methods for exemption reports, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. Owners of vessels required to use the VMS who do not receive instructions by mail are responsible for contacting OLE during business hours at least 3 days before the exemption is needed to obtain information necessary for exemption reports. OLE must be contacted during business hours (Monday through Friday, except Federal holidays, between 0800 and 1700 Pacific Time). Any other categories of exemptions that have not been specified in paragraph (g) of this section may be submitted to OLE through the VMS unit or another method deemed appropriate by OLE. Before a request for a new category of exemption can be approved by OLE, it must be announced in the **Federal Register.**

(F) *Valid exemption reports.* For an exemption report to be valid, it must be received by OLE at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (g)(4)(iv)(A) through (D) of this section occur and confirmed by OLE. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; or at least 2 hours before a vessel resumes fishing with a large-mesh drift gillnet after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (g)(4)(ii) of this section before returning to fish, that report may substitute for the exemption cancellation. After an emergency situation occurs that disrupts the VMS transmission, initial contact must be made with OLE within 24 hours and a written emergency exemption request submitted within 72 hours from when the incident occurred. If the emergency situation, upon which an emergency exemption is based, is resolved before the exemption expires, an exemption cancellation must be received by OLE at least 2 hours before the vessel resumes fishing.

(v) When aware that transmission of automatic position reports has been interrupted, or when notified by OLE that automatic position reports are not being received, contact OLE and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating the vessel's position to a location designated by OLE or returning to port until the VMS unit is operable.

(vi) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next fishing trip. Repair or reinstallation of a VMS unit or installation of a replacement unit, including any changes in communications service providers shall be in accordance with the instructions provided by OLE.

(vii) Make the VMS units available for inspection by OLE personnel, USCG personnel, state enforcement personnel or any authorized officer.

(viii) Ensure that the VMS unit is not tampered with, disabled, destroyed, operated, or maintained improperly.

(ix) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS units.

(5) *What is the contact information for the OLE SAC?* For issues related to day-to-day operation of VMS units, including declaration reports, activation reports and exemption reports, the SAC's designee is the OLE VMS Program Manager's office located at 7600 Sand Point Way NE., Seattle, WA 98115–6349; phone: (888) 585–5518; fax: (206) 526-6528); and email: *wcd.vms@noaa.gov.*

[FR Doc. 2014–21902 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 178

Monday, September 15, 2014

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

Economic Research Service

Notice of Intent To Request Renewal of a Currently Approved Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this information collection. This notice announces the intention of the Economic Research Service to request a renewal to a currently approved information collection, namely a pilot generic clearance for experimental economic research.

DATES: Written comments on this notice must be received on or before November 14, 2014 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Nathaniel Higgins, Resource and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Mail Stop 1800, Room 6–135B, Washington, DC 20250–0002. Comments may also be submitted via fax to the attention of Nathaniel Higgins at 202–245–4847 or via email to *nhiggins@ers.usda.gov.*

All written comments will be open for public inspection at the office of the Economic Research Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 355 E St. SW., Room 6–135B, Washington, DC 20024–3221.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments and replies will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: For further information contact Nathaniel Higgins at the mailing address in the preamble. Tel. 202–694–5602.

SUPPLEMENTARY INFORMATION:

Title: A Pilot Generic Clearance for Experimental Economic Research.

OMB Number: 0536–0070.

Expiration Date: November 30, 2014.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Economic Research Service (ERS) of the United States Department of Agriculture (USDA) requests approval from the Office of Management and Budget (OMB) for renewal of a pilot generic clearance that allows ERS to conduct experimental economic research into the cost-effectiveness of alternative policy mechanisms. ERS offers policy-relevant research to its stakeholders, including other agencies of the USDA, but does not offer recommendations or make policy decisions itself. Research conducted under the expected clearance will be used to assess features of alternative policy mechanisms, but will not be used for the purposes making regulatory decisions; ERS does not intend to use the information collected under this approval for the purposes of developing or evaluating specific policies. ERS will not conduct any experiments which alter a government program. ERS has no regulatory or program authority with which to conduct such an experiment.

The primary mission of ERS is to provide economic and other social science information and analysis for public and private decisions on agriculture, food, natural resources, and rural America. ERS has constructed a set of key strategic goals in support of this mission. Research conducted under this generic clearance will further an ongoing initiative that would use insights from behavioral economics to provide economic intelligence, research, and analysis to inform agricultural resource and conservation policies. Information collected from these experiments will allow ERS to develop and implement state-of-the-art research methodologies to better inform and advance scientific understanding for its customers in response to both specific requests and in anticipation of future need.

ERS envisions using a number of research techniques, as appropriate to the individual investigation. These include laboratory and field techniques, exploratory interviews, pilot experiments, and respondent debriefing. Laboratory and field techniques are two methodologies based on comparison of outcomes over groups that have been randomized into different treatments. This request is being sought as a continuing pilot of the concept of using a generic approval mechanism for those types of experiments. As such, experiments will be limited to two topic areas: Conservation and nutrition.

Following standard OMB requirements ERS will submit to OMB individually for review of each specific experiment it undertakes under this generic clearance and provide OMB with all materials associated with the experiment.

Authority: Legislative authority for the planned information collection are 7 U.S.C. 2204(a) and 7 U.S.C. 2026(a)(1).

ERS intends to protect respondent information under the Privacy Act of 1974 and the E-Government Act of 2002. ERS has decided not to invoke the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). The complexity and cost necessary to invoke CIPSEA is not justified given the nature of the collection; the collections would generally be designed to be hosted in university computer labs, where CIPSEA compliance could not be assured.

Consistent with the Privacy Act and the E-Government Act, a Systems of Records Notice (SORN) and a Privacy Impact Assessment (PIA) will be submitted for approval, as appropriate.

The SORN and PIA will document the ways in which participant personally identifiable information will be collected, stored, and accessed. Data will be managed for research purposes only.

Specific details regarding information handling will be specified in individual submissions under this generic clearance, but will conform to these broad guidelines.

Affected Public: Respondents will include individuals and households.

Estimated Number of Respondents and Respondent Burden: In all cases, participation will be voluntary and time commitments will be minimal (15–90 minutes). No experiments will put participants at risk of physical, monetary, or psychological harm. No data collection is estimated to take longer than 90 minutes per respondent, including the time required for respondents and non-respondents to review instructions and participate in the data collection.

The estimated number of respondents participating in data collections under this generic clearance over an eighteen months period is 6,900. The maximum total estimated response burden for all of those participating in the study is 7,025 hours.

Type of research instrument	Estimated number of respondents	Estimated number of responses per respondent	Average burden-hours per response	Estimated total burden hours requested
Laboratory study	4,240	1	1.5 (90 mins)	6,360
Field study	2,660	1	≤1 (15 mins)	665
Total	6,900			7,025

Dated: September 4, 2014.

Mary Bohman,

Administrator, Economic Research Service.

[FR Doc. 2014–21904 Filed 9–12–14; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Approval of a New Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Foreign Agricultural Service to request approval for a new information collection for General Administrative Policy for Cost-Reimbursable Agreements.

DATES: Comments on this notice must be received by November 14, 2014 to be assured of consideration.

Additional Information or Comments: Contact: Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; Tel: (202) 720–2568, Fax: (202) 690–4029, Email: *christopher.coppenbarger@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

The Foreign Agricultural Service (FAS) of the United States Department of Agriculture (USDA) intends to establish uniform guidelines for the use, award and administration of cost-reimbursable agreements entered into under the authority of 7 U.S.C. 3319a and subsequently to publish regulations on the use, award, and administration of such agreements. The intended effect is to issue agency regulations to reflect current statutory authority and long-held agency business practices.

Title: General Administrative Policy for Cost-Reimbursable Agreements.

OMB Number: 0551–New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.0 hours per response.

Type of Respondents: U.S. institutions of higher education.

Estimated Number of Respondents: 250.

Estimated Number of Responses: 750.

Estimated Total Annual Burden on Respondents: 3,000.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

Abstract: This information collection is required to support the planned FAS guidelines and regulations regarding ''General Administrative Policy for Cost-reimbursable Agreements'' for agreements entered into under 7 U.S.C. 3319a. These guidelines establish the requirements for participation in the following FAS programs listed in the Catalog of Federal Domestic Assistance: 10.613, Faculty Exchange Program; 10.614, Scientific Cooperation Exchange Program with China; 10.777, Norman E. Borlaug International Agricultural Science and Technology Fellowship; 10.960, Technical Agricultural Assistance; 10.961, Scientific Cooperation and Research Program; 10.962, Cochran Fellowship Program-International Training-Foreign Participant. This information collection is necessary for FAS to manage, plan, and evaluate these programs and to ensure the proper and judicious use of government resources. Without the information collection, FAS would not be able to conduct any of the activities falling under the authorities and instruments listed above (i.e., the agency would not be able to develop projects, make or receive payments, monitor projects, identify financial and accounting errors, report to *www.usaspending.gov,* etc.).

FAS will determine the specific means of collection that will be used based on the availability of technology and, as applicable, (1) an informal agreement of FAS and the respondent, (2) the terms of a signed agreement between FAS and the respondent, or (3) the provision of written, procedural rules made publicly available by FAS to the respondent. The information will be collected via phone calls, emails, fax, postal mail, person-to-person meetings, as data entry into grant management system(s), and/or any other commonly used means of communication available to both parties. FAS will encourage the respondent to use modern information technology to reduce the administrative burden whenever possible. Respondents that meet user criteria and choose to utilize the FAS's electronic grants management system will not be required to provide duplicate information for subsequent or current transactions. Any party may initiate a conversation at any time to discuss the possibility of entering into a non-assistance cooperative agreement.

FAS uses the following forms to obtain information from respondents

(program applicants and awardees) regarding their eligibility for, and participation in, its programs:

1. FAS–2013–240–003, Cost-reimbursable Agreements and Attachment A Provisions.
2. FAS–2013–240–009, FAS Grants and Agreements Cover Sheet.
3. Form FAS–2013–240–011, FAS Detailed Budget Form.
4. Form FAS–2013–240–012, FAS Project Description Form.
5. Form SF–424 (used for both construction or non-construction), Application for Federal Assistance.
6. Form SF–424A, Budget Information; Non-Construction Programs.
7. Form AD–3030, Representations Regarding Felony Conviction and Tax Delinquent Status.
8. Form SF–LLL, Disclosure of Lobbying Activities.
9. Form AD–3031, Assurance Regarding Felony Conviction or Tax Delinquent Status.
10. SF–425, Federal Financial Report.
11. SF–425A, Federal Financial Report Attachment.
12. SF–270, Request for Advance or Reimbursement.
13. SF–428, Tangible Personal Property Report.
14. SF–428–A, Annual Report.
15. SF–428–B, Final Report Form.
16. SF–428–C, Disposition Request/Report.
17. SF–428–S, Supplemental Form.
18. FAS–2013–240–007, Modification Form.
19. FAS–2013–240–010, Closeout (Modification) of Award Form.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250, Email: *christopher.coppenbarger@fas.usda.gov.* Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on August 19, 2014.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–21891 Filed 9–12–14; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Approval of a New Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Foreign Agricultural Service to request approval for a new information collection for General Administrative Policy for Joint Venture Agreements.

DATES: Comments on this notice must be received by November 14, 2014 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact: Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; Tel: (202) 720–2568, Fax: (202) 690–4029, Email: *christopher.coppenbarger@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) of the United States Department of Agriculture (USDA) intends to establish uniform guidelines for the use, award, and administration of joint venture agreements entered into under the authority of 7 U.S.C. 3318(b), and subsequently to publish regulations on the use, award, and administration of such agreements. The intended effect is to issue agency regulations that reflect current statutory authority and long-held agency business practices.

Title: General Administrative Policy for Joint Venture Agreements.

OMB Number: 0551—New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.0 hours per response.

Type of Respondents: Non-profit organizations; for-profit organizations; institutions of higher education; federal, state, and local governments; individuals; foreign entities and organizations.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 315.

Estimated Total Annual Burden on Respondents: 1,260 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

Abstract: This information collection is required to support the planned FAS guidelines and regulations regarding ''General Administrative Policy for Joint Venture Agreements.'' These guidelines establish the requirements for participation in the following FAS programs listed in the Catalog of Federal Domestic Assistance: 10.613, Faculty Exchange Program; 10.614, Scientific Cooperation Exchange Program with China; 10.777, Norman E. Borlaug International Agricultural Science and Technology Fellowship; 10.960, Technical Agricultural Assistance; 10.961, Scientific Cooperation and Research Program; and 10.962, Cochran Fellowship Program-International Training-Foreign Participant. This information collection is necessary for FAS to plan, manage, and evaluate these programs and to ensure the proper and judicious use of government resources, including the development, implementation, and administration of the joint venture agreements entered into under these programs. Without the information collection, the agency would not be able to develop projects, make or receive payments, monitor projects, identify financial and accounting errors, report to *www.usaspending.gov,* etc.

FAS will determine the specific means of collection that will be used, based on the availability of technology and, as applicable, (1) the informal agreement of FAS and the respondent, (2) the terms of a signed agreement between FAS and the respondent, or (3) the provisions of written, procedural rules made publicly available by FAS to the respondent. The information will be collected via phone calls, emails, fax,

postal mail, person-to-person meetings, as data entry into grant management system(s)), and/or any other commonly used means of communication available to both parties. FAS will encourage the respondent to use modern information technology to reduce the administrative burden whenever possible. Respondents that meet user criteria and choose to utilize the FAS's electronic grants management system will not be required to provide duplicate information for subsequent or current transactions. Any party may initiate a conversation at any time to discuss the possibility of entering into these agreements.

FAS uses the following forms to obtain information from respondents (program applicants and awardees) regarding their eligibility for, and participation in, its programs:

1. FAS–2013–240–004, Joint Venture Agreement and Attachment A Provisions.
2. Form FAS–2013–240–009, FAS Grants and Agreements Cover Sheet
3. Form FAS–2013–240–011, FAS Detailed Budget Form.
4. Form FAS–2013–240–012, FAS Project Description Form.
5. Form SF–424 (used for both construction and non-construction), Application for Federal Assistance.
6. Form SF–424 Individual (used for both construction and non-construction), Application for Federal Assistance.
7. Form SF–424A, Budget Information, Non-Construction Programs, or SF–424C, Construction Programs.
8. Form AD–3030, Representations Regarding Felony Conviction and Tax Delinquent Status.
9. Form SF–LLL, Disclosure of Lobbying Activities.
10. Form AD–3031, Assurance Regarding Felony Conviction or Tax Delinquent Status.
11. FAS–2013–240–013, Grants and Agreements Overseas Application Coversheet .
12. FAS–2013–240–015, Foreign Assistance Notice of Award.
13. FAS–2013–240–016, Amendment to Foreign Assistance Notice of Award.
14. FAS–2014–240–021, Joint Venture Agreement Template for PIO.
15. FAS–2014–240–022, Joint Venture Agreement Template for Foreign Entities.
16. SF–425, Federal Financial Report.
17. SF–425a, Federal Financial Report Attachment.
18. SF–270, Request for Advance or Reimbursement.
19. SF–428, Tangible Personal Property Report.
20. SF–428–A, Annual Report.
21. SF–428–B, Final Report Form.
22. SF–428–C, Disposition Request/Report.
23. SF–428–S Supplemental Form.
24. FAS–2013–240–007, Modification Form.
25. FAS–2013–240–010, Closeout (Modification) of Award Form.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250, Email: *christopher.coppenbarger@fas.usda.gov.* Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on August 19, 2014.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–21887 Filed 9–12–14; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Approval of a New Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Foreign Agricultural Service to request approval for a new information collection for General Administrative Policy for Agreements to Conduct International Agricultural Research, Extension and Teaching Activities.

DATES: Comments on this notice must be received by November 14, 2014 to be assured of consideration.

Additional Information or Comments: Contact: Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; Tel: (202) 720–2568, Fax: (202) 690–4029, Email: *christopher.coppenbarger@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) of the United States Department of Agriculture (USDA) intends to establish uniform guidelines for the use, award and administration of agreements entered into by FAS to conduct international agricultural research, development, extension and teaching activities awarded under the authority of 7 U.S.C. 3291(a), and subsequently to publish regulations on the use, award, and administration of such agreements. The intended effect is to issue agency regulations that reflect current statutory authority and long-held agency business practices.

Title: General Administrative Policy for Agreements to Conduct International Agricultural Research, Extension and Teaching Activities.

OMB Number: 0551—New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.0 hours per response.

Type of Respondents: Land-grant colleges and universities, Hispanic-serving agricultural colleges and universities, other colleges and universities, the Agency for International Development, international organizations (such as the United Nations, the World Bank, regional development banks, international agricultural research centers), transitional and more advanced countries, Departments and Ministries of Agriculture in other nations or other organizations, institutions, or individuals.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 315.

Estimated Total Annual Burden on Respondents: 1,260 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

Abstract: This information collection is required to support the planned FAS guidelines and regulations regarding ''General Administrative Policy for Agreements to Conduct International Agricultural Research, Extension and Teaching Activities'' under 7 U.S.C. 3291(a). These guidelines establish the requirements for participation in the following FAS programs listed in the Catalog of Federal Domestic Assistance: 10.613, Faculty Exchange Program; 10.614, Scientific Cooperation Exchange Program with China; 10.960, Technical Agricultural Assistance; 10.961, Scientific Cooperation and Research Program. This information collection is necessary for FAS to manage, plan, and evaluate these programs and to ensure the proper and judicious use of government resources. Without the information collection, FAS would not be able to conduct any of the activities falling under the authorities and instruments listed above (i.e., the agency would not be able to develop projects, make or receive payments, monitor projects, identify financial and accounting errors, report to *www.usaspending.gov,* etc.).

FAS will determine the specific means of collection that will be used based on the availability of technology and, as applicable, (1) an informal agreement of FAS and the respondent, (2) the terms of a signed agreement between FAS and the respondent, or (3) the provision of written, procedural rules made publicly available by FAS to the respondent. The information will be collected via phone calls, emails, fax, postal mail, person-to-person meetings, as data entry into grant management system(s)), and/or any other commonly used means of communication available to both parties. FAS will encourage the respondent to use modern information technology to reduce the administrative burden whenever possible. Respondents that meet user criteria and choose to utilize the FAS's electronic grants management system will not be required to provide duplicate information for subsequent or current transactions. Any party may initiate a conversation at any time to discuss the possibility of entering into these agreements. FAS uses the following forms to obtain information from respondents (program applicants and awardees) regarding their eligibility for, and participation in, its programs:

1. Form FAS–2013–240–001, Grant Agreement Template for Foreign Entities and Attachment A Provisions
2. Form FAS–2013–240–002, Cooperative Agreement and Attach. A Provisions
3. Form FAS 2013–240–009, FAS Grants & Agreements Application Cover Sheet
4. Form FAS–2013–240–007, Modification Form
5. Form FAS 2013–240–010, Closeout (Modification) of Award
6. Form FAS 2013–240–011, FAS Detailed Budget Form
7. Form FAS 2013–240–012, FAS Project Description Form
8. Form FAS 2013–240–013, FAS Grants & Agreements Overseas Application Cover Sheet
9. Form FAS 2013–240–014, Fixed Amount Award Template
10. Form FAS 2013–240–015, Foreign Assistance Notice of Award
11. Form FAS–2013–240–016, Amendment to Foreign Assistance Notice of Award
12. Form FAS–2014–240–018, Cooperative Agreement Template for Foreign Entities
13. Form FAS–2014–240–019, Grants Agreement Template for PIO
14. Form FAS–2014–240–020, Cooperative Agreement Template for PIO
15. Form FAS–2014–240–017, Proposal Executive Summary Form
16. Form AD–1047, Certification Regarding Debarment, Suspension, & other Responsibility Matters—Primary Covered Transactions
17. Form AD–1048, Certification Regarding Debarment, Suspension, & other Responsibility Matters—Lower Tier Covered Transactions
18. Form AD–1049, Certificate Regarding Drug Free Workplace Requirements Alternative 1—Non-Individuals
19. Form AD–1050, Certificate Regarding Drug Free Workplace Requirements Alternative 2—Individuals
20. Form AD–1052, Certificate Regarding Drug Free Workplace Requirements—State and State Agencies
21. Form SF–424, Application for Federal Assistance (Approved under 4040–0004)—Discretionary Common Form
22. Form SF–424, Application for Federal Assistance (Approved under 4040–0005)—Individual Common Form
23. Form SF–LLL, Disclosure of Lobbying Activities
24. Form AD–3030, Representations Regarding Felony Conviction and Tax Delinquent Status, OMB Control Number 0505–0025
25. Form AD–3031, Assurance Regarding Felony Conviction or Tax Delinquent Status, OMB Control Number 0505–0025
26. Form SF–424A OR SF–424C, Budget Information—Non-Construction Programs (Approved under OMB 4040–0006) OR Budget Information—Construction Programs (Approved under OMB 4040–0008
27. Form SF–424B OR SF–424D, Assurances—Non-Construction Programs (4040–0007) or Assurances—Construction Programs (4040–0009)
28. Form SF–270, Request for Advance or Reimbursement (Approved under OMB 4040–0012)
29. Form SF–425, Federal Financial Report (Approved under OMB 4040–0014)
30. Form SF–425A, Federal Financial Report Attachment (Approved under OMB 4040–0014)
31. Form SF–424 (RR), Application for Federal Assistance (R&R) (Approved under OMB 4040–0001) (per response time includes time for other RR docs.)
32. Form SF–424 (RR), Research & Related Budget (Total Fed + Non-Fed Sheet) (Approved under OMB 4040–0001)
33. Form SF–424 (RR), R&R Subaward Budget (Fed/Non-Fed) Attachment(s) Form (Approved under OMB 4040–0001)
34. Form SF–424 (RR), Research and Related Senior/Key Person Profile (Approved under OMB 4040–0001)
35. Form SF–424 (RR), Project/Performance Site Location(s) Sheet (Approved under OMB 4040–0010)
36. Form SF–424 (RR), Research & Related Personal Data (Optional) (Approved under OMB 4040–0001)
37. Form SF–428, Tangible Personal Property Report (Approved under OMB 3090–0289) (per response time covers a, b, c, & s attachments)
38. Form SF–428–s, Tangible Personal Property Report—Supplemental Sheet (Approved under OMB 3090–0289)
39. Form SF–428–a, Tangible Personal Property Report—Annual Report (Approved under OMB 3090–0289)
40. Form SF–428–b, Tangible Personal Property Report—Final Report (Approved under OMB 3090–0289)
41. Form SF–428–c, Tangible Personal Property Report—Disposition Request/Report (Approved under OMB 3090–0289)
42. Form SF–429, Real Property Status Report (Approved under OMB 3090–0296)

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Chris Coppenbarger, Grants Management Officer, Office of the Chief Operating Officer, MS–3118, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250, Email: *christopher.coppenbarger@fas.usda.gov.* Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on August 19, 2014.

Philip C. Karsting

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–21890 Filed 9–12–14; 8:45 am]

BILLING CODE 3410–10–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: Bureau of Industry and Security (BIS).

Title: Competitive Enhancement Needs Assessment Survey Program.

OMB Control Number: 0694–0083.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 2,400.

Average Hours Per Response: 1 hour.

Burden Hours: 2,400.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense. They also develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal laboratories. The goal is to improve regions of the country adversely affected by cutbacks in defense spending and military base closures.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 9, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–21878 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–33–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: National Oceanic and Atmospheric Administration (NOAA).

Title: Dr. Nancy Foster Scholarship Program.

OMB Control Number: 0648–0432.

Form Number(s): NA.

Type of Request: Regular (revision and extension of a current information collection).

Number of Respondents: 200.

Average Hours per Response: Application package, 8 hours; Letter of Recommendation: 45 minutes; Bio/Photograph Submission: 1 hour; Annual Report: 1 hour, 30 minutes; and Evaluation: 15 minutes.

Burden Hours: 1,917.

Needs and Uses: This request is for revision and extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) collects, evaluates and assesses student data and information for the purpose of selecting successful scholarship candidates, generating internal NOAA reports and articles to demonstrate the success of its program. The Dr. Nancy Foster Scholarship Program is available to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography and maritime archaeology. The ONMS requires applicants to the Dr. Nancy Foster Scholarship Program to complete an application and to supply references (e.g., from academic professors and advisors) in support of the scholarship application. Scholarship recipients are required to conduct a pre- and post-evaluation of their studies through the scholarship program to gather information about the level of knowledge, skills and behavioral changes that take place with the students before and after their program participation. The evaluation results support ONMS performance measures. This form is revised from the one previously approved. Scholarship recipients are also required to submit an annual progress report, a biographical sketch, and a photograph.

Affected Public: Individuals or households.

Frequency: Annually and one time.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 10, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–21935 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[08/22/2014 through 09/09/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Blissfield Manufacturing Company.	626 Depot St., Blissfield, MI 49228.	9/3/2014	The firm manufactures fluid cooling tanks of iron or steel, compressors, heat exchangers and various sheet metal fabrications.
San Antonio Light House for the Blind.	2305 Roosevelt Ave, San Antonio, TX 78210.	9/4/2014	The firm manufactures writing instrument.
Han-Boone International Inc. dba Fort Worth Gasket & Supply.	2200 Gravel Drive, Fort Worth , TX 76118.	9/9/2014	The firm manufactures various types of gaskets.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 9, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–21892 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results and Notice of Amended Final Results of the Antidumping Duty Administrative Review; 2009–2010

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 28, 2014, the United States Court of International Trade (the Court) issued final judgment in *Xiamen International Trade and Industrial Co., Ltd. et al.* v. *United States,* Court No. 11–00411, sustaining the Department of Commerce's (the Department's) final results of redetermination pursuant to remand.[1] In the *Remand Results,* the Department recalculated the weighted-average dumping margin for Xiamen International Trade and Industrial Co., Ltd. (XITIC) using a revised surrogate value for lime and a revised calculation of labor and financial ratios.[2] The Department also recalculated the dumping margin for two respondents not selected for individual examination—Zhejiang Iceman Group Co., Ltd. (Iceman Group) and Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan) because their dumping margin was based in part upon XITIC's dumping margin, which changed on remand.[3] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the antidumping duty administrative review of certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2009, through January 31, 2010, and is amending the amended final results with respect to the weighted-average dumping margins assigned to XITIC, Iceman Group, and Golden Banyan.[4]

DATES: *Effective Date:* September 8, 2014.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–0698, respectively.

SUPPLEMENTARY INFORMATION: On September 14, 2011, the Department issued the *Final Results.*[5] On November 10, 2011, it issued the *Amended Final Results.*[6] XITIC, Iceman Group, and Golden Banyan, exporters of subject merchandise, timely filed complaints

[1] *See* Final Results of Redetermination Pursuant to Court Remand, Certain Preserved Mushrooms from the People's Republic of China, *Xiamen Int'l Trade & Indus. Co., Ltd. et al.* v. *United States,* Court No. 11–00411, Slip Op. 13–152 (CIT December 20, 2013), dated April 21, 2014 (*Remand Results*), available at *http://enforcement.trade.gov/remands/index.html.*

[2] *See generally Remand Results.*

[3] *Id.*

[4] *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part,* 76 FR 56732 (September 14, 2011) (*Final Results*), as amended, *Certain Preserved Mushrooms From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review,* 76 FR 70112 (November 10, 2011) (*Amended Final Results*).

[5] *See Final Results.*

[6] *See Amended Final Results.*

with the Court to challenge certain aspects of the *Final Results* and *Amended Final Results*. Specifically, XITIC challenged the Department's selection of surrogate values for fresh mushrooms, mushroom spawn, and lime. XITIC also argued that the Department should have applied its revised labor methodology, instead of its interim labor methodology, when calculating XITIC's surrogate labor rates and financial ratios.[7] Finally, XITIC challenged the Department's decision to interpret section 771(35) of the Tariff Act of 1930, as amended (the Act), differently in administrative reviews from the manner in which it interprets that same provision in investigations.[8]

Iceman Group argued that the Department unlawfully assigned it a separate rate. Finally, Iceman Group and Golden Banyan argued that the Department's separate rate calculation erroneously included the 266.13 percent partial adverse facts available rate of Guangxi Jisheng Foods, Inc. (Jisheng) because that dumping margin calculated for Jisheng was higher than the rate assigned to the PRC-wide entity.

On December 20, 2013, the Court remanded the Department's *Final Results* and *Amended Final Results* and instructed the Department to reconsider (1) the calculation of XITIC's surrogate values for mushroom spawn and lime, (2) the calculation of XITIC's labor rate and financial ratios, and (3) the inclusion of Jisheng's dumping margin in the calculation of the separate rate for Iceman Group and Golden Banyan.[9] However, the Court upheld the Department's calculation of the surrogate value for XITIC's fresh mushrooms and its determination to assign Iceman Group a separate rate.[10]

On April 21, 2014, the Department filed its remand results with the Court, in which it used a revised surrogate value for lime and recalculated XITIC's labor rate and financial ratios using the revised labor methodology.[11] The Department further explained its decisions in the *Final Results* to calculate the surrogate value for XITIC's mushroom spawn using Global Trade Atlas data and to include Jisheng's dumping margin in the separate rate calculation.[12] As a result of the changes to XITIC's calculations, XITIC's margin changed from 13.12 percent to 5.76 percent.[13] Because the separate rate assigned to Iceman Group and Golden Banyan was based in part upon XITIC's dumping margin, the separate rate assigned to those exporters also changed from 76.12 percent to 74.14 percent.[14]

On August 28, 2014, the Court entered judgment sustaining the Department's *Remand Results*.[15]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's August 28, 2014, judgment sustaining the *Remand Results* constitutes a final decision of the Court that is not in harmony with the Department's *Amended Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, the Department amends the *Final Results* and *Amended Final Results* with respect to XITIC, Golden Banyan, and Iceman Group. The revised weighted-average dumping margins for these exporters during the period February 1, 2009, through January 31, 2010 follows:

Exporter	Weighted average dumping margin (percent)
Xiamen International Trade & Industrial Co., Ltd	5.76
Zhejiang Iceman Group Co., Ltd	74.14
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd	74.14

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed, or if appealed and upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise exported by XITIC, Iceman Group, and Golden Banyan using the revised assessment rate calculated by the Department in the *Remand Results* and listed above.

Cash Deposit Requirements

The cash deposit rates for Iceman Group and Golden Banyan are unaffected by these amended final results. The cash deposit rate for the PRC-wide entity, which now includes Iceman Group, will remain the PRC-wide entity rate established for the subsequent and most-recent period during which the PRC-wide entity was reviewed, which is 308.33 percent.[16] The cash deposit rate for Golden Banyan will remain the rate established for the subsequent and most-recent period during which Golden Banyan was reviewed, which is 304.89 percent.[17] However, since the *Amended Final Results,* the Department has not established a new cash deposit rate for XITIC. Therefore, consistent with section 751(a)(1) of the Act, the Department will instruct CBP to collect cash deposits for entries of subject merchandise for XITIC equal to the weighted-average dumping margin listed above, which is 5.76 percent effective September 8, 2014.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: September 9, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–21990 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–DS–P

[7] On appeal, the Department acknowledged that it erred in applying the interim labor methodology and requested a voluntary remand to employ the revised labor methodology.

[8] After the Federal Circuit issued its decision in *Union Steel* v. *United States,* 713 F.3d 1101 (Fed. Cir. 2013), XITIC abandoned this claim.

[9] *See, generally, Xiamen Int'l Trade & Indus. Co., Ltd.* v. *United States,* 953 F. Supp. 2d 1307 (Ct. Int'l Trade 2013).

[10] *Id.*

[11] *See Remand Results* at 3–6, 12–14.

[12] *Id.,* at 6–12, 14–21.

[13] *Id.,* at 14.

[14] *Id.,* at 16–17.

[15] *See Xiamen Int'l Trade & Indus. Co., Ltd. et al. v. United States,* Court No. 11–00411 (Ct. Int'l Trade August 28, 2014).

[16] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 12150, 12151–52 & n.16 (March 4, 2014).

[17] *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Review,* 77 FR 55808, 55809 (September 11, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). For more information, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

The Petitioner in this investigation is the Rebar Trade Action Coalition.[1] In addition to the Government of Turkey, the mandatory respondents in this investigation are Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas). The period of investigation (POI), for which we are measuring subsidies, is January 1, 2012, through December 31, 2012.

Case History

The events that occurred since the Department published the *Preliminary Determination* on February 26, 2014,[2] are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey'' (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice.

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

Critical Circumstances

Pursuant to section 705(a)(2) of the Tariff Act of 1930, as amended (the Act), the Department determines that critical circumstances exist for imports of rebar from Turkey for the ''all other'' companies. Although we determine that Habas and Icdas benefited from programs that are inconsistent with the Subsidies Agreement, the companies' shipment data do not indicate a massive increase in shipments of subject merchandise to the United States. The shipment data, however, indicate a massive increase in shipments of subject merchandise by the ''all other'' companies. Therefore, we determine that critical circumstances exist with regard to imports of rebar from Turkey by companies subject to the all others rate. For further information on the Department's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Methodology

The Department is conducting this countervailing duty (CVD) investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memorandum.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of subsidy programs and the issues that parties raised, and to which the Department responded in the Issues and Decision Memorandum, is attached an appendix to this notice.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a countervailable subsidy rate for each individually investigated producer/exporter of the subject merchandise. Section 705(c)(5)(A)(i) of the Act states that for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any *de minimis* countervailable subsidy rates. In this investigation, the only non-*de minimis* rate is the rate calculated for Icdas. Consequently, the rate calculated for Icdas is assigned as the ''all others'' rate.

We determine the total estimated net countervailable subsidy rates to be:

[1] The members are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.

[2] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Determination,* 79 FR 10771 (February 26, 2014) (*Preliminary Determination*).

Company	Subsidy rate
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	0.74 percent (*de minimis*).
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	1.25 percent.
All Others	1.25 percent.

Because the *Preliminary Determination* was negative, we did not instruct U.S. Customs and Border Protection (CBP) to suspend entries of subject merchandise. In accordance with sections 705(c)(1)(C) of the Act, we are now directing CBP to suspend liquidation of and to require the posting of a cash deposit on all imports of the subject merchandise from Turkey, other than those produced and exported by Habas because Habas' rate is *de minimis,* that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Additionally, as a result of this final affirmative determination of critical circumstances for ''all other'' companies, we are instructing CBP to suspend liquidation of all entries of subject merchandise from those producers/exporters of rebar from Turkey, which were entered or withdrawn from warehouse for consumption 90 days prior to the date of publication of this notice in the **Federal Register**, pursuant to section 703(e)(2) of the Act.

As our final determination is affirmative and our preliminary determination was negative, in accordance with section 705(b)(3) of the Act, the U.S. International Trade Commission (ITC) will determine within 75 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. We will issue a CVD order if the ITC issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to 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 that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: September 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
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4. Scope of the Investigation
5. Critical Circumstances
6. Subsidies Valuation
7. Analysis of Programs
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   - 1. Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)
   - 2. Provision of Lignite for LTAR
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   - Comment 6: Calculation of the Export Revenue Tax Deduction for Icdas
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Comment 8: Whether the Department Failed to Initiate on the GOT's Purchase of Electricity for MTAR

9. Recommendation

[FR Doc. 2014–21989 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–818]

Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of steel concrete reinforcing bar (rebar) from Turkey are not being, or are not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins are listed in the ''Final Determination'' section of this notice. The Department also finds that critical circumstances do not exist for Turkey with regard to the two mandatory respondents, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), but do exist for all other producers and exporters of subject merchandise.

DATES: *Effective Date:* September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska (Icdas) or George McMahon (Habas), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–8362 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2014, the Department published the *Preliminary Determination* in the **Federal Register**.[1] In the *Preliminary Determination,* we postponed the final determination until no later than 135 days after the publication of the *Preliminary Determination* in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e) and invited parties to comment on our *Preliminary Determination.* We received case and rebuttal briefs from the Petitioners,[2] Habas, and Icdas. We also received a case brief from the interested party Colakoglu Metalurji, A.S. and the Turkish Steel Exporter's Association. On July 31, 2014, we conducted a public hearing in this investigation.

Period of Investigation

The period of investigation is July 1, 2012, through June 30, 2013.

Scope Comments

On June 19, 2014, the Petitioners submitted a request that the Department amend the scope of this investigation to exclude certain types of deformed steel wire by inserting the sentence below immediately before the last sentence of the current scope language:

> Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size or grade) and without being subject to an elongation test.

We solicited comments on the scope of the investigation from interested parties in the *Initiation Notice*[3] and case briefs. Based on the fact that no other interested party submitted comments regarding the Petitioners' request to amend the scope language, we incorporated this amendment in the ''Scope of the Investigation'' section below.

Scope of the Investigation

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

Analysis of the Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in the Issues and Decision Memorandum.[4] A list of the issues which parties raised and to which we responded is in the Issues and Decision Memorandum and attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, pre-verification corrections, and our findings at verifications, we made certain changes to the margin calculations for Habas and Icdas.[5]

[1] *See Steel Concrete Reinforcing Bar From Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 22804 (April 24, 2014) (*Preliminary Determination).*

[2] Petitioners are the Rebar Trade Action Coalition and its members: Nucor Corporation, Gerdau Ameristeel U.S. Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.

[3] *See Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations,* 78 FR 60827 (October 2, 2013) (*Initiation Notice*).

[4] *See* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado titled ''Issues and Decision Memorandum for the Final Determination in the Less than Fair Value Investigation of Steel Concrete Reinforcing Bar from Turkey'' dated concurrently with this notice and hereby adopted by this notice (Issues and Decision Memorandum).

[5] For a discussion of these changes, *see* Memorandum to Neal Halper titled, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Habas,'' dated concurrently with this notice and Memorandum to the File titled, ''Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey—Analysis Memorandum for Habas,'' dated

Continued

Verification

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by Habas and Icdas. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by both companies.

Final Determination of Critical Circumstances

On December 4, 2013, Petitioners filed a timely critical circumstances allegation pursuant to section 733(e)(l) of the Act and 19 CFR 351.206(c)(l), alleging that critical circumstances exist with respect to imports of the merchandise under consideration. Based on our analysis, pursuant to 735(a)(3), we find that critical circumstances do not exist for Habas and Icdas, but do exist for all other producers and exporters. The finding for producers and exporters subject to the all others rate is moot because the antidumping duty margins for Habas and Icdas are *de minimis.* Thus, we will not instruct U.S. Customs and Border Protection (CBP) to retroactively suspend entries for producers and exporters subject to the all others rate.

For a full description of the methodology and results of our analysis, *see* the Critical Circumstances Section of the Issues and Decision Memorandum.

Final Determination

We determine that the estimated weighted-average dumping margins are as follows:

Producer or exporter	Estimated weighted-average dumping margin (percent)
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)	0.00
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)	0.00
All Others	0.00

Consistent with section 735(c)(1) of the Act, the Department has not determined an estimated all-others rate because it has not made an affirmative final determination of sales at LTFV.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

Because the estimated weighted-average dumping margins for the examined companies are *de minimis,* we are not directing CBP to suspend liquidation of entries of rebar from Turkey. As noted above, for this final determination, the Department found that critical circumstances exist with respect to the ''all other'' producers and/or exporters. The finding for ''all others'' is moot because the final determination of dumping is negative. Thus, we will not instruct CBP to retroactively suspend entries for firms subject to the all others rate. Further, we will instruct CBP to liquidate without regard to antidumping duties those entries that were suspended on or after January 24, 2014, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.[6]

In the final determination of the companion countervailing duty investigation on rebar from Turkey, the Department determined that the all other companies received a benefit from export subsidies.[7] The antidumping duty margins for Habas and Icdas are *de minimis* and no cash deposits will be collected. Therefore, no adjustment is required for export subsidies pursuant to sections 735(c)(1) and 772(c)(1)(C) of the Act and 19 CFR 351.210(d).[8] These instructions suspending liquidation will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission of our final determination.

Return or Destruction of Proprietary Information

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

We are issuing and publishing this determination and notice pursuant to sections 735(d) and 777(i)(l) of the Act.

Dated: September 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Critical Circumstances
V. Scope Comments
VI. Scope of the Investigation
VII. Margin Calculations
VIII. Discussion of the Issues

concurrently with this notice; *see* also Memorandum to Neal Halper titled ''Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—Icdas,'' dated concurrently with this notice and Memorandum to the File titled, ''Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey—Analysis Memorandum for Icdas,'' dated concurrently with this notice; *see also* Memorandum to the File, titled ''Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey—Sales Analysis Memorandum for Habas,'' (Sales Analysis Memorandum for Habas), dated concurrently with this notice; *see also* Memorandum to the File, titled ''Final Determination in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Turkey—Sales Analysis Memorandum for Icdas,'' (Sales Analysis Memorandum for Icdas), dated concurrently with this notice.

[6] In the *Preliminary Determination,* in accordance with section 733(d)(2) of the Act, we directed CBP to suspend liquidation of all entries of rebar from Turkey from companies with above *de minimis* margins, as described in the Scope of the Investigation section that are entered, or withdrawn from warehouse, for consumption on or after April 24, 2014 (the date of publication of the *Preliminary Determination* notice in the **Federal Register**), and to require a cash deposit for such entries in the amounts indicated in the *Preliminary Determination.* Because we preliminarily determined that critical circumstances existed with regard to imports of rebar produced or exported by Turkish firms other than Habas and Icdas, we directed CBP to apply the suspension of liquidation to any unliquidated entries of rebar from Turkey that are entered, or withdrawn from warehouse, for consumption on or after January 24, 2014, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.

[7] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* dated concurrently with this notice.

[8] Consistent with the Department's practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit or posting of a bond equal to the amount by which the normal value exceeds the export price or constructed export price, as indicated in the estimated margin section above, less the amount of the countervailing duty determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea,* 77 FR 17413 (March 26, 2012).

1. Whether the Department Should Deny Respondents' Duty Drawback Adjustments
2. Whether Exempted Duties Should be Added to Costs Regardless of Whether the Department Grants the Duty Drawback Adjustment
3. Whether the Department Should Revise Habas and Icdas' Home Market (HM) Control Numbers (CONNUMs) for the Yield Strength Product Characteristic (MSYSTRH)
4. Whether the Department Should Include Rebar Type (REBARTYPEH/U) as a Product Characteristic Forming Part of the Control Number (CONNUM)
5. Whether HM Sales of Foreign Grade Rebar Are Outside the Ordinary Course of Trade
6. Whether Critical Circumstances Exist for All Others
7. Date of Sale for Habas' U.S. Market
8. Whether the Department Should Utilize Habas' Revised Mill Scale Offset in the Cost Calculations
9. Whether the Department Should Disallow Habas' Offsets Related to Prior Fiscal Years
10. Date of Sale for Icdas' U.S. Market
11. Differential Pricing Analysis
12. Denial of Offsets for Non-Dumped Sales When Using the Average-to-Transaction Method
13. Whether the Department Should Account for Certain COP Differences not Reported by Icdas
14. Whether the Department Should Adjust Icdas' TOTCOM for Unreconciled COM Differences
15. Whether the Department Should Adjust the Cost Calculation of Rebar To Reflect the Production of Short-Length Rebar
16. Whether Icdas Correctly Reported The Byproduct Offset Amount for Scrap and Related Materials
17. Whether the Department Should Include Insurance Proceeds in Calculating Icdas' G&A Expenses

IX. Recommendation

[FR Doc. 2014–21986 Filed 9–12–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that steel concrete reinforcing bar (rebar) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 30, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the ''Final Determination'' section of this notice. The Department also determines that critical circumstances exist with respect to imports of rebar from Mexico from mandatory respondents Deacero S.A.P.I. de C.V. and Deacero USA, Inc. (collectively, Deacero) and Grupo Acerero S.A. de C.V. (Acerero), the voluntary respondent, Grupo Simec (Simec)/Orge S.A. de C.V. (Orge) (collectively Simec), and Mexican firms that are subject to the all others rate.

DATES: *Effective Date:* September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Deacero), or Joy Zhang (Simec), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2014, the Department published the *Preliminary Determination* in the **Federal Register**.[1] In the *Preliminary Determination,* we postponed the final determination until no later than 135 days after the publication of the *Preliminary Determination* in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e) and invited parties to comment on our *Preliminary Determination.* On August 4, 2014, we received case briefs from Petitioner,[2] Deacero, Simec, and Acerero. On August 11, 2014, we received rebuttal briefs from Petitioner, Deacero, and Simec.

Period of Investigation

The period of investigation is July 1, 2012, through June 30, 2013.

Scope Comments

On June 19, 2014, Petitioner submitted a request that the Department amend the scope of this investigation to exclude certain types of deformed steel wire by inserting the sentence below immediately before the last sentence of the current scope language:

> Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size, or grade) and without being subject to an elongation test.

We solicited comments on the scope of the investigation from interested parties in the *Initiation Notice*[3] and case briefs.[4] Because no other interested party has submitted comments regarding the Petitioner's request to amend the scope language, and we see no reason to deny Petitioner's request, we incorporated this amendment into the ''Scope of the Investigation'' section below.

Scope of the Investigation

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

Verification

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by Deacero and Simec. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source

[1] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination,* 79 FR 22804 (April 24, 2014) (*Preliminary Determination*).

[2] Petitioner is the Rebar Trade Action Coalition and its members: Nucor Corporation, Gerdau Ameristeel U.S. Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.

[3] *See Steel Concrete Reinforcing Bar from Mexico and Turkey: Initiation of Antidumping Duty Investigations,* 78 FR 60827 (October 2, 2013) (*Initiation Notice*).

[4] *See Preliminary Determination,* 79 FR at 22803.

documents provided by both companies.[5]

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs for this investigation are addressed in the Issues and Decision Memorandum.[6] A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and it is available to all parties in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, pre-verification corrections, and our findings at verification, we made certain changes to the margin calculations for Deacero. For Simec, we determined to apply a margin based on total adverse facts available. Our determination for Acerero, to apply a margin based on total adverse facts available, remains unchanged from the *Preliminary Determination.*

Final Affirmative Determination of Critical Circumstances

On December 17, 2013, Petitioner filed a timely critical circumstances allegation pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.[7] Based on our analysis, pursuant to 735(a)(3), we continue to find that critical circumstances exist with regard to imports of rebar from Deacero, Acerero, and the Mexican firms subject to the all others rate.

For further information concerning our analysis, *see* the ''Critical Circumstances'' section of the Issues and Decision Memorandum.

Final Determination

For the final determination, the following margins exist for the following entities for the POI:

Producer or exporter	Estimated weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V.	20.58
Grupo Acerero S.A. de C.V.	66.70
Grupo Simec	66.70
All Others	20.58

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding all rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Deacero as the weighted-average dumping margin for all other producers and exporters of subject merchandise.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As noted above, the Department reached an affirmative critical circumstances determination at both the *Preliminary Determination* and final determination with respect to imports of the merchandise under consideration from Deacero, Acerero, and the Mexican firms subject to the all others rate. Therefore, in accordance with section 735(c)(4)(A) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of rebar from Mexico from Deacero, Acerero, and the Mexican firms subject to the all others rate that were entered, or withdrawn from warehouse, for consumption on or after January 24, 2014, which is 90 days prior to publication of the *Preliminary Determination* in the **Federal Register**, and require a cash deposit for such entries as noted above. Because the Department reached a negative critical circumstances determination at the *Preliminary Determination,* and an affirmative critical circumstances determination at the final determination with respect to Simec, pursuant to section 735(c)(4)(B) of the Act, the Department will instruct CBP to suspend liquidation of all entries of rebar from Mexico from Simec which were entered, or withdrawn from warehouse, for consumption on or after January 24, 2014,which is 90-days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**, and require a cash deposit for such entries as noted above.

Pursuant to section 735(c)(l) of the Act and 19 CFR 351.210(d), the Department will instruct CBP to require cash deposits equal to the weighted-average dumping margins indicated in the table above.[8] If the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise. The rate for all other producers or exporters will be 20.58 percent *ad valorem.* These suspension of liquidation and cash deposit instructions will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final affirmative determination of sales at LTFV. Because the final

[5] *See* Memorandum to Melissa G. Skinner, Director, Office III, Operations, ''Verification of the Sales response of Grupo Simec and Constructed Export Sales of Simec USA in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico,'' (July 1, 2014), *see also* Memorandum to Neal M. Halper, ''Verification of the Cost Response of Grupo Simec in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico,'' (July 11, 2014), *see also* Memorandum to Melissa G. Skinner, Director, Office III, Operations, ''Verification of the Sales Response of Deacero in the 2012–2013 Antidumping Duty Investigation of Concrete Steel Reinforcing Bar (Rebar) from Mexico,'' (July 7, 2014), *see also* Memorandum to Neal M. Halper, ''Verification of the Cost Response of Deacero S.A.P.I. de C.V. in the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico,'' (July 25, 2014).

[6] *See* the memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Steel Concrete Reinforcing Bar from Mexico,'' dated concurrently with this notice and hereby adopted by this notice (Issues and Decision Memorandum).

[7] *See* Petitioners' submission, ''Steel Concrete Reinforcing Bar from Mexico: Critical Circumstances Allegation,'' dated December 17, 2013.

[8] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of rebar from Mexico no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the merchandise under investigation entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (APO)

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

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(l) of the Act and 19 CFR 351.210(c).

Dated: September 8, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Issues Discussed in the Final Issues and Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Application of Adverse Facts Available With Regard to Acerero and Simec
V. Critical Circumstances
VI. Scope Comments
VII. Scope of the Investigation
VIII. All Others Rate
IX. Discussion of the Issues
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Comment 1: Scope of the Subject Merchandise
Comment 2: Whether Cooling Method Should Be Incorporated Into CONNUMs
Issues Regarding Deacero
Comment 3: Whether Certain Home Market Sales Are Outside the Ordinary Course of Trade
Comment 4: Application of Adverse Facts Available for Deacero's Unreported U.S. Sales
Comment 5: Critical Circumstances Finding
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Comment 6: Application of Total Adverse Facts Available to Simec
Comment 7: Whether Constructed Value Can Be Used as the Basis for Normal Value
Comment 8: Whether the Department Can Calculate Indirect Selling Expenses From the Information on the Record
Comment 9: Whether Simec's Sales to Affiliated Distributors Were Made at Arm's Length
Issues Regarding Acerero
Comment 10: Whether the Application of Total AFA With Regard to Acerero is Warranted
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X. Recommendation

[FR Doc. 2014–21982 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Vessel Monitoring System (VMS) Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or November 14, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Vessel Monitoring System (VMS) units integrate global positioning system (GPS) and communications electronics in a single, tamper-resistant package to automatically determine the vessel's position several times per hour. The units can be set to transmit a vessel's location periodically and automatically to an overhead satellite in real time. In most cases, the vessel owner is unaware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to NOAA Fisheries Office for Law Enforcement and U.S. Coast Guard. Enforcement of measures, such as critical habitat no-fishing and directed fishing closures, is heavily reliant on use of VMS.

II. Method of Collection

Automatic GPS position reporting starts after VMS transceiver installation and power activation onboard the vessel. The unit is pre-configured and tested for NOAA Fisheries Service VMS operations. VMS check-in with NMFS, by fax, is required one time from vessel operators who purchase and install a new VMS on a vessel. Thereafter, submittal is automatic by satellite. All other VMS units are identified. Respondents must fax the one-time VMS check-in report.

III. Data

OMB Control Number: 0648–0445.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 48.

Estimated Time per Response: 12 minutes for VMS check-in report; 4 hours for VMS operation (includes installation and maintenance).

Estimated Total Annual Burden Hours: 3,745.

Estimated Total Annual Cost to Public: $740,145.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 9, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–21879 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD477

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Joint Logistics Over-the-Shore Training in Virginia and North Carolina

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to conducting Joint Logistics Over-the-Shore (JLOTS) training activities in Virginia and North Carolina, from June 2015 through June 2020. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than October 15, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the Navy's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

With respect to military readiness activities, the MMPA defines ''harassment'' as: ''(i) Any act that injures or has the significant potential to injure a marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

Summary of Request

On August 20, 2014, NMFS received an application from the Navy requesting a letter of authorization (LOA) for the take of bottlenose and Atlantic spotted dolphins incidental to the Navy's JLOTS training activities in nearshore waters at the Joint Expeditionary Base (JEB) Little Creek-Fort Story in Virginia and at Camp Lejeune in North Carolina. The Navy is requesting a 5-year LOA for these activities. These activities are classified as military readiness activities. The Navy states that these activities may result in take of marine mammals from noise or visual disturbance from temporary pier construction associated with the JLOTS training activities. The Navy requests to take bottlenose and Atlantic spotted dolphins by Level B harassment.

Description of the Specified Activity

JLOTS training is the movement of cargo and personnel from ships to shore in areas that do not have existing fixed port facilities. Among the several coordinated exercises of the JLOTS training, the only activity that has the potential to harass marine mammals is the construction of the Elevated Causeway System, Modular [ELCAS(M)] by introducing noise into the water.

The ELCAS (M) is a temporary pier constructed from the beach into the water past the surf zone. It provides a means of delivering containers, vehicles, and bulk cargo ashore without lighterage craft having to enter the surf zone. The ELCAS (M) consists of a series of 24- by 40-ft. (7.3- by 12.2-m) pontoon sections joined together and supported by piles driven into the sea floor.

To build the pier, piles are driven into the sand with a diesel-powered impact hammer. The piles used typically are hollow, half-inch steel uncapped piles, 24 inches (0.5 m) in diameter, and can be of various lengths (38 ft. [11.6 m], 57 ft. [17.4 m], or 76 ft. [23.2 m]) depending on local bathymetry. The depth to which the piles are driven is between 30 and 40 ft. (9.1 to 12.2 m) and installation takes approximately 15 minutes per pile. Typically, 6 piles would be installed in a day. Two pile drivers are generally used, but not simultaneously: while one is driving a

pile, the other is being re-positioned for the next pile. Construction may take up to 20 days. A pier length of 1,500 ft (457 m) is typical for training, with approximately 119 supporting piles.

Once the ELCAS (M) is constructed, offloading operations are similar to those of a conventional pier. Container-handling operations consist primarily of transferring containers from lighterage vessels (e.g., Landing Craft Utility or Landing Craft Mechanized) to the pier. Empty trucks or trailers are driven onto a turntable at the seaward end of the ELCAS (M) and are loaded with containers using the same cranes from construction. The ELCAS (M) is wide enough to accommodate two-way traffic. Rolling stock may be lifted by crane to the pier and driven to the beach as well. Operations typically involve the use of two forklifts and an average of six cargo trucks a day during the exercise. Power for the operation of the turntable and the lighting of the ELCAS (M) is provided by up to two 30-kilowatt (kW) and two 100-kW generators.

The ELCAS (M) is dismantled by removing the pontoon sections and extracting the piles with a vibratory hammer, which takes approximately 6 minutes per pile, over the course of 10 days. Typically, 12 piles are removed in a day. On the beach, the modified area re-graded to its original elevation.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All input related to the Navy's request and NMFS' role in governing the incidental taking of marine mammals will be considered by NMFS when developing, if appropriate, the most effective regulations governing the issuance of an LOA.

Dated: September 9, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–21886 Filed 9–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–HA–0192]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 15, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of Defense Suicide Event Report (DoDSER); OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 1375.

Responses per Respondent: 1.

Annual Responses: 1375.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 229.

Needs and Uses: This data system will provide integrated enterprise and survey data to be used for direct reporting of suicide events and ongoing population-based health surveillance activities.

These surveillance activities include the systematic collection, analysis, interpretation, and reporting of outcome-specific data for use in planning, implementation, evaluation, and prevention of suicide behaviors within the Department of Defense. Data are collected on individuals with reportable suicide and self-harm behaviors (to include suicide attempts, self-harm behaviors, and suicidal ideation). All other DoD active and reserve military personnel records collected without evidence of reportable suicide and self-harm behaviors will exist as a control group. Records are integrated from enterprise systems and created and revised by civilian and military personnel in the performance of their duties.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Megan Larkin.

Written comments and recommendations on the proposed information collection should be sent to Ms. Megan Larkin at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 10, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–21936 Filed 9–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Study of Enhanced College Advising in Upward Bound

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Study of Enhanced College Advising in Upward Bound'' (18–13–36). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences awarded a contract in September 2012 to Abt Associates Inc. to conduct an impact evaluation of a strategy to enhance college advising within Upward Bound—consisting of a professional development program for Upward Bound staff that includes a set of tools and resources for staff and students. The system of records will contain records on approximately 136,000 Upward Bound students and 200 Upward Bound project staff and will be used to conduct the study.

DATES: Submit your comments on this proposed new system of records on or before October 15, 2014.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB) on September 3, 2014. This system of records will become effective at the later date of: (1) The expiration of the 40-day period for OMB review on October 13, 2014, unless OMB waives 10 days of the 40–day review period for compelling reasons shown by the Department, or (2) October 15, 2014, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed system of records to Dr. Audrey Pendleton, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7078. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.*

You must include the phrase ''Study of Enhanced College Advising in Upward Bound'' in the subject line of the electronic message.

During and after the comment period, you may inspect all public comments about this notice at the Department in Room 502D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Marsha Silverberg. Telephone: (202) 208–7178. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to any record about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or Social Security Number (SSN). The information about each individual is called a ''record,'' and the system, whether manual or computer based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare and send a report to OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are included to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 9, 2014.

Sue Betka,

Deputy Director for Administration and Policy, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education (Department) publishes a notice of a new system of records to read as follows:

SYSTEM NUMBER: 18–13–36

SYSTEM NAME:

Study of Enhanced College Advising in Upward Bound.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001.

(2) Abt Associates, 55 Wheeler Street, Cambridge, Massachusetts 02138–1168 (contractor).

(3) Decision Information Resources, Inc., 2600 Southwest Freeway, Suite 900, Houston, Texas 77098–4610 (subcontractor).

(4) Survey Research Management, 5777 Central Ave., Suite 225, Boulder, Colorado 80301–2853 (subcontractor).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will contain records on approximately 136,000 Upward Bound students and 200 Upward Bound project staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will include information about the 200 project staff and 6,000 students who are participating in the study, as well as a group of students who previously participated in Upward Bound (high school juniors in school years 2005–2006 through 2010–2011) and for whom information was collected and is maintained through the Department's annual performance reporting process. The project staff-level information will include, but will not necessarily be limited to: Names; educational background (college major, highest degree, and professional development activities); and college advising activities. The student-level information will include, but will not necessarily be limited to: Student names; student SSNs; dates of birth; demographic information such as race, ethnicity, and gender; college entrance exam scores; educational experiences (GPA, AP/IB course-taking); and college application and enrollment plans and behavior, including application and receipt of financial aid.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Study of Enhanced College Advising in Upward Bound is authorized under section 403(h) of the 2008 Higher Education Opportunity Act (HEOA), Public Law 110–315 (20 U.S.C. 1070a–18), which requires the Department to conduct a rigorous study of a promising practice that has the potential to improve key outcomes for Upward Bound participants. Section 403(h)(3) of the HEOA provides that ''[f]or the purpose of improving the effectiveness of the programs and projects assisted under this chapter the Secretary shall make grants to, or enter into contracts with, institutions of higher education and other public and private institutions and organizations to rigorously evaluate the effectiveness of the programs and projects assisted under this chapter . . . .''

Further, part D, section 171(b)(2) of the Education Sciences Reform Act of 2002, Public Law 107–279 (20 U.S.C. 9561(b)(2)) authorizes the Institute of Education Sciences (IES) to ''conduct evaluations of Federal education programs administered by the Secretary (and as time and resources allow, other education programs) to determine the impact of such programs . . . .''

PURPOSE(S):

The information contained in the records maintained in this system will be used to conduct an evaluation of the effectiveness of a professional development strategy for Upward Bound staff (with related advising tools and resources for staff and students).

The study will address the following three research questions: (1) To what extent do the professional development package and tools have an effect—above and beyond the services Upward Bound grantees already provide—on important student outcomes? (2) How fully was the strategy implemented (e.g., in terms of staff participation in training and student use of the tools) and to what extent did it lead to differences in the Upward Bound college advising provided? (3) Is there variation in the impacts of the enhanced college advising strategy and to what extent is the variation associated with Upward Bound project features or characteristics of participating students? Are differences in the implementation of the enhanced college advising strategy associated with differences in impacts?

Information about students who participated previously in Upward Bound will be analyzed to identify potential points in the college advising and enrollment process where improvements can be made using the professional development and tools.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed here without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the Education Sciences Reform Act (ESRA) (20 U.S.C. 9573), which provides confidentiality standards that apply to all collection, reporting, and publication of data by IES.

1. *Research Disclosure.* The Director of IES may license confidential information from this system of records to qualified external researchers solely for the purpose of carrying out specific research that is compatible with the purpose(s) of this system of records. The researcher must maintain, under the Privacy Act and the ESRA, safeguards with respect to such records. In addition, if confidential information from this system of records constitutes personally identifiable information from a student's education record that is protected by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), the researcher also must comply with the requirements in the applicable FERPA exception to consent.

2. *Research Disclosure to Obtain Necessary Records to Conduct the Study.* Under data sharing agreements that will protect student privacy and confidentiality, the Department may disclose the identity of students participating in the study to the study's partners (the College Board, the ACT, and the National Student Clearinghouse) in order to obtain information on students' college entrance exams or their enrollment and persistence in college as important outcomes to be examined in the study.

3. *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosing records in this system to the contractor's employees, the Department may disclose the records to those employees who have received the appropriate level of security clearance from the Department. Before entering into such a contract, the Department will require the contractor to establish and maintain the safeguards required under the Privacy Act (5 U.S.C. 552a(m)) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor (Abt Associates, Inc.) and subcontractors (Decision Information Resources, Inc. and Survey Research Management) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis and controls individual users' ability to access and alter records within the system.

The contractor and subcontractor will establish a similar set of procedures at their sites to ensure confidentiality of data. The contractor's and subcontractor's systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. At each site, all hardcopy data will be kept in locked file cabinets during non-working hours and work on hardcopy data will take place in a single room, except for data entry.

Physical security of electronic data will also be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the

contractor's system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. Employees of the Department, as well as employees of its contractor and subcontractors who ''maintain'' (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the Privacy Act and the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

These records are covered by a draft records schedule under development, ED 231 Research and Statistics Records. This schedule shall be submitted to the National Archives and Records Administration (NARA) for review and approval when complete. Until such time as it is approved by NARA, no records shall be destroyed.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208–0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record about you in this system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including specification of the particular record you are seeking to have changed, the written justification for making such a change, and proof of identity.

RECORD SOURCE CATEGORIES:

This system contains records on project staff and students participating in the Study of Enhanced College Advising in Upward Bound, as well as a group of students who previously participated in Upward Bound (high school juniors in school years 2005–2006 through 2010–2011) and for whom information was collected and is maintained through the Department's annual performance reporting process. Data will be obtained through study data collection directly from staff and students, administrative records maintained by Upward Bound project staff including Annual Performance Reports submitted to the Department, data extracts from the Department's Office of Federal Student Aid, and data extracts from the College Board, the ACT, and the National Student Clearinghouse under data sharing agreements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–21850 Filed 9–12–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), Department of Energy.

ACTION: Agency Information Collection Activities: Information Collection Extension with Changes; Notice and Request for Comments.

SUMMARY: The Office of Electricity Delivery and Energy Reliability, pursuant to the Paperwork Reduction Act of 1995, intends to extend with changes for three years with the Office of Management and Budget (OMB), Department of Energy Form OE–417, ''Emergency Electric Incident and Disturbance Report.'' Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 14, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to OE–417 Survey Manager, Office of Electricity Delivery and Energy Reliability, OE–40, 1000 Independence Avenue SW., Washington, DC 20585, Reference: OE–417 2014 Renewal. Comments may be sent by fax at 202–586–2623, or by email at *OE417renewal@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to OE–417 Survey Manager, Office of Electricity Delivery and Energy Reliability, OE–40, 1000 Independence Avenue SW., Washington, DC 20585, *OE417renewal@hq.doe.gov;* the proposed form can be accessed at: *http://www.oe.netl.doe.gov/oe417.aspx.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1901–0288; (2) *Information Collection Request Title:* Electric Emergency Incident and Disturbance Report; (3) *Type of Request:* Three-year extension with changes; (4) *Purpose:* The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 et seq.) requires the DOE to carry out a centralized, comprehensive, and unified energy information program. This program collects, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The Office of Electricity Delivery and Energy Reliability (OE), as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies the opportunities to comment on collections of energy information conducted by OE. Any comments received help the DOE to prepare data requests that maximize the utility of the information collected and to assess the impact of collection requirements on the public. Also, the DOE will later seek the approval of this collection of this information by the Office of

Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The DOE collects information on the generation, distribution, and transmission of electric energy. The DOE also collects information on emergency situations in the electric energy supply systems so that appropriate Federal emergency response measures can be implemented in a timely and effective manner.

The purpose of this notice is to seek public comment on the revised Form OE–417 ''Electric Emergency Incident and Disturbance Report'', which is used to report electric emergency incidents and disturbances to the DOE. The OE–417 reports enable the DOE to monitor electric emergency incidents and disturbances in the United States (including all 50 states, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Trust Territories) so that the Government may help prevent the physical or virtual disruption of the operation of any critical infrastructure.

Currently, OE uses Form OE–417 to monitor major system incidents on the electric power systems, assess power generating capacity in the event of a significant disruption, and to conduct after-action non-regulatory investigations on significant interruptions of electric power. The information is used to meet DOE national-security responsibilities and requirements as set forth in the U.S. Department of Homeland Security's National Response Framework. The information may also be used in developing legislative recommendations/reports to Congress and coordinating Federal efforts regarding activities such as incidents/disturbances in critical infrastructure protection, the continuity of electric industry operations, and the continuity of operations. The information submitted may also be used by OE to analyze significant power interruptions of electric power from a non-regulatory perspective.

(4a) *Proposed Changes to Information Collection:* OE is considering making the following changes during this recertification cycle:

(a) OE intends to protect the data submitted on Schedule 2 of the OE–417 under the Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107–347, 44 U.S.C. 3501 note)(CIPSEA). The information reported on Schedule 2 will be kept confidential and used for exclusively statistical purposes. This differs from the previous confidentiality provisions that were used to protect information reported in this schedule.

In the past, information was protected to the extent that it satisfied the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations, 10 CFR 1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905. These laws permitted the information to be used for any non-statistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes. Under CIPSEA, the information will not be used for these non-statistical purposes and the information would be used for exclusively statistical purposes.

(b) In applying CIPSEA to protect information reported in Schedule 2, OE will no longer accept submissions of OE–417 forms via email to limit disclosure of confidential information. Respondents will still be able to submit event reports via phone or via fax to the DOE Emergency Operations Center (EOC) which functions 24 hours a day, 7 days a week, 365 days a year.

(c) Adjusting the responses requested in Question 19 and Question 20 to be more generic and the removal of current form Question 21 and Question 22.

The online filing system will now be the default submission method for submitting OE–417 forms during events. Information submitted on Schedule 1 of the OE–417 will still be considered public, with public summaries posted on the OE Web site. The online filing system will be upgraded to transmit public information collected on Schedule 1 of the OE–417 to other organizations, such as the North American Electric Reliability Corporation (NERC), as needed.

(5) *Annual Estimated Number of Respondents:* 2,924;

(6) *Annual Estimated Number of Total Responses:* 300;

(7) *Annual Estimated Number of Burden Hours:* 5061 hours;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0. There are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on September 8, 2014.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–21954 Filed 9–12–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–545–000]

Texas Eastern Transmission, LP; Notice of Application

On August 28, 2014, Texas Eastern Transmission, LP (Texas Eastern) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for its proposed Bailey East Mine Panel 2L Project (Project). Texas Eastern proposes to replace and temporarily elevate sections of three different pipelines in order to monitor and mitigate potential strains and stresses on these pipelines that could result from longwall coal mining activities planned by Consol Energy, Inc. in the area beneath Texas Eastern's existing pipeline facilities in Greene County, Pennsylvania. The Project will ensure the safe and efficient operation of these pipeline facilities throughout the duration of the longwall mining activities, scheduled to occur in early 2016. Texas Eastern requests that the Commission grant the requested authorizations by February 15, 2015.

Questions concerning this application may be directed to Lisa A. Connolly, General Manager, Rates and Certificates, at Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by calling 713–627–4102, by Fax at (713) 627–5947, or by emailing *laconnolly@spectraenergy.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of

this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on September 29, 2014.

Dated: September 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21864 Filed 9–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12796–004]

City of Wadsworth, Ohio; Notice of Teleconference

a. Date and Time of Meeting: Tuesday, September 23, 2014 at 10:00 a.m. (Eastern Daylight Time).

b. *FERC Contact:* Andy Bernick, Phone: (202) 502–8660, Email: *andrew.bernick@ferc.gov.*

c. Purpose of Meeting: To discuss the U.S. Fish and Wildlife Service's responses to Commission staff's determinations of effect for federally listed species described in the Draft Environmental Assessment for Hydropower License, for the proposed R.C. Byrd Hydroelectric Project, issued on July 8, 2014.

d. Proposed Agenda:

1. Introduction
2. Bats
3. Freshwater Mussels
4. Summary

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Andy Bernick at (202) 502–8660 by Tuesday, September 16, 2014, to RSVP and to receive specific instructions on how to participate.

Dated: September 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21863 Filed 9–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–40–000]

Sunoco Pipeline L.P.; Notice of Petition for Declaratory Order

Take notice that on August 29, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Sunoco Pipeline L.P. (''SPLP'') filed a petition for declaratory order approving priority service, the tariff and rate structure and terms of service for its Project Mariner East 2 proposal, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 29, 2014.

Dated: September 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21862 Filed 9–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–544–000]

MIGC LLC; Notice of Request Under Blanket Authorization

Take notice that on August 27, 2014, MIGC LLC (MIGC), 1099 18th Street, Suite 1800, Denver, Colorado 80202 filed a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act for authorization to abandon by sale two compressor units located in Campbell County, Wyoming in connection with an amended air quality permit issued by the Division of Air Quality of the Wyoming Department of Environmental Quality, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Brian Binford, Commercial Development Regional Manager, MIGC LLC, 1099 18th Street, Suite 1800, Denver, CO 80202, by phone at (720) 929–6292, by fax (720)929–7284, or by email at *Brian.Binford@anadarko.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21861 Filed 9–12–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0742; FRL 9915–92–OEI]

Agency Information Collection Activities; Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2); ICR Submitted to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*): Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a)(2) (EPA ICR No. 1204.12, OMB Control No. 2070–0039). The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** on February 5, 2014 (79 FR 6897). With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments must be received on or before October 15, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0742, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Field and External Affairs Division, 7506P, Environmental

Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–305–9542; fax number: 703–305–5884; email address: *TSCAHotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's docket, visit *http://www.epa.gov.dockets.*

ICR status: This ICR is currently scheduled to expire on September 30, 2014. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. If an activity requires PRA approval, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136d(a)(2)), requires pesticide registrants to submit information to the Agency that may be relevant to the balancing of the risks and benefits of a pesticide product. The statute requires the registrant to submit any factual information that it acquires regarding adverse effects associated with its pesticidal products, and it is up to the Agency to determine whether or not that factual information constitutes an unreasonable adverse effect. In order to limit the amount of less meaningful information that might be submitted to the Agency, the EPA has defined the scope of factual information that the registrant must submit. The Agency's regulations at 40 CFR part 159 provide a detailed description of the reporting obligations of registrants under FIFRA section 6(a)(2).

Respondents/affected entities: Potential respondents affected by the collection activities under this ICR include anyone who holds or ever held a registration for a pesticide product issued under FIFRA section 3 or 24(c). The North American Industrial Classification System (NAICS) code is 325300 (Pesticide, Fertilizer and other Agricultural Chemical Manufacturing).

Respondent's obligation to respond: Mandatory under FIFRA section 6(a)(2) and the requirements listed at 40 CFR part 159.

Estimated number of respondents: 1,763 (total).

Frequency of response: On occasion.

Total estimated burden: 275,014 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $16,827,821 (per year), includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is an increase of 71,778 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects EPA's updating of burden estimates for this collection based upon historical information on the number of responses received and a small increase in the number of registrants of products, which results in a small increase in the additional employees being trained. This change is an adjustment.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Spencer W. Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–21842 Filed 9–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–48–Region 5]

Operating Permit Program: Notice of Reporting Requirements for Compliance Certifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reporting requirements for compliance certifications.

SUMMARY: Under the state operating permit programs compliance certification requirements, facilities subject to the Title V operating permit program are required to submit compliance certifications to the Environmental Protection Agency (EPA) and the permitting authority. EPA is providing notice that submittal of Title V compliance certifications to the Region 5 authorized State permitting authorities, except Michigan, fulfills the reporting requirements. This allows for EPA and the delegated State agencies to meet air quality goals while streamlining reporting requirements and eliminating the duplication of paperwork by regulated facilities.

DATES: This action is effective on September 15, 2014.

ADDRESSES: The documents relevant to this action are available for public inspection during normal business hours at the following addresses:

Illinois Environmental Protection Agency, Bureau of Air, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794–9276.

Indiana Department of Environmental Management, Office of Air Quality, Indiana Government Center North, 100 Senate Avenue, Indianapolis, Indiana 46204.

Minnesota Pollution Control Agency, Industrial Division, Land and Air Compliance Section, 520 Lafayette Road North, St. Paul, Minnesota 55155–4194.

Ohio Environmental Protection Agency, Division of Air Pollution Control, P.O. Box 109, Columbus, Ohio 43216–1049.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 S. Webster Street, P.O. Box 7921 Madison, Wisconsin 53707–7921.

FOR FURTHER INFORMATION CONTACT: Rochelle Marceillars, Air Enforcement and Compliance Assurance Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The reporting provisions in 40 CFR 70.6(c)(5)(iv) requiring all compliance certifications be submitted to EPA and the permitting authority will be met by sending such submissions only to the authorized State Region 5 agency provided that: (1) Submissions do not contain or rely upon confidential information; (2) the State agency maintains authority to implement the 40 CFR part 70 Operating Permit Program; and (3) EPA will have access to these reports and related documents via hard or electronic copy, as needed. This notice does not apply to Michigan.

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

Dated: September 2, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–21943 Filed 9–12–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) IV will hold its fifth meeting. At the meeting, each of the Working Groups will present an update on topics including emergency warning systems, 9–1–1 location accuracy, distributed denial-of-service (DDoS), and cybersecurity best practices.

DATES: September 24, 2014.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: While the notice of this meeting has not yet been published in the **Federal Register**, and therefore, did not meet the 15-day requirement for advance publication, exceptional circumstances warrant proceeding with the September 24, 2014, CSRIC meeting. CSRIC members were informed of the September 24th meeting at the June 18, 2014, public meeting of the Council, and have been informed informally of the September meeting date on more than one occasion both before and since then. In addition, the meeting date has been posted on the CSRIC IV Web site for several months. A significant number of Council members have made business and travel plans in accordance with this schedule, and there is no date within one month of the planned date that will accommodate Council members' schedules. Delaying the meeting will also cause undue financial burdens on many of the members who have made travel arrangements.

In addition, it is not possible at this time to schedule a half-day meeting in the FCC's Commission Meeting Room for any date within one month of September 24, 2014. Further, the agency is planning to issue a Public Notice of this meeting no later than on September 15, 2014, to mitigate the late **Federal Register** publication and as an additional way of advising the public of this meeting and their right to attend. As the September 24 meeting date was announced at the June 2014 public meeting of the Council and has been stated on the Council's Web site for several months, the meeting has now been broadly announced to the public more than once.

Federal Communications Commission.

Lauren Kravetz,

Deputy Division Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2014–22041 Filed 9–12–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket Nos. 10–51 and 03–123, WC Docket Nos. 05–196 and 10–191; DA 14–1249]

Request for Comment on Petition Filed by Sprint Corporation Regarding Access to the Internet Based Telecommunications Relay Service Numbering Directory

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a Sprint Corporation (Sprint) petition (Sprint Petition) requesting a limited waiver of the Commission's rule regarding access to the Internet based telecommunications relay service (TRS) numbering directory in order to allow Sprint, as the provider of Federal Relay services, to load telephone numbers for its federal video relay service (VRS), including ''front door'' toll-free telephone numbers and ten-digit numbers, into the TRS Numbering Directory.

DATES: Comments are due September 30, 2014 and reply comments are due October 10, 2014.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 10–51 and 03–123, WC Docket Nos. 05–196 and 10–191, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 10–51 and 03–123, WC Docket Nos. 05–196 and 10–191.
- *Paper filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

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

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, (202) 559–5158, email: *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, document DA 14–1249, released on August 27 2014. The full text of document DA 14–1249, the Sprint Petition, and any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at its Web site, *www.bcpiweb.com* or call 1–800–378–3160. A copy of the submission may

also be found by searching on ECFS (insert CG Docket Nos. 10–51 & 03–123, and WC Docket Nos. 05–196 & 10–191 in the Proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. On January 16, 2014, Sprint filed a petition requesting a limited waiver of the Commission rule, 47 CFR 64.613(a)(4), that restricts access to the TRS Numbering Directory by the TRS Numbering Administrator and Internet-based TRS providers. Specifically, Sprint requests a waiver of this rule to allow Sprint, as a provider of Federal Relay services, to load telephone numbers for its federal VRS, including ''front door'' toll-free numbers and ten-digit numbers, into the iTRS Numbering Directory. Sprint asserts that because these numbers are not currently in the TRS Numbering Directory, federal employees who are deaf or hard-of-hearing and have been assigned a Federal VRS number are unable to make point-to point video calls to other deaf or hard-of-hearing federal employees. Sprint further asserts that permitting these ''front door'' telephone numbers and ten-digit numbers into the database will allow deaf and hard-of-hearing federal employees to make point-to-point video calls, increase the ability of deaf and hard-of-hearing Americans to reach federal employees and reduce the number of calls that must be supported by the Interstate TRS Fund. This Notice seeks public comment on Sprint's petition.

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2014–21987 Filed 9–12–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2014.

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

1. *Kearny MHC, and Kearny Financial Corp.,* both in Fairfield, New Jersey; to convert to stock form and merge with Kearny Financial Corp., (a newly formed holding company), Fairfield, New Jersey, which proposes to become a savings and loan holding company by acquiring 100 percent of the voting shares of Kearny Federal Savings Bank, Fairfield, New Jersey.

Board of Governors of the Federal Reserve System, September 9, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–21820 Filed 9–12–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Karen Leydon, Chief Human Capital Officer, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3633.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

David Robbins, Executive Director, Chairman
Jonathan Nuechterlein, General Counsel
Deborah Feinstein, Director, Bureau of Competition
Jessica Rich, Director, Bureau of Consumer Protection
Michael Vita, Deputy Director, Bureau of Economics

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–21985 Filed 9–12–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14SR]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) 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; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

A Professional Development Needs Assessment to Improve Implementation of HIV/STD, Teen Pregnancy Prevention Services—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2010, young people aged 13–24 years accounted for 26% of all new HIV infections in the United States. Nearly half of the 19 million new sexually transmitted diseases (STD) reported each year are among young people aged 15–24 years. Young people who share certain demographic characteristics are disproportionately affected by HIV infection and other STD. Black and Latino young men who have sex with men (YMSM), homeless youth, and youth enrolled in alternative schools are particularly vulnerable.

The Nation's schools can play a critical role in addressing these epidemics. After the family, schools are one of the primary institutions responsible for the development of young people.

To address these needs and disparities, the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Division of Adolescent and School Health (DASH) through Funding Opportunity Announcement (FOA) PS–13–1308, is funding 19 state education agencies (SEA) and 17 local education agencies (LEA) to do HIV/STD teen pregnancy prevention in the education setting. Under the same cooperative agreement six Non-Governmental organizations (NGOs) are being funded to provide professional development, training and technical assistance to these 36 agencies. The purpose of this project is to assess the capacity building assistance (CBA) needs of CDC-funded local and state educational agencies (LEA\SEA) and NGO to develop a ''Training Plan for Professional Development (PD)'' to address those needs. The information will be used to inform the development of PD Plans to improve CDC grantees' program processes and operations in the major approach areas: Exemplary Sexual Health Education, Sexual Health Services and Safe and Supportive Environments and Policy. In addition, a contractor is being funded to provide assistance with the development and offering of effective and efficient professional development training and technical assistance.

This is a complex FOA with multiple approaches. SEA and LEA will be providing professional development training and technical assistance to school districts and schools. Time is very limited to access school personnel and it is critical that this training and technical assistance be provided in the most effective and efficient manner. In addition, NGO, as providers of professional development training and technical assistance to SEA and LEA may also need assistance with meeting those objectives effectively and efficiently. To meet these needs, DASH has funded a contractor, ETR, through contract # 200–2013–F–57593 to develop a training plan designed to raise the capacity of all funded agencies in the area of professional development. As part of this contract, a needs assessment is required to gauge the skill level and needs of the funded agencies. The contractor is charged with conducting an organizational needs assessment so that a plan can be developed for NGO and the contractor to tailor their training and technical assistance activities to the specific needs of the service providers (SEA/LEA).

Findings from this proposed assessment will be used by ETR, funded NGOs, and CDC–DASH to ensure that professional development training and technical assistance is provided based on current theory on professional development and in the most effective and efficient manner. DASH will be able to refine their approach to conceptualizing and providing professional development training and technical assistance to all grantees in the most cost-effective manner possible.

The SEA/LEA/NGO organizational needs assessment tool will be used to assess the capacity of the 36 SEA/LEA agencies and 6 NGOs.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 42.

ESTIMATE OF ANNUALIZED BURDEN

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
SEA/LEA Project Coordinator	SEA/LEA/NGO Needs Assessment	36	1	1
NGO	SEA/LEA/NGO Needs Assessment	6	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21885 Filed 9–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0907]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) 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; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Musculoskeletal disorder (MSD) intervention effectiveness in material handling operations—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH proposes a 2-year approval to continue a study to assess the effectiveness and cost-benefit of occupational safety and health (OSH) interventions for musculoskeletal disorders (MSD).

NIOSH and the Ohio Bureau of Workers Compensation (OBWC) will continue to collaborate on a multi-site intervention study at OBWC-insured companies from 2014–2016. In overview, MSD engineering control interventions (such as stair-climbing, powered hand trucks and powered truck lift gates) will be tested for effectiveness in reducing self-reported back and upper extremity pain among up to 960 employees performing material handling operations in up to 72 establishments using a prospective design (multiple baselines across groups). The costs of the interventions will be funded through existing OBWC funds and participating establishments. This study will provide important information that is not currently available elsewhere on the effectiveness of OSH interventions for workers. The study sub-sample will be volunteer employees at OBWC-insured establishments who perform material handling tasks that are expected to be impacted by the engineering control interventions. It is estimated that there will be up to 960 impacted employees in the recruited establishments, which will be paired according to previous WC loss history and establishment size. This protocol is changed from the previous data collection in that:

- A Low Back Functional Assessment is no longer being conducted to increase data collection efficiency.
- The study population now includes workers performing material handling tasks in all industries, not just wholesale retail trade. Tested interventions also include a number of material handling engineering controls. These changes were made to increase generalizability of results.
- All employers will now receive the intervention immediately, rather than half being randomly selected to receive the intervention six months later. This change was made to increase participation among employers.

The main outcomes for this study are self-reported low back pain and upper extremity pain collected using surveys every three months over a two-year period from volunteer material handling workers at participating establishments. Individuals will also be asked to report usage of the interventions and material handling exposures every three months over two years. Individuals will also be asked to complete an annual health assessment survey at baseline, and once annually for two years.

In order to maximize efficiency and reduce burden, a choice of web-based or paper survey is proposed for the data collection.

All collected information will be used to determine whether there are significant differences in reported musculoskeletal pain and functional back pain score ratios (pre/post intervention scores), while controlling for covariates. Once the study is completed, results will be made available through the NIOSH internet site and peer-reviewed publications. In summary, this study will determine the effectiveness of the tested MSD interventions for material handling workers and enable evidence based prevention practices to be shared with the greatest audience possible. NIOSH expects to complete data collection in 2016. There is no cost to respondents other than their time. The total estimated annual burden hours are 1,364.

The ''Self-reported low back pain'' and ''Self-reported upper extremity pain'' forms are collected nine times over two years. The ''Self-reported general work environment and health'' form is collected at baseline, at the end of the first year and at the end of the second year. The informed consent form is collected once at the beginning of the study. The early exit interview is collected once for a limited number of participants.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Material handling workers	Self-reported low back pain	960	4.5	5/60
	Self-reported upper extremity pain	960	4.5	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
	Self-reported specific job tasks and safety incidents	960	4.5	5/60
	Self-reported general work environment and Health	960	1.5	10/60
	Informed Consent Form (Overall Study)	960	.5	5/60
	Early Exit Interview	106	.5	5/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21881 Filed 9–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–14AYC]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Behavioral Risk Factor Surveillance System (BRFSS)—Existing Collection In Use Without an OMB Control Number—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP)—Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC seeks OMB approval to collect information through the Behavioral Risk Factor Surveillance System (BRFSS). The BRFSS is a system of customized telephone surveys conducted by U.S. states, territories, and the District of Columbia to produce state-level data about health-related risk behaviors, chronic health conditions, use of preventive services, and emerging health issues. Information collection is conducted primarily to support state and local health departments, which plan and evaluate public health programs at the state or sub-state level. Information collected through the BRFSS is also used by the federal government and other entities.

Scientific research shows that personal health behaviors play a major role in premature morbidity and mortality. Patterns of behavior that affect health or predict adverse effects on health are called behavioral risk factors. For example, lack of physical activity is a behavioral risk factor for obesity, type 2 diabetes, cardiovascular diseases, and other diseases and conditions. Although national estimates of some health risk behaviors among U.S. populations are available, the methods used to produce national estimates do not typically produce the type of detailed information needed to plan and implement public health programs; moreover, national estimates provide only limited insight into regional or state-specific variability in health status and risk factors. Information that is specific to public health jurisdictions is required to guide the administration of public health programs.

CDC is requesting OMB approval to conduct information collection for the Behavioral Risk Factor Surveillance System (BRFSS). The BRFSS is a nationwide system of cross-sectional telephone health surveys administered by health departments in states, territories, and the District of Columbia (collectively referred to as states) in collaboration with CDC. The BRFSS produces state-level information primarily on health risk behaviors, health conditions, and preventive health practices that are associated with chronic diseases, infectious diseases, and injury. Information collection is sponsored by CDC under the BRFSS cooperative agreement with states and territories. Under this partnership, questionnaire content is determined by BRFSS state coordinators with technical and methodological assistance provided by CDC. The BRFSS is designed to meet the data needs of individual states and territories. For most states and territories, the BRFSS provides the only sources of data amenable to state and local level health and health risk indicators. Over time it has also developed into an important data collection system that federal agencies rely on for state and local health information and to track national health objectives such as Healthy People. Therefore, although the BRFSS remains primarily a state needs-driven system,

in consultation with OMB, CDC is requesting OMB approval of BRFSS data collection beginning with the 2015 cycle.

The BRFSS questionnaire is comprised of two parts: The core questionnaire and optional modules. The BRFSS core questionnaire consists of fixed core, rotating core, and emerging core questions. Fixed core questions are asked every year. Rotating core questions cycle on and off the core questionnaire during even or odd years, depending on the question. Emerging core questions are included in the core questionnaire as needed to collect data on urgent or emerging health topics such as influenza. Optional modules are offered by CDC annually depending on data needs and funding availability. In off-years when the rotating questions are not included in the core questionnaire, they are offered to states as an optional module.

All participating states are required to administer the core questionnaire, which provides a set of shared health indicators for all BRFSS partners. The current estimated average burden per interview is 15 minutes for the core. States may select which, if any, optional modules to administer. These modules provide the information needed for state-specific public health assessments and program planning. The estimated average burden per response varies by state and year, but is currently estimated at 15 minutes for the optional component. In order to maintain consistency, the states and CDC set standard protocols for BRFSS data collection which all states are encouraged to adopt. These standards allow for state-to-state data comparisons as well as comparisons over time. The BRFSS allows states to customize some portions of the questionnaire through the addition of state-added questions, which are neither reviewed nor approved by the CDC, and meet the specific data needs of individual state health departments.

The CDC and BRFSS partners produce a new set of state-specific BRFSS questionnaires each calendar year (i.e., 2015 BRFSS questionnaires, 2016 BRFSS questionnaires, etc.). Each state administers its BRFSS questionnaire throughout the calendar year. In response to unanticipated public health needs, limited modifications may be incorporated mid-cycle. The BRFSS partnership thus results in a flexible, coordinated information collection system that is adaptive to national and state-specific needs.

Each state's data collection plan uses two samples: one for landline telephone respondents and one for cellular telephone respondents. States obtain samples of telephone numbers from CDC. For persons interviewed on landline telephones, individual respondents will be randomly selected from all adults, aged 18 years and older, living in a household. Cellphone interviews will be conducted with respondents who answer the number called and are treated as one-person households.

Computer-assisted telephone interviewing (CATI) programming is provided by the CDC to states to convert the BRFSS questionnaire into a CATI interface from which interviewers will read and record answers to each question. States may opt to use their own CATI programming software. States must develop and maintain procedures to ensure respondents' privacy, assure and document the quality of the interviewing process, and supervise and monitor trained interviewers. States submit information to CDC monthly, or quarterly with an approved exception. The CDC provides post-data collection technical assistance including data cleaning and weighting as well as production of data quality and user reports.

CDC also makes BRFSS data sets available for public use and provides guidance on statistically appropriate uses of the data. Due to the variety and complexity of data collection methods employed, CDC and states frequently collaborate on methodological issues to improve the quality and efficiency of information collection and analysis. CDC plans to submit one or more additional information collection requests to OMB that will establish the clearance mechanism(s) needed to support new areas of interest, quality improvement, and innovation (such as protocol enhancements, requests for methodological studies and cognitive testing of new questions). OMB approval for state- and territory-specific BRFSS questionnaires is requested for three years. CDC's authority to collect this information is provided by the Public Health Service Act. Data obtained from the BRFSS surveys will allow states, CDC, policy makers, and other data users to track state and nationwide trends in the burden of disease, prioritize the allocation of health resources, plan and implement targeted public health interventions, and set and track progress towards meeting objectives for improving health, including selected Healthy People 2020 targets.

Participation in the BRFSS is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
U.S. General Population	Landline Screener	440,486	1	1/60	7,341
	Cell Phone Screener	223,334	1	1/60	3,722
Adults > 18 Years	Core Survey	494,650	1	15/60	123,662
	Optional Modules	484,757	1	15/60	121,189
Total					255,914

Leroy A. Richardson

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21909 Filed 9–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Formative Data Collections for Policy Research.

OMB No.: 0970–0356.

Description: The Office of Planning, Research and Evaluation (OPRE), in the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) intends to request approval from the Office of Management and Budget (OMB) for renewal of a generic clearance to allow OPRE to conduct a variety of formative data collections with more than nine respondents. The data collections will inform future research but will not be highly systematic nor intended to be statistically representative.

OPRE conducts research on a wide variety of policy and programmatic areas. OPRE's research serves to provide further understanding of current programs and service populations, explore options for program improvement, and assess alternative policy and program designs. OPRE uses this formative data collection generic clearance to employ a variety of information collection techniques, including semi-structured discussions, focus groups and interviews. These activities inform the development of OPRE research, help OPRE maintain a research agenda that is rigorous and relevant, and ensure that research products are as current as possible.

Following standard OMB requirements, OPRE will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OPRE requests OMB review within 10 days of receiving each change request.

Respondents: Key stakeholder groups involved in ACF projects, state or local government officials or service providers, or experts in fields pertaining to ACF research.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Semi-Structured Discussion and Information-Gathering Protocols	1,600	533	1	1	1,600	533

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Karl Koerper,

Reports Clearance Officer.

[FR Doc. 2014–21917 Filed 9–12–14; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Pre-testing of Evaluation Surveys.

OMB No.: 0970–0355.

Description: The Office of Planning, Research and Evaluation (OPRE), in the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) intends to request approval from the Office of Management and Budget (OMB) for renewal of a generic clearance to allow OPRE to pre-test data collection instruments with more than nine participants to identify and resolve any question or procedural problems in survey administration.

OPRE studies ACF programs, and the populations they serve, through rigorous research and evaluation projects. These include evaluations of existing programs, evaluations of innovative approaches to helping low-income children and families, research syntheses and descriptive and exploratory studies. To improve the development of its research and evaluation surveys, OPRE uses the pre-testing of evaluation surveys generic clearance to employ a variety of techniques including cognitive and usability laboratory and field techniques, behavior coding, exploratory interviews, respondent debriefing questionnaires, split sample experiments, focus groups, and pilot studies/pre-tests. These activities allow OPRE to identify if and when a survey may be simplified for respondents, respondent burden may be reduced, and other possible improvements.

Following standard OMB requirements, OPRE will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OPRE requests OMB review within 10 days of receiving each change request.

Respondents: Participants in ACF programs being evaluated; participants in ACF demonstrations; comparison group members; and other relevant populations, such as individuals at risk of needing ACF services.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Survey development field tests, respondent debriefing questionnaires, cognitive interviews, split sample experiments, focus groups	5100	1700	1	.75	3,825	1,275

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Karl Koerper, Reports

Clearance Officer.

[FR Doc. 2014–21918 Filed 9–12–14; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0649]

Draft Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: External Pacemaker Pulse Generator; Withdrawal of Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of the draft guidance entitled ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator,'' dated October 2011, in response to the requirements of the Food and Drug Administration Safety and Innovation Act (FDASIA) and new input received during a panel meeting.

DATES: The withdrawal is effective September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Hina Pinto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 1652, Silver Spring, MD 20993, 301–796–6351.

SUPPLEMENTARY INFORMATION:

In a notice published in the **Federal Register** of October 17, 2011 (76 FR 64228), FDA announced the availability of a draft special controls guidance document that, if finalized, would serve as a special control if FDA reclassified these devices. FDA believed that the special controls described in the draft guidance entitled, ''Class II Special Controls Guidance Document: External Pacemaker Pulse Generator'' would be sufficient to mitigate the risks to health associated with the external pacemaker pulse generator (EPPG) (Ref. 1).

On July 9, 2012, FDASIA (Pub. L. 112–144) was enacted. Section 608(a) of FDASIA amended section 513(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(a)) changing the process for reclassifying a device from rulemaking to an administrative order. Subsequent to the publication of the proposed rule, FDASIA's amendments to section 513 of the FD&C Act required FDA to hold a classification panel (an FDA advisory committee) meeting to discuss the classification of this device type. On September 11, 2013, a meeting of the Circulatory System Devices Panel (the Panel) was held to discuss whether EPPG devices should be reclassified or remain as class III devices (Ref. 2). The Panel recommended that EPPG devices be reclassified to class II with special controls when intended for cardiac rate control or prophylactic arrhythmia prevention.

FDA provided an opportunity for interested parties to comment on the special control guidance on EPPG. FDA did not receive any comments to the docket. As a result of the Panel recommendation and the amendment to section 513(e) of the FD&C Act, FDA will now include the special controls for EPPG devices in a proposed order published elsewhere in this issue of the **Federal Register** and withdraw the draft guidance through this notice.

References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Class II Special Controls Draft Guidance Document: External Pacemaker Pulse Generator, available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM275703.pdf.*

2. The transcript and other meeting materials for the September 11, 2013, Circulatory System Devices Panel are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/*

MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/ucm342357.htm.

Dated: September 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21815 Filed 9–12–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Evaluation License: Development of Antibody-Drug Conjugates Comprising Topoisomerase Inhibitors for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Provisional Patent Application No. 60/844,027 entitled, ''Azonafide derived tumor and cancer targeting compounds,'' filed September 12, 2006 [HHS Ref. No. E–160–2006/0–US–01], PCT Application No. PCT/US2007/078233 entitled, ''Azonafide derived tumor and cancer targeting compounds,'' filed September 12, 2007 [HHS Ref. No. E–160–2006/0–PCT–02], European Patent Application No. 7842310.0 entitled, ''Azonafide derived tumor and cancer targeting compounds,'' filed September 12, 2007 [HHS Ref. No. E–160–2006/0–EP–03], and U.S. Patent Application No. 12/441,029 entitled, ''Azonafide derived tumor and cancer targeting compounds,'' filed March 12, 2009 now US Patent No. 8,008,316 issued August 30, 2011 [HHS Ref. No. E–160–2006/0–US–04], and all related continuing and foreign patents/patent applications for the technology family, to Oncolinx, Inc. The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive evaluation option license territory may be worldwide and the field of use may be limited to the development and use of the licensed patent rights as a component of an antibody-drug conjugate for the treatment of human cancers. Upon expiration or termination of the exclusive evaluation option license, Oncolinx will have the right to execute an exclusive patent commercialization license which will supersede and replace the exclusive evaluation option license with no broader territory than granted in the exclusive evaluation option license and the field of use will be commensurate with the commercial development plan at the time of conversion.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before September 30, 2014 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: Jennifer Wong, M.S., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; Email: *wongje@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The present technology provides compound formulation and method of use of improved derivatives of 2-[2′-(2-aminoethyl)-2-methyl-ethyl]-l,2-dihydro-6-methoxy-3H-dibenz-[de,h]isoquinoline-l,3-dione (herein referred to as azonafides), anthracene-based DNA intercalcators that inhibit tumor growth. The synthesized azonafides can be attached to a ligand or antibody to recognize specific receptors on cancer cells and delivered as a targeted cytotoxic payload. The azonafides have been developed to allow for easy modification with different peptide linkers and antibodies, but also allow for rapid release once cleaved in lysosomes after delivery to the cancer cell enabling highly targeted attack of cancer cells. The azonafides have reduced toxicity and lower development of drug resistance.

The prospective exclusive evaluation option license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive evaluation option license, and a subsequent exclusive patent commercialization license, may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Any additional, properly filed, and complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 9, 2014.

Richard U. Rodriguez,

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

[FR Doc. 2014–21855 Filed 9–12–14; 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, 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. 209 and 37 CFR part 404 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.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

A Novel Fusion Protein for Inhibiting HIV Budding

Description of Technology: Ubiquitin plays a critical role in HIV–1 budding. Vectors containing deubiquitin enzymes (DUbs) were constructed to deliver DUbs to HIV–1 production sites in living cells. The DUbs vectors comprise DUb cDNAs and cDNA expressing either HIV–1 gag, or the ESCRT protein TSG101.

Experimental data show that the fusion proteins expressed by the DUbs vectors retained their known protein-protein interactions and caused a significant and specific interruption of HIV–1 budding. The data suggest that the DUbs vectors could be used to inhibit HIV–1 infection or propagation in an individual. Thus, the DUbs vectors could potentially be used in high-risk individuals to prevent HIV–1 infection or as an adjunct therapy with known Anti-Retroviral Therapy (ART/HAART) in infected individuals.

Potential Commercial Applications:

- Prevention for HIV
- Treatment for patients infected with HIV
- Clinical research

Competitive Advantages:

- Use for both treatment and prevention
- No development of resistance to HIV

Development Stage: In vitro data available.

Inventors: Fadila Bouamr and Paola Sette (NIAID).

Publication: Sette P, et al. Ubiquitin conjugation to Gag is essential for ESCRT-mediated HIV–1 budding. Retrovirology. 2013 Jul 29;10:79 [PMID 23895345].

Intellectual Property: HHS Reference No. E–223–2014/0—U.S. Provisional Application No. 62/030,193 filed 29 July 2014.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the DUbs vectors and/or the fusion proteins expressed by the vectors. For collaboration opportunities, please contact Fadilla Bouamr, Ph.D. at *bouamrf@niaid.nih.gov.*

Surgical Tool for Subretinal Tissue Implantation

Description of Technology: The invention pertains to a surgical tool for implanting a sheet of tissue into the eye in such a way that damage to the tissue and the eye during insertion and manipulation of the tissue is minimized. The device enables tissue to be released and delivered in a precise and controlled fashion. The device includes a hollow handle portion (e.g. a syringe) with a bore fashioned to convey fluid. An injector is fluidically coupled to the handle of the device and includes a flat triangular shaped tip that defines an aperture connected to the internal channel of the injector portion and configured to enshroud a tissue for transplantation. Vacuum or pressure of a hydrostatic pump impels the fluid and enshrouded tissue into the tool and then into the eye. The tip of the surgical injector tool curved in a direction extending distally away from a handle of the surgical injector tool to better accommodate eye curvature.

Potential Commercial Applications:

- Ocular tissue transplantation
- Subretinal tissue transplantation
- Delivery of extended release drug pellets into subretinal space
- Ocular surgery
- Endothelial keratoplasty

Competitive Advantages:

- Precision of operation for surgeon (no extra moving parts)
- Instrument consists of separate disposable parts
- Controlled delivery
- Minimization of damage to the eye and transplanted tissue
- Ease of operation
- There is no available instrument capable to deliver tissue into subretinal space

Development Stage:

- Early-stage
- In vivo data available (animal)
- Prototype

Inventor: Arvydas Maminishkis (NEI).

Intellectual Property: HHS Reference No. E–192–2014/0—U.S. Provisional Application No. 62/023,289 filed 11 July 2014.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov*

Collaborative Research Opportunity: The National Eye Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize ocular tissue transplantation device. For collaboration opportunities, please contact Matthew McMahon at 301–451–1610 or *neitechtransfer@nei.nih.gov.*

A Novel Demodulation System in X-ray Imaging

Description of Technology: In various x-ray imaging methods, including scattering correction and phase contrast imaging, intensity modulation in space is introduced into the projection images by the use of masks, gratings, or apertures. The present invention relates to a process to demodulate the modulation. The current demodulation processes are either to remove the modulation pattern through digital processing or to move the modulation pattern on the detector in a series of images that requires mechanical movements of a component and tends to lose some information of the imaged object. The demodulation of the present invention can be realized with a relative movement between the projected image of the sample and the modulation pattern without having to move the modulation pattern. The demodulated images are free of the modulation pattern and have better clarity.

Potential Commercial Applications:

- Clinical diagnostic
- Research tools
- Security inspections

Competitive Advantages:

- Better clarity for images
- Simplify the demodulation method

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Han Wen and Houxun Miao (NHLBI)

Publications:

1. David C, et al. Interferometer for quantitative phase contrast imaging and tomography with an incoherent polychromatic x-ray source. U.S. Patent No. 7,889,838 issued 15 Feb 2011. [*http://patft1.uspto.gov/netacgi/nph-Parser?patentnumber=7889838*].
2. Schusser S, Vogtmeier G. Non-parallel grating arrangement with on-the-fly phase stepping, x-ray system and use. PCT Application No. PCT/IB2010/055562 filed 02 Dec 2010. [*http://patentscope.wipo.int/search/en/WO2011070489*].

Intellectual Property: HHS Reference No. E–113–2013/0—U.S. Provisional Application No. 61/877,219 filed 12 Sep 2013.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the technology. For collaboration opportunities, please contact Dr. Denise Crooks at *crooksd@mail.nih.gov.*

A Novel X-ray Grating To Enhance Phase Contrast Imaging

Description of Technology: The present invention relates to improving x-ray phase contrast imaging. The invention discloses a novel grating interferometer for phase contrast imaging with hard x-rays that overcomes limitations in the level of sensitivity by utilizing the advantages of far-field interferometers. The novel design and fabrication process can easily acquire absolute and differential

phase images of lightly absorbing samples.

Potential Commercial Applications:

- Clinical diagnostics
- Research tools

Competitive Advantages:

- More sensitivity
- Easier to fabricate images

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventor: Han Wen (NHLBI)

Publications:

1. Wen H. Boosting phase contrast with two-arm interferometers using sub-micron period gratings. Presentation, The Royal Society, London scientific discussion meeting: Taking x-ray phase contrast imaging into mainstream applications, February 11, 2013, London, UK.
2. Momose A, Fukuda J. Phase-contrast radiographs of nonstained rat cerebellar specimen. Med Phys. 1995 Apr;22(4):375–9. [PMID 7609717].
3. Clauser JF. Ultrahigh resolution interferometric x-ray imaging. U.S. Patent No. 5,812,629 issued 22 Sep 1998. [*http://patft1.uspto.gov/netacgi/nph-Parser?patentnumber=5812629*].

Intellectual Property: HHS Reference No. E–114–2013/0—U.S. Provisional Application No. 61/877,228 filed 12 Sep 2013.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the technology. For collaboration opportunities, please contact Dr. Denise Crooks at *crooksd@mail.nih.gov*.

Dated: September 9, 2014.

Richard U. Rodriguez,

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

[FR Doc. 2014–21856 Filed 9–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; R01 Review.

Date: October 16, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., MBA, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W120, Bethesda, MD 20892–9750, 240–276–6457, *mh101v@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Core Infrastructure and Methodological Research for Cancer Epidemiology Cohorts.

Date: October 21–22, 2014.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030–Oct 21, 5E030 Oct 22, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division Of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Revisions Early Stage Informatics Technologies, Revisions Early Stage Informatics Technologies, Advanced Stage Informatics Technologies.

Date: November 4–5, 2014.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7E030–Nov 4, 5E030–Nov 5 Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch. Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W244, Rockville, MD 20850, 240–276–6373, *bielatk@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Imaging and Biomarkers for Early Cancer Detection.

Date: November 14, 2014.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1E030, Rockville, MD 20892–9750, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850, 240–276–66373, *bielatk@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: September 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21854 Filed 9–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: October 9, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: October 14–15, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037,

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group, Molecular Oncogenesis Study Section.

Date: October 14–15, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Injury and Neurovascular Pathologies Study Section.

Date: October 14–15, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Area: Digestive, Kidney and Toxicology AREA applications.

Date: October 14–15, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: October 14–15, 2014.

Time: 10:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 13–345: Pediatric Drug Formulation and Delivery.

Date: October 14, 2014.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person:, Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–435–4577, *tuoj@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 9, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21858 Filed 9–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, Chemosensory Fellowship Review.

Date: Review October 14, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: September 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21857 Filed 9–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS ESBSC Meeting.

Date: October 19–21, 2014.

Closed: October 19, 2014, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree by Hilton Hotel, 4810 Page Creek Lane, Durham, NC 27703.

Open: October 20, 2014, 8:30 a.m. to 11:50 a.m.

Agenda: Scientific Presentations.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 20, 2014, 11:50 a.m. to 1:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: October 20, 2014, 1:30 p.m. to 3:00 p.m.

Agenda: Poster Session.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 20, 2014, 3:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: October 20, 2014, 3:45 p.m. to 5:25 p.m.

Agenda: Scientific Presentations.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 20, 2014, 5:25 p.m. to 5:55 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 20, 2014, 7:15 p.m. to 10:00 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree by Hilton Hotel, 4810 Page Creek Lane, Durham, NC 27703.

Open: October 21, 2014, 8:30 a.m. to 9:20 a.m.

Agenda: Scientific Presentation.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: October 21, 2014, 9:20 a.m. to 11:30 a.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Darryl C. Zeldin, M.D., Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Health Sciences, NIH, 111 TW Alexander Drive, Maildrop A2–09, Research Triangle Park, NC 27709, 919–541–1169, *zeldin@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: September 9, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21859 Filed 9–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0526]

Imposition of Conditions of Entry for Certain Vessels Arriving to the United States From Cambodia

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the exemption from conditions of entry on vessels arriving in the U.S. from certain ports in Cambodia and will impose conditions of entry on all vessels arriving from Cambodian ports. This notice promotes the Coast Guard's maritime security mission.

DATES: The policy announced in this notice will become effective September 29, 2014.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Michael Brown, International Port Security Evaluation Division, United States Coast Guard, telephone 202–372–1081. For information about viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, or toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Discussion

The authority for this notice is 5 U.S.C. 552(a), 46 U.S.C. 70110, and Department of Homeland Security Delegation No. 0170.1(II)(97)(f). As delegated, section 70110 authorizes the Coast Guard to impose conditions of entry on vessels arriving in U.S. waters from ports that the Coast Guard has not found to maintain effective anti-terrorism measures.

In October 2008, we found that ports in Cambodia, with certain exceptions, did not maintain effective anti-terrorism measures. Accordingly, the Coast Guard imposed conditions of entry on certain vessels arriving to the United States from Cambodian ports (73 FR 63499, Oct. 24, 2008). The notice exempted two ports from conditions of entry: Phnom Penh Autonomous Port and Sihanoukville Autonomous Port. We no longer find that those two ports are maintaining effective anti-terrorism measures, and we remove their exemption.

Accordingly, beginning September 29, 2014, the conditions of entry shown in Table 1 will apply to any vessel that visited any Cambodian port in its last five port calls.

TABLE 1—CONDITIONS OF ENTRY FOR VESSELS VISITING CAMBODIAN PORTS

Number	Each vessel must:
1	Implement measures per the vessel's security plan equivalent to Security Level 2 while in a port in Cambodia. As defined in the ISPS Code and incorporated herein, "Security Level 2" refers to the "level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident."
2	Ensure that each access point to the vessel is guarded and that the guards have total visibility of the exterior (both landside and waterside) of the vessel while the vessel is in ports in Cambodia.

TABLE 1—CONDITIONS OF ENTRY FOR VESSELS VISITING CAMBODIAN PORTS—Continued

Number	Each vessel must:
3	Guards may be provided by the vessel's crew; however, additional crewmembers should be placed on the vessel if necessary to ensure that limits on maximum hours of work are not exceeded and/or minimum hours of rest are met, or provided by outside security forces approved by the vessel's master and Company Security Officer. As defined in the ISPS Code and incorporated herein, ''Company Security Officer'' refers to the ''person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer.''
4	Attempt to execute a Declaration of Security while in a port in Cambodia;
5	Log all security actions in the vessel's security records; and
6	Report actions taken to the cognizant Coast Guard Captain of the Port (COTP) prior to arrival into U.S. waters.
7	In addition, based on the findings of the Coast Guard boarding or examination, the vessel may be required to ensure that each access point to the vessel is guarded by armed, private security guards and that they have total visibility of the exterior (both landside and waterside) of the vessel while in U.S. ports. The number and position of the guards has to be acceptable to the cognizant COTP prior to the vessel's arrival.

The following countries currently do not maintain effective anti-terrorism measures and are therefore subject to certain conditions of entry: Cambodia, Cameroon, Comoros, Cote d'Ivoire, Cuba, Equatorial Guinea, Guinea-Bissau, Iran, Liberia, Madagascar, Nigeria, Sao Tome and Principe, Syria, Timor-Leste, Venezuela, and Yemen. This list is also available in a policy notice available at *https://homeport.uscg.mil* under the Maritime Security tab; International Port Security Program (ISPS Code); Port Security Advisory link.

Dated: August 15, 2014.

Charles D. Michel,

Vice Admiral, USCG, Deputy Commandant for Operations.

[FR Doc. 2014–21998 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov*.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Coconino (FEMA Docket No.: B–1421).	Unincorporated areas of Coconino County (14–09–0827P).	The Honorable Matt Ryan, Chairman, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, AZ 86001.	Community Development Department, Engineering Division, 2500 North Fort Valley Road, Building 1, Flagstaff, AZ 86001.	July 14, 2014	040019
Greenlee (FEMA Docket No.: B–1411).	Unincorporated areas of Greenlee County (13–09–2482P).	The Honorable David Gomez, Chairman, Greenlee County Board of Supervisors, P.O. Box 908, Clifton, AZ 85533.	Greenlee County Planning and Zoning Department, 253 5th Street, Clifton, AZ 85533.	June 26, 2014	040110
Maricopa (FEMA Docket No.: B–1411).	City of Peoria (13–09–2575P).	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	June 27, 2014	040050
Maricopa (FEMA Docket No.: B–1421).	City of Scottsdale (13–09–3424P).	The Honorable J.W. Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	July 11, 2014	045012
Maricopa (FEMA Docket No.: B–1421).	City of Scottsdale (14–09–0385P).	The Honorable J.W. Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	July 18, 2014	045012
Maricopa (FEMA Docket No.: B–1421).	City of Surprise (13–09–2884P).	The Honorable Sharon Wolcott, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Community Services Department, 12425 West Bell Road, Suite D–100, Surprise, AZ 85374.	June 20, 2014	040053
Maricopa (FEMA Docket No.: B–1411).	Unincorporated areas of Maricopa County (13–09–2575P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	June 27, 2014	040037
Maricopa (FEMA Docket No.: B–1421).	Unincorporated areas of Maricopa County (13–09–2884P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	June 20, 2014	040037
Pima (FEMA Docket No.: B–1411).	City of Tucson (13–09–3259P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services Department, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	July 7, 2014	040076
Yavapai (FEMA Docket No.: B–1421).	Town of Prescott Valley (13–09–1658P).	The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	July 25, 2014	040121
Yavapai (FEMA Docket No.: B–1421).	Unincorporated areas of Yavapai County (13–09–1658P).	The Honorable Rowle P. Simmons, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.	July 25, 2014	040093
California:					
Orange (FEMA Docket No.: B–1421).	City of Newport Beach (14–09–1616P).	The Honorable Rush N. Hill, II, Mayor, City of Newport Beach, 100 Civic Center Drive, Newport Beach, CA 92660.	City Hall, 100 Civic Center Drive, Newport Beach, CA 92660.	July 11, 2014	060227
Tulare (FEMA Docket No.: B–1421).	City of Porterville (13–09–3041P).	The Honorable Cameron J. Hamilton, Mayor, City of Porterville, 291 North Main Street, Porterville, CA 93257.	Public Works Department, 291 North Main Street, Porterville, CA 93257.	July 25, 2014	060407
Colorado:					
Arapahoe (FEMA Docket No.: B–1421).	City of Centennial (14–08–0302P).	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112.	July 18, 2014	080315
Arapahoe (FEMA Docket No.: B–1421).	City of Greenwood Village (14–08–0302P).	The Honorable Ron Rakowsky, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, CO 80111.	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.	July 18, 2014	080195
Larimer (FEMA Docket No.: B–1421).	City of Fort Collins (13–08–1143P).	The Honorable Karen Weitkunat, Mayor, City of Fort Collins, 3009 Phoenix Drive, Fort Collins, CO 80525.	Stormwater Utilities Department, 700 Wood Street, Fort Collins, CO 80521.	July 25, 2014	080102
Florida:					
Broward (FEMA Docket No.: B–1421).	City of Hollywood (14–04–2264P).	The Honorable Peter J.M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020.	July 11, 2014	125113

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Charlotte (FEMA Docket No.: B–1421).	Unincorporated areas of Charlotte County (13–04–8283P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	July 14, 2014	120061
Gulf (FEMA Docket No.: B–1411).	Unincorporated areas of Gulf County (13–04-5405P).	The Honorable Ward McDaniel, Chairman, Gulf County Board of Commissioners, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, FL 32456.	Gulf County Courthouse, 1000 Cecil G. Costin, Sr. Boulevard, Suite 311, Port St. Joe, FL 32456.	June 27, 2014	120098
Manatee (FEMA Docket No.: B–1421).	Unincorporated areas of Manatee County (14–04–1072P).	The Honorable Larry Bustle, Chairman, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	July 14, 2014	120153
Monroe (FEMA Docket No.: B–1421).	Unincorporated areas of Monroe County (14–04–0921P).	The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Public Works Department, 1100 Simonton Street, Key West, FL 33040.	July 25, 2014	125129
Monroe (FEMA Docket No.: B–1421).	Unincorporated areas of Monroe County (14–04–1809P).	The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Public Works Department, 1100 Simonton Street, Key West, FL 33040.	July 25, 2014	125129
Pinellas (FEMA Docket No.: B–1411).	City of St. Petersburg (13–04–5913P).	The Honorable Rick Kriseman, Mayor, City of St. Petersburg, 175 5th Street North, St. Petersburg, FL 33701.	Municipal Services Center, Permit Division, 1 4th Street North, St. Petersburg, FL 33701.	June 27, 2014	125148
Polk (FEMA Docket No.: B–1421).	City of Bartow (13–04–7607P).	The Honorable James F. Clements, Mayor, City of Bartow, 450 North Wilson Avenue, Bartow, FL 33830.	Building Department, 450 North Wilson Avenue, Bartow, FL 33830.	July 17, 2014	120263
Polk (FEMA Docket No.: B–1421).	Unincorporated areas of Polk County (13–04–7607P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33830.	July 17, 2014	120261
Sarasota (FEMA Docket No.: B–1411).	Town of Longboat Key (12–04–8304P).	The Honorable Jim Brown, Mayor, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Planning, Zoning and Building Department, 501 Bay Isles Road, Longboat Key, FL 34228.	July 7, 2014	125126
Sumter (FEMA Docket No.: B–1411).	City of Wildwood (14–04–1328P).	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	Development Services Department, 100 North Main Street, Wildwood, FL 34785.	July 11, 2014	120299
Montana: Fallon (FEMA Docket No.: B–1421).	Unincorporated areas of Fallon County (13–08–0962P).	The Honorable Deb Ranum, Chair, Fallon County Board of Commissioners, P.O. Box 846, Baker, MT 59313.	Fallon County Courthouse, Office of the Clerk and Recorder, 10 West Fallon Avenue, Baker, MT 59393.	June 30, 2014	300149
North Carolina:					
Buncombe (FEMA Docket No.: B–1423).	Unincorporated areas of Buncombe County (14–04–3019P).	The Honorable David Gantt, Chairman, Buncombe County Board of Commissioners, 200 College Street, Room, 316, Asheville, NC 28801.	Buncombe County Planning Department, 46 Valley Street, Asheville, NC 28801.	July 11, 2014	370031
Guilford (FEMA Docket No.: B–1417).	City of Greensboro (13–04–6581P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Water Resources Department, Planning and Engineering Section, 2602 South Elm-Eugene Street, Greensboro, NC 27406.	June 17, 2014	375351
Rockingham (FEMA Docket No.: B–1421).	City of Reidsville (13–04–2888P).	The Honorable John M. "Jay" Donecker, Mayor, City of Reidsville, 230 West Moreshead Street, Reidsville, NC 27320.	City Hall, 230 West Moreshead Street, Reidsville, NC 27320.	July 7, 2014	370209
Wake (FEMA Docket No.: B–1421).	Town of Fuquay-Varina (13–04–4877P).	The Honorable John W. Byrne, Mayor, Town of Fuquay-Varina, 401 Old Honeycutt Road, Fuquay-Varina, NC 27526.	Planning Department, 401 Old Honeycutt Road, Fuquay-Varina, NC 27526.	June 30, 2014	370239
South Carolina: Charleston (FEMA Docket No.: B–1407).	Unincorporated areas of Charleston County (13–04–7776P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, Lonnie Hamilton, III Public Services Building, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Services Department, Lonnie Hamilton, III, Public Services Building, 4045 Bridge View Drive, North Charleston, SC 29405.	March 28, 2014	455413
South Dakota:					
Brown (FEMA Docket No.: B–1411).	City of Aberdeen (13–08–0756P).	The Honorable Mike Levsen, Mayor, City of Aberdeen, 123 South Lincoln Street, Aberdeen, SD 57401.	City Engineer's Office, 123 South Lincoln Street, Aberdeen, SD 57401.	July 11, 2014	460007

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Brown (FEMA Docket No.: B–1411).	Unincorporated areas of Brown County (13–08–0756P).	The Honorable Duane Sutton, Chairman, Brown County Board of Commissioners, 25 Market Street, Suite 1, Aberdeen, SD 57401.	Brown County Planning and Zoning Department, 25 Market Street, Suite 5, Aberdeen, SD 57401.	July 11, 2014	460006
Tennessee: Rutherford (FEMA Docket No.: B–1421).	Unincorporated areas of Rutherford County (13–04–7742P).	The Honorable Earnest Burgess, Mayor, Rutherford County, 1 Public Square South, Room 101, Murfreesboro, TN 37130.	Rutherford County Planning and Engineering Department, 1 Public Square South, Room 200, Murfreesboro, TN 37130.	July 25, 2014	470165
Utah:					
Salt Lake (FEMA Docket No.: B–1421).	Town of Herriman (14–08–0040P).	The Honorable Carmen Freeman, Mayor, Town of Herriman, 13011 South Pioneer Street, Herriman, UT 84096.	Town Hall, 13011 South Pioneer Street, Herriman, UT 84096.	July 18, 2014	490252
Salt Lake (FEMA Docket No.: B–1421).	Unincorporated areas of Salt Lake County (13–08–0707P).	The Honorable Ben McAdams, Mayor, Salt Lake County, 2001 South State Street, Suite N2100, Salt Lake City, UT 84190.	Public Works Department, 2001 South State Street, Suite N3100, Salt Lake City, UT 84190.	July 11, 2014	490102

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Date: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21923 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1439]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The

flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Connecticut: New Haven.	Town of Branford (14–01–0158P).	The Honorable James B. Cosgrove, First Selectman, Town of Branford, 10919 Main Street, Branford, CT 06405.	Town Hall, 1019 Main Street, Branford, CT 06405.	*http://www.msc.fema.gov/lomc.*	December 12, 2014	090073
Illinois:						
Adams	City of Quincy (14–05–4520P).	The Honorable Kyle Moore, Mayor, City of Quincy, 730 Maine Street, Quincy, IL 62301.	City Hall, 730 Maine Street, Quincy, IL 62301.	*http://www.msc.fema.gov/lomc.*	December 19, 2014	170003
Adams	Unincorporated Areas of Adams County (14–05–4520P).	The Honorable Les Post, Chairman, Adams County, 101 North 54th Street, Quincy, IL 62305.	Adams County Highway Department, 101 North 54th Street, Quincy, IL 62305.	*http://www.msc.fema.gov/lomc.*	December 19, 2014	170001
Maine: Hancock	Town of Deer Isle (14–01–1320P).	The Honorable Neville Hardy, First Selectman, Town of Deer Isle, 70 Church Street, Deer Isle, ME 04627.	Town Hall, 70 Church Street, Deer Isle, ME 04627.	*http://www.msc.fema.gov/lomc.*	November 20, 2014	230280
Massachusetts: Bristol.	Town of Dartmouth (14–01–1022P).	The Honorable Shawn D. McDonald, Select Board Member, Town of Dartmouth, 400 Slocum Road, Dartmouth, MA 02747.	400 Slocum Road, Dartmouth, MA 02747.	*http://www.msc.fema.gov/lomc.*	December 19, 2014	250051
Washington: King ..	City of Shoreline (14–10–0909P).	The Honorable Keith McGlashan, Mayor, City of Shoreline, 17500 Midvale Avenue North, Shoreline, WA 98133.	17500 Midvale Avenue North, Shoreline, WA 98133.	*http://www.msc.fema.gov/lomc.*	December 15, 2014	530327
Wisconsin:						
Brown	Unincorporated Areas of Brown County (14–05–2566P).	Mr. Troy Streckenbach, County Executive, Brown County, 305 East Walnut Street, Green Bay, WI 54305.	305 East Walnut Street, Green Bay, WI 54305.	*http://www.msc.fema.gov/lomc.*	December 10, 2014	550020
Brown	Unincorporated Areas of Brown County (14–05–3376P).	Mr. Troy Streckenbach, County Executive, Brown County, 305 East Walnut Street, Green Bay, WI 54305.	305 East Walnut Street, Green Bay, WI 54305.	*http://www.msc.fema.gov/lomc.*	December 5, 2014	550020
Brown	Village of Wrightstown (14–05–3375P).	Mr. Dean Erickson, Village President, Village of Wrightstown, 352 High Street, Wrightstown, WI 54180.	Village Hall, 352 High Street, Wrightstown, WI 54180.	*http://www.msc.fema.gov/lomc.*	December 5, 2014	550025
Outagamie	Unincorporated Areas of Outagamie County (14–05–3375P).	Mr. Thomas M. Nelson, County Executive, Outagamie County, 410 South Walnut Street, Appleton, WI 54911.	410 South Walnut Street, Appleton, WI 54911.	*http://www.msc.fema.gov/lomc.*	December 5, 2014	550302

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21894 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Texas:					
Bexar (FEMA Docket No.: B–1416).	Unincorporated areas of Bexar County (14–06–0021P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	August 7, 2014	480035
Bexar (FEMA Docket No.: B–1416).	Unincorporated areas of Bexar County (14–06–0228P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	August 7, 2014	480035
Dallas (FEMA Docket No.: B–1408).	City of Dallas (13–06–2620P).	The Honorable Mike Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Public Works Department, 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.	July 28, 2014	480171
Denton (FEMA Docket No.: B–1408).	City of Denton (13–06–3803P).	The Honorable Chris Watts, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	901–A Texas Street, Denton, TX 76209.	July 28, 2014	480194
Denton (FEMA Docket No.: B–1408).	Unincorporated areas of Denton County (13–06–3803P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	July 28, 2014	480774
Webb (FEMA Docket No.: B–1416).	City of Laredo (13–06–4511P).	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	1120 San Bernardo Avenue, Laredo, TX 78040.	July 31, 2014	480651
Wilson (FEMA Docket No.: B–1416).	City of Floresville (14–06–0256P).	The Honorable Diana Garza, Mayor, City of Floresville, 1120 D Street, Floresville, TX 78114.	City Hall, 1120 D Street, Floresville, TX 78114.	July 31, 2014	480671

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21897 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1435]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency

Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Arizona:						
Maricopa	City of Scottsdale (14–09–0808P).	The Honorable Jim Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	045012
Maricopa	Town of Queen Creek (14–09–1090P).	The Honorable Gail Barney, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, AZ 85142.	Town Hall, 22350 South Ellsworth Road, Queen Creek, AZ 85142.	*http://www.msc.fema.gov/lomc.*	October 24, 2014	040132
Maricopa	Unincorporated areas of Maricopa County (14–09–1090P).	The Honorable Denny Barney, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.msc.fema.gov/lomc.*	October 24, 2014	040037
California:						
Orange	City of Newport Beach (14–09–2874P).	The Honorable Rush N. Hill, II, Mayor, City of Newport Beach, 100 Civic Center Drive, Newport Beach, CA 92660.	City Hall, 100 Civic Center Drive, Newport Beach, CA 92660.	*http://www.msc.fema.gov/lomc.*	October 30, 2014	060227

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
San Diego	Unincorporated areas of San Diego County (14–09–0364P).	The Honorable Dianne Jacob, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	San Diego County Department of Public Works, Flood Control Division, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	*http://www.msc.fema.gov/lomc.*	October 16, 2014	060284
Colorado:						
Boulder	City of Longmont (14–08–0987P).	The Honorable Dennis L. Coombs, Mayor, City of Longmont, 350 Kimbark Street, Longmont, CO 80501.	Service Center, 1100 South Sherman Street, Longmont, CO 80501.	*http://www.msc.fema.gov/lomc.*	October 22, 2014	080027
Jefferson	City of Arvada (14–08–0099P).	The Honorable Marc Williams, Mayor, City of Arvada, P.O. Box 8101, Arvada, CO 80001.	City Hall, 8101 Ralston Road, Arvada, CO 80001.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	085072
Florida:						
Broward	City of Fort Lauderdale (14–04–1663P).	The Honorable John P. "Jack" Seiler, Mayor, City of Fort Lauderdale, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.	City Hall, 100 North Andrews Avenue, Fort Lauderdale, FL 33301.	*http://www.msc.fema.gov/lomc.*	November 6, 2014	125105
Charlotte	Unincorporated areas of Charlotte County, (14–04–2502P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc.*	October 16, 2014	120061
Duval	City of Jacksonville (14–04–2078P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, FL 32202.	City Hall, 117 West Duval Street Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc.*	October 27, 2014	120077
Manatee and Sarasota.	Town of Longboat Key (14–04–3983P).	The Honorable Jim Brown, Mayor, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Planning, Zoning, and Building Department, 501 Bay Isles Road, Longboat Key, FL 34228.	*http://www.msc.fema.gov/lomc.*	October 30, 2014	125126
Monroe	Unincorporated areas of Monroe County (14–04–4077P).	The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Monroe County Planning and Environmental Resources Department, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc.*	October 14, 2014	125129
Orange	City of Orlando (14–04–3140P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32801.	*http://www.msc.fema.gov/lomc.*	September 5, 2014	120186
Orange	Unincorporated areas of Orange County (14–04–0780P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	120179
Osceola	Unincorporated areas of Osceola County (14–04–0490P).	The Honorable Fred Hawkins, Jr., Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Section, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	120189
Polk	Unincorporated areas of Polk County (14–04–2689P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33831.	*http://www.msc.fema.gov/lomc.*	November 6, 2014	120261
Polk	Unincorporated areas of Polk County (14–04–2776P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Bartow, FL 33831.	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33831.	*http://www.msc.fema.gov/lomc.*	October 16, 2014	120261

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Sarasota	City of Sarasota (14–04–3830P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	City Hall, 1565 1st Street, Sarasota, FL 34236.	*http://www.msc.fema.gov/lomc.*	October 22, 2014	125150
Sarasota	City of Sarasota (14–04–5443P).	The Honorable Willie Charles Shaw, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	City Hall, 1565 1st Street, Sarasota, FL 34236.	*http://www.msc.fema.gov/lomc.*	November 13, 2014	125150
Sarasota	Unincorporated areas of Sarasota County (14–04–3759P).	The Honorable Charles D. Hines, Chairman, Sarasota County Commission, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Stormwater Management Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*http://www.msc.fema.gov/lomc.*	October 15, 2014	125144
Georgia:						
Columbia	Unincorporated areas of Columbia County (13–04–7901P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Division, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.	*http://www.msc.fema.gov/lomc.*	November 10, 2014	130059
Columbia	Unincorporated areas of Columbia County (13–04–8279P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, 630 Ronald Reagan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Division, 630 Ronald Reagan Drive, Building A, Evans, GA 30809.	*http://www.msc.fema.gov/lomc.*	October 16, 2014	130059
Columbia	Unincorporated areas of Columbia County (13–04–8301P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, 630 Ronald Regan Drive, Building B, Evans, GA 30809.	Columbia County Engineering Division, 630 Ronald Regan Drive, Building A, Evans, GA 30809.	*http://www.msc.fema.gov/lomc.*	November 6, 2014	130059
Gwinnett	City of Lilburn (13–04–4606P).	The Honorable Johnny D. Crist, Mayor, City of Lilburn, 76 Main Street, Lilburn, GA 30047.	City Hall, 76 Main Street, Lilburn, GA 30047.	*http://www.msc.fema.gov/lomc.*	October 10, 2014	130100
Richmond	Augusta-Richmond County (13–04–2899P).	The Honorable Deke S. Copenhaver, Mayor, Augusta-Richmond County, 75 Conifer Circle, Augusta, GA 30909.	Augusta-Richmond County Planning and Zoning Department, 525 Telfair Street, Augusta, GA 30901.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	130158
Nevada:						
Clark	City of Henderson (14–09–0094P).	The Honorable Andy Hafen, Mayor, City of Henderson, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	*http://www.msc.fema.gov/lomc.*	October 2, 2014	320005
Washoe	Unincorporated areas of Washoe County (14–09–1338P).	The Honorable David Humke, Chairman, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89512.	Washoe County Public Works Department, 1001 East 9th Street, Reno, NV 89512.	*http://www.msc.fema.gov/lomc.*	October 20, 2014	320019
North Carolina:						
Franklin	Unincorporated areas of Franklin County (14–04–1007P).	The Honorable Angela L. Harris, Franklin County Manager, 113 Market Street, Louisburg, NC 27549.	Franklin County Planning and Inspections Office, 215 East Nash Street, Louisburg, NC 27549.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	370377
Macon	Unincorporated areas of Macon County (14–04–3043P).	The Honorable Kevin Corbin, Chairman, Macon County Board of Commissioners, 5 West Main Street, Franklin, NC 28734.	Macon County Planning Department, 5 West Main Street, Franklin, NC 28734.	*http://www.msc.fema.gov/lomc.*	October 16, 2014	370150
North Dakota:						
Bowman.	City of Bowman (14–08–0180P).	The Honorable Lyn James, President, City of Bowman Commission, P.O. Box 12, Bowman, ND 58623.	Zoning Administrator's Office, 104 1st Street NW, Bowman, ND 58623.	*http://www.msc.fema.gov/lomc.*	October 6, 2014	380012
South Carolina:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Aiken	City of North Augusta (13–04–2899P).	The Honorable Lark W. Jones, Mayor, City of North Augusta, 100 Georgia Avenue, North Augusta, SC 29841.	City Hall, 100 Georgia Avenue, North Augusta, SC 29841.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	450007
Aiken	Unincorporated areas of Aiken County (13–04–2899P).	The Honorable Ronnie Young, Chairman, Aiken County Council, 220 Deerwood Drive, North Augusta, SC 29841.	Aiken County Planning and Zoning Department, 1680 Richmond Avenue West, North Augusta, SC 29801.	*http://www.msc.fema.gov/lomc.*	October 17, 2014	450002
Charleston	Town of Mount Pleasant (14–04–4488P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Town Hall, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	*http://www.msc.fema.gov/lomc.*	November 4, 2014	455417
Charleston	Unincorporated areas of Charleston County (14–04–4488P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 2700 Crestline Drive, North Charleston, SC 29405.	Charleston County Building Services Department, 2700 Crestline Drive, North Charleston, SC 29405.	*http://www.msc.fema.gov/lomc.*	November 4, 2014	455413
Richland	City of Columbia (13–04–7561P).	The Honorable Steve Benjamin, Mayor, City of Columbia, P.O. Box 147, Columbia, SC 29217.	Department of Engineering, P.O. Box 147, Columbia, SC 29217.	*http://www.msc.fema.gov/lomc.*	October 27, 2014	450172
Richland	Unincorporated areas of Richland County (13–04–7561P).	The Honorable Norman Jackson, Chairman, Richland County Council, P.O. Box 90617, Columbia, SC 29209.	Richland County Courthouse, 1701 Main Street, Columbia, SC 29202.	*http://www.msc.fema.gov/lomc.*	October 27, 2014	450170

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21896 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1432]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer

of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Delaware: New Castle.	Unincorporated areas of New Castle County (13–03–2557P).	The Honorable Thomas P. Gordon, New Castle County, Executive, 87 Reads Way, New Castle, DE 19720.	New Castle County Government Center, Land Use Department, 87 Reads Way, New Castle, DE 19720.	*http://www.msc.fema.gov/lomc.*	Nov. 14, 2014	105085
Minnesota:						
Steele	City of Owatonna (14–05–4257P).	The Honorable Thomas Kuntz Mayor, City of Owatonna 540 West Hills Circle Owatonna, MN 55060.	City Administration Building 540 West Hills Circle Owatonna, MN 55060.	*http://www.msc.fema.gov/lomc.*	Nov. 12, 2014	270463
Steele	Unincorporated areas of Steele County (14–05–4257P).	Mr. Tom Shea, Steele County Administrator, P.O. Box 890, Owatonna, MN 55060.	Steele County Planning and Zoning Department, 630 Florence Avenue, Owatonna, MN 55060.	*http://www.msc.fema.gov/lomc.*	Nov. 12, 2014	270635
New York: Onondaga.	Town of Cicero (13–02–1264P).	The Honorable Jessica Zambrano, Supervisor, Town of Cicero, 8236 Brewerton Road, Cicero, NY 13039.	Town Hall, 8236 Brewerton Road, Cicero, NY 13039.	*http://www.msc.fema.gov/lomc.*	Dec. 9, 2014	360572
Oklahoma:						
Carter	City of Ardmore (13–06–4203P).	The Honorable Bob Geurin, Mayor, City of Ardmore, P.O. Box 249, Ardmore, OK 73402.	Developmental Services Department, 23 South Washington Street, Ardmore, OK 73401.	*http://www.msc.fema.gov/lomc.*	Oct. 17, 2014	400031
Tulsa	City of Owasso (13–06–0281P).	The Honorable Jeri Moberly, Mayor, City of Owasso, 111 North Main Street, Owasso, OK 74055.	City Municipal Building, 111 North Main Street, Owasso, OK 74055.	*http://www.msc.fema.gov/lomc.*	Oct. 24, 2014	400210
Tulsa	Unincorporated areas of Tulsa County (13–06–0281P).	The Honorable Ron Peters, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.	Tulsa County Administration Building, 500 South Denver Avenue, Tulsa, OK 74103.	*http://www.msc.fema.gov/lomc.*	Oct. 24, 2014	400462
Pennsylvania:						
Mercer	Borough of Sharpsville (14–03–2041P).	Mr. Kenneth P. Robertson, Manager, Borough of Sharpsville, 1 South Walnut Street, Sharpsville, PA 16150.	1 South Walnut Street, Sharpsville, PA 16150.	*http://www.msc.fema.gov/lomc.*	Oct. 22, 2014	420682
Mercer	City of Hermitage (14–03–2041P).	Mr. Gary P. Hinkson, Manager, City of Hermitage, 800 North Hermitage Road, Hermitage, PA 16148.	800 North Hermitage Road, Hermitage, PA 16148.	*http://www.msc.fema.gov/lomc.*	Oct. 22, 2014	421862
Mercer	Township of South Pymatuning (14–03–2041P).	The Honorable Brian Geisel, Chairman, Township of South Pymatuning Board of Supervisors, 3483 Tamarack Drive, Sharpsville, PA 16150.	Township of South Pymatuning, 3483 Tamarack Drive, Sharpsville, PA 16150.	*http://www.msc.fema.gov/lomc.*	Oct. 22, 2014	421876
Texas:						
Bexar	City of San Antonio (13–06–3277P).	The Honorable Julián Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc.*	Nov. 6, 2014	480045

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Burnet	City of Horseshoe Bay (13–06–4634P).	The Honorable Steve Jordon, Mayor, City of Horseshoe Bay, P.O. Box 7765, Horseshoe Bay, TX 78657.	City Hall, 1 Community Drive, Horseshoe Bay, TX 78657.	*http://www.msc.fema.gov/lomc.*	Dec. 16, 2014	480149
Dallas	City of Coppell (13–06–3463P).	The Honorable Karen Hunt, Mayor, City of Coppell, P.O. Box 9478, Coppell, TX 75019.	255 Parkway Boulevard, Coppell, TX 75019.	*http://www.msc.fema.gov/lomc.*	Sept. 15, 2014	480170
Denton	Town of Flower Mound (14–06–0182P).	The Honorable Thomas Hayden, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Engineering Department, 1001 Cross Timbers Road, Suite 3220, Flower Mound, TX 75028.	*http://www.msc.fema.gov/lomc.*	Oct. 14, 2014	480777
El Paso	City of El Paso (14–06–2375P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Engineering Department, 222 South Campbell Street, El Paso, TX 79901.	*http://www.msc.fema.gov/lomc.*	Oct. 27, 2014	480214
Harris	Unincorporated areas of Harris County (14–06–1909P).	The Honorable Ed M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.msc.fema.gov/lomc.*	Nov. 5, 2014	480287
Kendall	Unincorporated areas of Kendall County (13–06–4074P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Development and Floodplain Management Office, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	*http://www.msc.fema.gov/lomc.*	Oct. 6, 2014	480417
Llano	Unincorporated areas of Llano County (13–06–4634P).	The Honorable Wayne Brascom, Llano County Judge, 801 Ford Street, Room 101, Llano, TX 78643.	Llano County Courthouse, 801 Ford Street, Llano, TX 78643.	*http://www.msc.fema.gov/lomc.*	Dec. 16, 2014	481234
Montgomery	City of Conroe (13–06–3866P).	The Honorable Webb K. Melder, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	City Hall, 300 West Davis Street, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc.*	Oct. 29, 2014	480484
Tarrant	City of Colleyville (13–06–4370P).	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	Engineering Division, 100 Main Street, 2nd Floor, Colleyville, TX 76034.	*http://www.msc.fema.gov/lomc.*	Sept. 17, 2014	480590
Tarrant	City of Fort Worth (13–06–3819P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc.*	Sept. 29, 2014	480596
Tarrant	City of Keller (13–06–4370P).	The Honorable Mark Matthews, Mayor, City of Keller, P.O. Box 770, Keller, TX 76244.	City Hall, 1100 Bear Creek Parkway, Keller, TX 76248.	*http://www.msc.fema.gov/lomc.*	Sept. 17, 2014	480602
Tarrant	City of Mansfield (14–06–0939P).	The Honorable David L. Cook, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	City Hall, 1200 East Broad Street, Mansfield, TX 76063.	*http://www.msc.fema.gov/lomc.*	Oct. 6, 2014	480606
Tarrant	City of Southlake (13–06–4370P).	The Honorable John Terrell, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, TX 76092.	Public Works Administration and Engineering, 1400 Main Street, Suite 320, Southlake, TX 76092.	*http://www.msc.fema.gov/lomc.*	Sept. 17, 2014	480612
Travis	City of Austin (14–06–0251P).	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Stormwater Management Division, 505 Barton Springs Road, Suite 908, Austin, TX 78704.	*http://www.msc.fema.gov/lomc.*	Sept. 9, 2014	480624
Travis	City of Lakeway (13–06–4373P).	The Honorable Dave DeOme, Mayor, City of Lakeway, 1102 Lohmans Crossing Road, Lakeway, TX 78734.	Floodplain Administrator's Office, 1102 Lohmans Crossing Road, Lakeway, TX 78734.	*http://www.msc.fema.gov/lomc.*	Oct. 17, 2014	481303
Virginia:						
Arlington	Unincorporated areas of Arlington County (13–03–1764P).	The Honorable Jay Fisette, Chairman, Arlington County Board, 2100 Clarendon Boulevard, Suite 300, Arlington, VA 22201.	Arlington County Department of Environmental Services, 2100 Clarendon Boulevard, Suite 800, Arlington, VA 22201.	*http://www.msc.fema.gov/lomc.*	Oct. 31, 2014	515520

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
City of Falls Church.	Independent City of Falls Church (13–03–1764P).	The Honorable David Tarter, Mayor, City of Falls Church, 300 Park Avenue, Suite 300 East, Falls Church, VA 22046.	Department of Public Works, 300 Park Avenue, Suite 100 West, Falls Church, VA 22046.	*http://www.msc.fema.gov/lomc.*	Oct. 31, 2014	510054

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21927 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1437]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Texas:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Collin	City of Allen (13–06–4603P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	City Hall, 305 Century Parkway, Allen, TX 75013.	*http://www.msc.fema.gov/lomc.*	November 7, 2014	480131
El Paso	City of El Paso, (14–06–0412P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Engineering Department, 222 South Campbell Street, El Paso, TX 79901.	*http://www.msc.fema.gov/lomc.*	November 28, 2014	480214
Lampasas	Unincorporated areas of Lampasas County, (13–06–4315P).	The Honorable Wayne L. Boultinghouse, Lampasas County Judge, P.O. Box 231, Lampasas, TX 76550.	Lampasas County, 501 East 4th Street, Lampasas, TX 76550.	*http://www.msc.fema.gov/lomc.*	September 15, 2014	480899
Wagoner	City of Wagoner, (14–06–0309P).	The Honorable James Jennings, Mayor, City of Wagoner, P.O. Box 406, Wagoner, OK 74477.	Wagoner County, 306 East Cherokee Street, Wagoner, OK 74467.	*http://www.msc.fema.gov/lomc.*	November 28, 2014	400219
Wagoner	Unincorporated areas of Wagoner County, (14–06–0309P).	The Honorable James Hanning, Chairman, Wagoner County Commissioners, P.O. Box 156, Wagoner, OK 74477.	Wagoner County, 306 East Cherokee Street, Wagoner, OK 74467.	*http://www.msc.fema.gov/lomc.*	November 28, 2014	400215

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21895 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4189–DR; Docket ID FEMA–2014–0003]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–4189–DR), dated August 13, 2014, and related determinations.

DATES: *Effective Date:* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 13, 2014.

Claiborne, Gibson, Giles, Haywood, and Weakley Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–21930 Filed 9–12–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on September 30-October 1, 2014, in Reston, Virginia. The meeting will be open to the public.

DATES: The TMAC will meet on September 30–October 1, 2014, from 8:30 a.m.–5:00 p.m. A public comment period will be held on September 30, 2014, from 9:45 a.m.–10:15 a.m. regarding the issues the committee will consider, as listed in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The meeting will be held at the United States Geological Survey Auditorium, located at 12201 Sunrise Valley Drive, Reston, Virginia 20192.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in ''For Further Information Contact:'' below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the ''Supplementary Information'' section below. Associated briefing materials that will be discussed at the meeting will be available at *www.fema.gov/TMAC* for review as of September 15, 2014. Written comments must be submitted and received by September 22, 2014, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

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

• *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.

• *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held during the open portion of the meeting on September 30, 2014, from 9:45 a.m.–10:15 a.m. and speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed thirty minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on September 22, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Crowell, Designated Federal Officer for the TMAC, FEMA, 1800 South Bell Street Arlington, VA 22202, telephone (202) 646–3432, or email *mark.crowell@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps; and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination; and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC must develop recommendations on how to ensure that Flood Insurance Rate Maps (FIRMs) incorporate the best available climate science to assess flood risks and ensure that FEMA uses the best available methodology to consider the impact of the rise in sea level and future development on flood risk. The TMAC must also develop a review report related to the implementation of a flood mapping program for the National Flood Insurance Program (NFIP).

Agenda: At the meeting, members will be informed of FEMA's vision, priorities, duties, reports, assignments, and structure for the TMAC. In addition, members will receive briefings on and discuss the following: future conditions risk assessment and modeling; Flood Insurance Rate Map accuracy, quality, ease of use, distribution, and dissemination; data accuracy, data quality, data currency, and data eligibility; performance metrics and milestones required to effectively and efficiently map flood risk areas; maintaining flood insurance rate maps and food risk identification; and delegating mapping activities to State and local mapping partners. There will be a public comment period on September 30 from 9:45 a.m. to 10:15 a.m. In addition, there will be 15 minute segments set aside towards the end of both days for comments from the public. The full agenda and related briefing materials will be available at *http://www.fema.gov/TMAC.*

Dated: September 10, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–21929 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1415]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On July 9, 2014, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained erroneous tables. This notice provides corrections to those tables, to be used in lieu of the information published at 79 FR 38926 and 79 FR 38927. The tables provided here represent the proposed flood hazard determinations and communities affected for the Narragansett HUC8 Watershed, including Bristol County, Massachusetts (All Jurisdictions), Norfolk County, Massachusetts (All Jurisdictions), and Plymouth County, Massachusetts (All Jurisdictions), and Des Moines County, Iowa, and Incorporated Areas.

DATES: Comments are to be submitted on or before December 15, 2014.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1415, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the tables below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 79 FR 38926 in the July 9, 2014, issue of the **Federal Register**, FEMA published a table titled Narragansett HUC8 Watershed. This table contained inaccurate information as to the online location for the Preliminary FIRM and FIS report for Bristol County, Massachusetts (All Jurisdictions), Norfolk County, Massachusetts (All Jurisdictions), and Plymouth County, Massachusetts (All Jurisdictions) featured in the table. In addition, in the proposed flood hazard determination notice published at 79 FR 38927 in the July 9, 2014, issue of the **Federal Register**, FEMA published a table titled Des Moines County, Iowa, and Incorporated Areas. This table contained inaccurate information as to the community map repository for the Unincorporated Areas of Des Moines County featured in the table. In this document, FEMA is publishing tables containing the accurate information. The information provided below should be used in lieu of that previously published.

I. Watershed-based studies:

Community	Community map repository address
Narragansett HUC8 Watershed	
Maps Available for Inspection Online at *http://www.fema.gov/preliminaryfloodhazarddata*	
Bristol County, Massachusetts (All Jurisdictions)	
City of Attleboro	City Hall, 77 Park Street, Attleboro, MA 02703.
City of Taunton	City Hall, 15 Summer Street, Taunton, MA 02780.
Town of Acushnet	Town Hall, 122 Main Street, Acushnet, MA 02743.
Town of Berkley	Town Hall, One North Main Street, Berkley, MA 02779.
Town of Dighton	Town Hall, 979 Somerset Avenue, Dighton, MA 02715.
Town of Freetown	Town Hall, Three North Main Street, Assonet, MA 02702.
Town of Mansfield	Town Hall, Six Park Row, Mansfield, MA 02048.
Town of North Attleborough	Town Hall, 43 South Washington Street, North Attleborough, MA 02760.
Town of Norton	Town Hall, 70 East Main Street, Norton, MA 02766.
Town of Raynham	Town Hall, 558 South Main Street, Raynham, MA 02767.

Community	Community map repository address
Town of Seekonk	Town Hall, 100 Peck Street, Seekonk, MA 02771.
Norfolk County, Massachusetts (All Jurisdictions)	
Town of Foxborough	Town Hall, 40 South Street, Foxborough, MA 02035.
Town of Plainville	Town Hall, 142 South Street, Plainville, MA 02762.
Plymouth County, Massachusetts (All Jurisdictions)	
Town of Bridgewater	Memorial Building, 151 High Street, Bridgewater, MA 02324.
Town of East Bridgewater	Town Hall, 175 Central Street, East Bridgewater, MA 02333.
Town of Halifax	Town Hall, 499 Plymouth Street, Halifax, MA 02338.
Town of Lakeville	Town Hall, 346 Bedford Street, Lakeville, MA 02347.
Town of Middleborough	Town Hall Annex, 20 Centre Street, Middleborough, MA 02346.
Town of Rochester	Town Hall Annex, 37 Marion Way, Rochester, MA 02770.

II. Non-watershed-based studies:

Community	Community map repository address
Des Moines County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Des Moines County	Southeast Iowa Regional Planning Commission, 211 North Gear Avenue, Suite 100, West Burlington, Iowa 52655.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 26, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–21928 Filed 9–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0045]

Agency Information Collection Activities: Petition by Entrepreneur To Remove Conditions, Form I–829; Revision of a Currently Approved Collection

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 14, 2014.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0045 in the subject box, the agency name and Docket ID USCIS–2006–0009. To avoid duplicate

submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.regulations.gov* under e-Docket ID number USCIS–2006–0009;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional resident status, and on the conditional resident status for his or her spouse and children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–829 is 1,500 and the estimated hour burden per response is 3 hours (180 minutes), and for biometrics collection 1,500 at 1.16 hours (70 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 6,240 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $183,750.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: September 9, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–21876 Filed 9–12–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N184; FXES11130200000–145–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before October 15, 2014.

ADDRESSES: Wendy Brown, Chief, Recovery and Restoration Branch, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6665.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR

17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–41812B

Applicant: U.S. Geological Survey–Leetown Science Center, Leetown, West Virginia.

Applicant requests a new permit for research and recovery purposes to hold and conduct genetic research on fountain darters (*Etheostoma fonticola*) that will be obtained from U.S. Fish and Wildlife Service fish hatcheries, at the science center in West Virginia.

Permit TE–082497

Applicant: Huggins Enterprises, LLC., Ardmore, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Arkansas, Kansas, Oklahoma, and Texas.

Permit TE–89061A

Applicant: Arizona State University School of Life Sciences, Tempe, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) within Arizona, including soil core collections and ecological monitoring for soil moisture, soil type, population size, disturbance level, and species richness.

Permit TE–41814B

Applicant: Tucson Audubon Society, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico and Arizona.

Permit TE–118414

Applicant: Cherokee Nation, Tahlequah, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Oklahoma.

Permit TE–063395

Applicant: Jenks Aquarium Authority, Jenks, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding for educational purposes for the loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles at the aquarium in Oklahoma.

Permit TE–44542B

Applicant: Olsson Associates, Oklahoma City, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Oklahoma:

- American burying beetle (*Nicrophorus americanus*)
- Gray bat (*Myotis grisescens*)
- Indiana bat (*Myotis sodalis*)
- Interior least tern (*Sterna antillarum*)
- Leopard darter (*Percina pantherina*)
- Neosho madtom (*Noturus placidus*)
- Ouachita pocketbook (*Arkansia wheeleri*)
- Ozark big-eared bat (*Corynorhinus townsendii ingens*)
- Piping plover (*Charadrius melodus*)
- Whooping crane (*Grus americana*)
- Winged mapleleaf (*Quadrula fragosa*)

Permit TE–141253

Applicant: Priscilla Crawford, Norman, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of interior least tern (*Sterna antillarum*) within Oklahoma.

Permit TE–44544B

Applicant: Russell Zora, Bartlesville, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Oklahoma, Arkansas, Missouri, and Kansas.

Permit TE–150490

Applicant: John Maresh, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapilla*) and golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–44545B

Applicant: Michael Horvath, Dripping Springs, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Texas:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (Unnamed) (*Rhadine exilis)*
- Ground beetle (Unnamed) (*Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Houston toad (*Bufo houstonensis*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta* (=*Leptoneta*) *myopica*)

Permit TE–44547B

Applicant: Thomas Dixon, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species within Texas:

- Barton Springs salamander (*Eurycea sosorum*)
- Black-capped vireo (*Vireo atricapilla*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Fountain darter (*Etheostoma fonticola*)

- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Houston toad (*Bufo houstonensis*)
- Interior least tern (*Sterna antillarum*)
- Northern aplomado falcon (*Falco femoralis*)
- Peck's Cave amphipod (*Stygobromus* (=*stygonectes*) *pecki*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- San Marcos gambusia (*Gambusia georgei*)
- San Marcos salamander (*Eurycea nana*)
- Texas blind salamander (*Eurycea rathbuni*)

Permit TE–051819

Applicant: Fort Worth Zoo, Fort Worth, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct husbandry and holding of black-footed ferrets (*Mustela nigripes*), Barton Springs salamanders (*Eurycea sosorum*), and Houston toads (*Bufo houstonensis*) at the zoo in Texas.

Permit TE–841

Applicant: Bowman Consulting Group, Ltd., Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Attwater's greater-prairie chicken (*Tympanuchus cupido attwateri*)
- Barton Springs salamander (*Eurycea sosorum*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Comal Springs dryopid beetle (*Stygoparnus comalensis*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Fountain darter (*Etheostoma fonticola*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (Unnamed) (*Rhadine exilis)*
- Ground beetle (Unnamed) (*Rhadine infernalis*)
- Hawksbill sea turtle (*Eretmochelys imbricata*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Houston toad (*Bufo houstonensis*)
- Interior least tern (*Sterna antillarum*)
- Jaguarundi (*Herpailurus yagouaroundi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Mexican long-nosed bat (*Leptonycteris nivalis*)
- Northern aplomado falcon (*Falco femoralis*)
- Ocelot (*Leopardus pardalis*)
- Peck's Cave amphipod (*Stygobromus* (=*stygonectes*) *pecki*)
- Piping plover (*Charadrius melodus*)
- Red-cockaded woodpecker (*Picoides borealis*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- San Marcos salamander (*Eurycea nana*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Texas blind salamander (*Eurycea rathbuni*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta* (=*Leptoneta*) *myopica*)
- Whooping crane (*Grus americana*)

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: September 4, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21922 Filed 9–12–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B711.IA000814]

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Extension of Tribal-State Class III Gaming Compact.

SUMMARY: This notice addresses the Extension of the Class III gaming compact between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* September 15, 2014.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 293.5, an extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not amend the terms of the compact. The Rosebud Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration of their existing Tribal-State Class III gaming compact to February 10, 2015. This notice publishes the new expiration date of the compact.

Dated: September 10, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–21931 Filed 9–12–14; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–16404; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Burke Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Burke Museum at the address in this notice by October 15, 2014.

ADDRESSES: Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 x2, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Burke Museum, Seattle, WA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Between 1929 and 1930, seven copper rod bracelets were brought to the Burke Museum by an unknown donor. The Burke Museum ledger lists these bracelets as identified by Leslie Spier, a professor of Anthropology at the University of Washington, as from ''Possibly Eastern Washington.'' The box in which these bracelets were stored was labeled as being from ''SE. Washington Plateau Area.'' The bracelets were not accessioned by the Burke Museum until 1993, under accession number 1993–1.

These bracelets and material type are typical of the cultural items found in burials in Eastern Washington and is consistent with Native American Plateau customs of burying the dead with personal adornment items. During consultation, information was provided that indicates that the aboriginal ancestors occupying the area were highly mobile and traveled the landscape for gathering resources, as well as trade, and are all part of the more broadly defined Plateau cultural community. This Plateau cultural community is represented by the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon), the Confederated Tribes of Warm Springs Reservation of Oregon, the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho), and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.

Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 7 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon), the Confederated Tribes of Warm Springs Reservation of Oregon, the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho), and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 x2, email *plape@uw.edu,* by October 15, 2014. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon), the Confederated Tribes of Warm Springs Reservation of Oregon, the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho), and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group, may proceed.

The Burke Museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon), the Confederated Tribes of Warm Springs Reservation of Oregon, the Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho), and the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group, that this notice has been published.

Dated: August 1, 2014.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–21900 Filed 9–12–14; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Personal Transporters, Components Thereof, and Manuals Therefor, DN 3032;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR. 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and 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 United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] 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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Segway, Inc. and DEKA Products Limited Partnership on September 9, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (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 personal transporters, components thereof, and manuals therefor. The complaint names as respondents PowerUnion (Beijing) Tech Co. Ltd. of China; UPTECH Robotics Technology Co., Ltd. of China; Beijing Universal Pioneering Robotics Co., Ltd. of China; Beijing Universal Pioneering Technology Co., Ltd. of China; Ninebot Inc. (China) of China; Ninebot Inc. (USA) of Newark, DE; Shenzhen INMOTION Technologies Co., Ltd. of China; Robstep Robot Co., Ltd. of China; FreeGo High-Tech Corporation Limited of China; Freego USA, LLC of Sibley, IA; Tech in the City of Honolulu, HI; Roboscooters.com of Laurel Hill, NC; and EcoBoomer Co. Ltd. of Malibu, CA. The complainant requests that the Commission issue a general exclusion order, a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3032'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 9, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21934 Filed 9–12–14; 8:45 am]

BILLING CODE 7020–02–P

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1110–0015]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection (1–699 and 1–700) Quarterly Hate Crime Report and Hate Crime Incident Report

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 134, page 40779, on July 14, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until October 15, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mrs. Amy Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone 304–625–4830, facsimile, 304 625–3566. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send to *OIRA_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Quarterly Hate Crime Report and Hate Crime Incident Report.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are 1–699 and 1–700. The applicable component within the Department of Justice, the Federal Bureau of Investigation, Criminal Justice Information Services Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public who are asked to voluntarily respond is city, county, state, tribal, and federal U.S. law enforcement. Under Title 28, U.S. Code, Section 534, this information collection requests hate crime data from respondents in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of hate crime data and to publish these statistics annually in Hate Crime Statistics. This provides for the national UCR Program a record of each crime incident including the offense classification and its respective bias motivation, the number and type of victims, the location of the incident, the number of suspected offenders, the suspected offender's race, and whether the victims and offenders are under 18 or over the age of 18.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There is a potential of 18,290 law enforcement agency respondents; 11,357 for the Summary Reporting System (SRS) and 6,933 for the National Incident-Based Reporting System (NIBRS). NIBRS burden hours are collected on the NIBRS Information Collection Request. Calculated estimates for an SRS respondent to respond indicate 7 minutes per quarter. The total annual burden hour per respondent is 28 minutes.

Total Annual Hour Burden:

7 minutes × 4 quarters = 28 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 5,300 hours, annual burden, associated with this information collection.

11,357 respondents × 4 responses/year = 45,428 total annual responses.

45,428 × 7 minutes/60 minutes = 5,300 total annual hour burden.

(This burden estimate does not include the 6,933 NIBRS agencies; the NIBRS burden hours are captured in the NIBRS Information Collection Request.)

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3W–1407B, Washington, DC 20530.

Dated: September 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–21908 Filed 9–12–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0309]

Agency Information Collection Activities; Proposed eCollection eComments Requested; International Terrorism Victim Compensation Program Application

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 79, Number 126, page 37353 on July 1, 2014, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until October 15, 2014.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chandria Slaughter, Program Manager, Office of Victims of Crime, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection 1117–0309

(1) *Type of Information Collection:* Reinstatement of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* International Terrorism Victim Expense Reimbursement Program Application.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Office of Victims of Crime, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other: none.

Abstract: The application is necessary for victims/claimants to request reimbursement of funds. Collection of information is necessary to assist OVC staff to objectively, fairly, and equitably determine distribution of reimbursement of funds and account for allocation of funds. Respondents will include U.S. government employees and U.S. Nationals who become victims of international terrorism that occurs outside of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100 respondents will complete the certification in approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The estimated total public burden associated with this information collection is 75 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: September 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–21907 Filed 9–12–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0003]

Agency Information Collection Activities; Proposed Collection Comments Requested; Fee Waiver Request

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until November 14, 2014.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Fee Waiver Request.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26A, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: An individual submitting an appeal or motion to the Board of Immigration Appeals. Other: Attorneys and qualified representatives representing an alien in immigration proceedings before EOIR. Abstract: The information on the fee waiver request form is used by the Board of Immigration Appeals to determine whether the requisite fee for a motion or appeal will be waived due to an individual's financial situation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8,614 respondents will complete the form annually with an average of 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 8,614 hours. It is estimated that respondents will take six minutes to complete the form.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–21906 Filed 9–12–14; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Telephone Point of Purchase Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before November 14, 2014.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allows items that are priced in the CPI to be properly weighted.

II. Current Action

Office of Management and Budget clearance is being sought for the Telephone Point of Purchase Survey.

Since 1997, the survey has been administered quarterly via a computer-assisted-telephone-interview. This survey is flexible and creates the possibility of introducing new products into the CPI in a timely manner. The data collected in this survey are necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers. TPOPS will transition from the 1998 to the 2018 geographic redesign over the next several years, resulting in a reduction of the number of PSUs from 87 to 75 when fully implemented. TPOPS will also transition from a four panel to an eight panel design, which will result in significant costs savings when fully implemented.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: The Telephone Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 21,827.

Frequency: Quarterly.

Total Responses: 55,571.

Average Time per Response: 12.76 minutes.

Estimated Total Burden Hours: 11,818 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 9th day of September 2014.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2014–21903 Filed 9–12–14; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–094)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee (PSS) of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Friday, October 10, 2014, 12:00 p.m.–2:30 p.m., Local Time.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–3092, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public telephonically. Any interested person

may call the USA toll free conference call number 800–988–9663, passcode 8015, to participate in this meeting by telephone. The agenda for the meeting includes the following topic: Earth Science Division Research Performance for Fiscal Year 2014.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–21942 Filed 9–12–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–092)]

NASA Federal Advisory Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Annual invitation for public nominations by U.S. citizens for service on NASA science advisory subcommittees.

SUMMARY: NASA announces its annual invitation for public nominations for service on NASA science advisory subcommittees. The five science advisory subcommittees report to the Science Committee of the NASA Advisory Council (NAC), a Federal Advisory Committee. U.S. citizens may submit self-nominations for consideration to fill unscheduled intermittent vacancies on NASA's science advisory subcommittees. NASA's science advisory subcommittees have member vacancies from time to time throughout the year, and NASA will consider self-nominations to fill such intermittent vacancies. *Nominees will only be contacted should a vacancy arise and it is judged that their area(s) of expertise is appropriate for that unscheduled vacancy.* NASA is committed to selecting members to serve on its science advisory subcommittees based on their individual expertise, knowledge, experience, and current/past contributions to the relevant subject area.

The following qualifications/experience are highly desirable in nominees, and should be clearly presented in their self-nomination letters:

- At least 10 years post-Ph.D. research experience including publications in the scientific field of the subcommittee for which they are nominated, or comparable experience;
- Leadership in scientific and/or education and public outreach fields as evidenced by award of prizes, invitation to national and international meetings as speaker, organizer of scientific meetings/workshops, or comparable experience;
- Participation in NASA programs either as member of NASA mission science team, Research & Analysis program, membership on an advisory/working group or a review panel, or comparable experience;
- Good knowledge of NASA programs in the scientific field of the subcommittee for which they are applying, including the latest NASA Science Plan (available as a link from *http://science.nasa.gov/about-us/science-strategy/*), or comparable experience; and,
- Knowledge of the latest Decadal Survey conducted by the National Research Council or other relevant advisory reports for the scientific field of the subcommittee.

Nominees from any category of organizations or institutions within the U.S. are welcome, including, but not limited to, educational, industrial, and not-for-profit organizations, Federally Funded Research and Development Centers (FFRDCs), University Affiliated Research Centers (UARCs), NASA Centers, the Jet Propulsion Laboratory (JPL), and other Government agencies. Nominees need not be presently affiliated with any organization or institution.

These are not full-time positions and the likelihood that an unscheduled vacancy will occur in the coming year is unknown at this time. Successful nominees will be required to attend meetings of the subcommittee approximately two or three times a year, either in person (NASA covers travel-related expenses for this non-compensated appointment) or via telecon and/or virtual meeting medium. Successful nominees who are not already U.S. Government employees will become Special Government Employees (SGEs). All successful nominees will be required to submit a confidential financial disclosure form, and undergo a conflict of interest review by the NASA Office of the General Counsel, before their appointment is finalized.

DATES: The deadline for NASA receipt of all public nominations is October 1, 2014.

ADDRESSES: To be considered by NASA, self-nomination packages from interested U.S. citizens must be sent to NASA as an email and must include the name of the specific NASA science advisory group of interest. Self-nomination packages are limited to specifying interest in only one NASA science advisory subcommittee per year. The following information is required to be included as part of each self-nomination package: (1) A cover email including the name of the specific NASA science advisory subcommittee of interest; (2) a professional resume (one-page maximum, included as an attachment); and, (3) a professional biography (one-page maximum; included as an attachment). All public self-nomination packages must be submitted electronically via email to NASA to one of the addresses listed below; paper-based documents sent through postal mail (hard-copies) will not be accepted. Note: Self-nomination packages that do not include the three (3) mandatory elements listed above will not receive further consideration by NASA.

Please submit the nomination as a single package containing the cover email and both required attachments electronically to the specific email identified for the science subcommittee of interest:

Astrophysics Subcommittee (APS),—*aps-execsec@hq.nasa.gov*.
Earth Science Subcommittee (ESS)—*ess-execsec@hq.nasa.gov*.
Heliophysics Subcommittee (HPS)—*hps-execsec@hq.nasa.gov*.
Planetary Protection Subcommittee (PPS)—*pps-execsec@hq.nasa.gov*.
Planetary Science Subcommittee (PSS)—*pss-execsec@hq.nasa.gov*.

FOR FURTHER INFORMATION CONTACT: To obtain further information on NASA's science advisory subcommittees, please visit the NAC Science Committee's subcommittee Web site noted below.

SUPPLEMENTARY INFORMATION: NASA's five (5) current science advisory subcommittees are listed below. Additional information about these science subcommittees may be found at the NAC Science Committee's subcommittee Web site at *http://science.nasa.gov/science-committee/subcommittees/:*

- Astrophysics Subcommittee (APS)—The Astrophysics Subcommittee is a standing subcommittee of the NAC Science Committee supporting the advisory needs of the NASA Administrator, the Science Mission Directorate (SMD), SMD's Astrophysics Division, and other NASA Mission Directorates as required. The scope of the APS includes projects and observational and theoretical study of the origins, evolution, and destiny of the

universe and the search for and study of Earth-like planets and habitable, extrasolar environments. In addition to scientific research, the scope encompasses considerations of the development of near-term enabling technologies, systems, and computing and information management capabilities, developments with the potential to provide long-term improvements in future operational systems, as well as training of the next generation of astronomers, and education and public outreach.

• Earth Science Subcommittee (ESS)—The Earth Science Subcommittee is a standing subcommittee of the NASA Advisory Council's (the Council) Science Committee supporting the advisory needs of the Administrator, the Science Mission Directorate (SMD), SMD's Earth Science Division (ESD), and other NASA Mission Directorates as required. The scope of the ESS includes the advancement of scientific knowledge of the Earth system through space-based observation and the pioneering use of these observations in conjunction with process studies, data assimilation and modeling to provide the Nation with improved capability to: predict climate variability, global change, and weather; mitigate and respond to natural hazards; and improve the scientific basis for policy decisions. In addition to observations and scientific research, the scope encompasses the development of computing and information management capabilities and other enabling technologies, including those with the potential to improve future operational satellite and ground systems.

• Heliophysics Subcommittee (HPS)—Heliophysics Subcommittee is a standing subcommittee of the NASA Advisory Council's (the Council) Science Committee supporting the advisory needs of the Administrator, the Science Mission Directorate (SMD), SMD's Heliophysics Division (HPD), and other NASA Mission Directorates as required. The scope of the HPS includes all aspects of heliophysics, including the dynamical behavior of the Sun and its heliosphere; the dynamical behavior of the space environments of the Earth and other solar system bodies; the multi-scale interaction between solar system plasmas and the interstellar medium; and energy transport throughout the solar system and its impact on the Earth and other solar system bodies. In addition to scientific research, the scope encompasses considerations of the development of enabling technologies, systems, and computing and information management capabilities, as well as developments with the potential to provide long-term improvements to future space weather operational systems.

• Planetary Protection Subcommittee (PPS)—Planetary Protection Subcommittee is a standing subcommittee of the NASA Advisory Council's (the Council) Science Committee supporting the advisory needs of the Administrator, the Science Mission Directorate (SMD), SMD's Planetary Science Division, NASA's Planetary Protection Officer and other NASA Mission Directorates as required. The scope of the PPS includes programs, policies, plans, hazard identification and risk assessment, and other matters pertinent to the Agency's responsibilities for biological planetary protection. This scope includes consideration of NASA planetary protection policy documents, implementation plans, and organization. The subcommittee will review and recommend appropriate planetary protection categorizations for all bodies of the solar system to which spacecraft will be sent. The scope also includes the development of near-term enabling technologies, systems, and capabilities, as well as developments with the potential to provide long-term improvements in future operational systems to support planetary protection. Outside the scope of the Subcommittee's responsibilities are issues that pertain solely to the quality and interpretation of scientific experiments and data in support of solar system exploration.

• Planetary Science Subcommittee (PSS)—Planetary Science Subcommittee is a standing subcommittee of the NASA Advisory Council's (the Council) Science Committee supporting the advisory needs of the Administrator, the Science Mission Directorate (SMD), SMD's Planetary Science Division (PSD), and other NASA Mission Directorates as required. The scope of the PSS includes all aspects of planetary science, scientific exploration of the Moon and Mars, the robotic exploration of the solar system, astrobiology, space- and ground-based research, technology development, planning, and training required to support these science areas. In addition to scientific research, the scope encompasses considerations of the development of near-term enabling technologies, systems, and computing and information management capabilities, as well as developments with the potential to provide long-term improvements in future operational systems. Responsibility for biological planetary protection is outside the purview of the PSS and resides with the Planetary Protection Subcommittee (PPS).

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–21877 Filed 9–12–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: The National Endowment for the Humanities will hold fourteen meetings of the Humanities Panel, a federal advisory committee, during October, 2014. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at Constitution Center, 400 7th Street SW., Washington, DC 20506. See Supplementary Information section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW. Room 4060, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: October 01, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications for the Bridging Cultures at Community Colleges grant program, submitted to the Division of Education Programs.

2. Date: October 02, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P003.
This meeting will discuss applications on the subjects of U.S. History and Culture for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

3. Date: October 07, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subjects of U.S. History and Culture for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. Date: October 09, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subjects of U.S. History and Culture for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

5. Date: October 15, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subject of the History of Science for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

6. Date: October 16, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subjects of Music and Performing Arts for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

7. Date: October 22, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subject of Art History for the Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

8. Date: October 23, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subject of History for the Media Projects: Production Grants, submitted to the Division of Public Programs.

9. Date: October 23, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subjects of New World Archeology and Culture for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

10. Date: October 27, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subject of History for the Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

11. Date: October 28, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subjects of Cultural History and Music for the Media Projects: Production Grants, submitted to the Division of Public Programs.

12. Date: October 28, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subject of World Studies for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

13. Date: October 29, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room 4002.
This meeting will discuss applications on the subject of History for the Museums, Libraries, and Cultural Organizations: Implementation Grants program, submitted to the Division of Public Programs.

14. Date: October 30, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Room P002.
This meeting will discuss applications on the subjects of History and Culture for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: September 9, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–21962 Filed 9–12–14; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362; NRC–2014–0170]

Southern California Edison Company; San Onofre Nuclear Generating Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions in response to a February 13, 2014, request from Southern California Edison Company (SCE, or the licensee), representing itself and the other owners. The exemptions would permit the use of San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, decommissioning Trust funds for purposes other than decommissioning activities and would allow the licensee to use withdrawals from the decommissioning Trust funds without prior notification to the NRC. The NRC has reviewed the Trusts and determined that, at this time, there is reasonable assurance of sufficient financial resources in the Trusts to complete decommissioning activities.

ADDRESSES: Please refer to Docket ID NRC–2014–0170 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0170. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the ADAMS public documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS Accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Wengert, Office of Nuclear Reactor Regulation, 301–415–4037; *Thomas.Wengert@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Southern California Edison Company (SCE), San Diego Gas & Electric Company, City of Riverside Utilities Department, and the City of Anaheim, California, (the licensees), are the holders of Facility Operating License Nos. NPF–10 and NPF–15, for SONGS, Units 2 and 3, respectively. SCE is authorized to act as the agent of the other owners. By letter dated June 12, 2013 (ADAMS Accession No. ML131640201), SCE submitted a certification to the U.S. NRC indicating it permanently ceased power operations at the SONGS Units 2 and 3 on June 7, 2013. By letters dated July 22, 2013 (ADAMS Accession No. ML13204A304), and June 28, 2013 (ADAMS Accession No. ML13183A391), respectively, SCE certified that it had permanently defueled the SONGS Units 2 and 3 reactor vessels.

The facility consists of two permanently shutdown and defueled pressurized-water reactors located in San Diego County, California.

II. Request/Action

By letter dated February 13, 2014 (ADAMS Accession No. ML14051A632), SCE submitted a request for exemptions from Section 50.82(a)(8)(i)(A) and Section 50.75(h)(2) of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR). The exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would permit withdrawal and the use of a portion of the funds in the SCE Decommissioning Trust Funds (Trusts) for financing irradiated fuel management and site restoration activities. The licensee's requested exemption from 10 CFR 50.75(h)(2) would permit Trust withdrawals to be made without prior notification of the NRC, in the same manner as withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities. The licensee supplemented this exemption request by letter dated March 12, 2014 (ADAMS Accession No. ML14078A028).

The requirements of 10 CFR 50.82(a)(8)(i)(A) restrict the use of decommissioning Trust fund withdrawals to expenses for legitimate decommissioning activities consistent with the definition of decommissioning in 10 CFR 50.2. The definition of ''decommission'' in 10 CFR 50.2 is as follows: to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

The definition does not include other activities, such as irradiated fuel management or site restoration activities. The requirements of 10 CFR 50.75(h)(2) also restrict the use of decommissioning Trust fund disbursements (other than for ordinary administrative costs and incidental expenses) to decommissioning expenses until final radiological decommissioning is completed. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are needed to allow SCE to withdraw funds from the Trusts for activities other than decommissioning activities prior to completion of all radiological decommissioning activities.

The requirements of 10 CFR 50.75(h)(2) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payment of ordinary and incidental expenses, no disbursement may be made from the Trust without written notice to the NRC at least 30 working days in advance. Therefore an exemption from 10 CFR 50.75(h)(2) is also needed to allow SCE to withdraw funds from the Trusts for activities other than decommissioning activities without prior NRC notification.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, the following:

(a) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(b) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

These exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would allow SCE to use a portion of the funds from the Trusts for activities other than decommissioning activities without prior notice to the NRC. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors. Based on the site-specific cost estimate and the cash flow analysis, use of the Trusts in the proposed manner will not adversely impact SCE's ability to complete radiological decontamination within 60 years and terminate the SONGS licenses. Furthermore, exemption from 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the Trusts without prior written notification to the NRC should not affect the sufficiency of funds in the Trusts to accomplish radiological decontamination of the site.

Based on the above, no new accident precursors are created by using the Trusts in the proposed manner. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there is no undue risk to public health and safety.

C. Consistent With the Common Defense and Security

The proposed exemptions would allow SCE to use funds from the Trusts for irradiated fuel management and site restoration. Irradiated fuel management under 10 CFR 50.54(bb) is an integral part of the planned SCE decommissioning and final license termination process and will not adversely affect SCE's ability to physically secure the site or protect special nuclear material. This change to enable use of a portion of the funds from the Trusts for activities other than decommissioning activities will not alter the scope of, or availability of funding for the licensee's security program. Therefore, the common defense and security is not impacted by this exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) are to provide reasonable assurance that adequate funds will be available for radiological decommissioning of power reactors. Strict application of these requirements would prohibit withdrawal of funds from the Trusts for activities other than decommissioning activities until final radiological decommissioning at SONGS, Units 2 and 3 has been completed.

The SONGS, Units 2 and 3 total Decommissioning Trust Funds balance as of December 31, 2013, was $3,926 million in 2013 dollars. The SCE analysis projects that the total radiological decommissioning cost of SONGS to be approximately $1,769 million (2013 dollars). As required by 10 CFR 50.54(bb), SCE estimated the costs associated with the long-term irradiated fuel management at $1,487 million in (2013 dollars). The total expenditures for site restoration are estimated at $1,098 million (2013 dollars). The NRC staff performed an independent cash flow analysis of the Trusts through 2051 (assuming an annual real rate of return of 2%, as allowed by 10 CFR 50.75(e)(1)(ii)) and determined the projected earnings of the Trust. The staff confirmed that the current funds, planned future contributions and projected earnings of the Trusts provide reasonable assurance of adequate funding to complete all NRC required decommissioning activities, and that SCE's site-specific decommissioning cost analysis demonstrates adequate funds are available in the Trusts to also conduct irradiated fuel management and site restoration activities. The staff's review and conclusions are based on SCE's specific financial situation as described in the February 13, 2014, and March 12, 2014, letters. Therefore, SCE has demonstrated reasonable assurance that sufficient funding will be available for radiological decommissioning, irradiated fuel management, and site restoration activities and that the exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 50.75(h)(2), with respect to the use of funds from the Trusts for irradiated fuel management and site restoration activities, will still achieve the underlying purposes of the rule.

In its submittal, SCE also requested exemption from the requirements of 10 CFR 50.75(h)(2) concerning prior written notification to the NRC of withdrawals from the Trusts to fund activities other than decommissioning activities. The underlying purpose of notifying the NRC prior to withdrawal of funds from the Trusts is to provide opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8) that could result in insufficient funds in the Trust to accomplish radiological decontamination of the site.

By granting the exemptions to 10 CFR 50.75(h)(2) and 10 CFR 50.82(a)(8), the staff considers that withdrawals consistent with the licensee's submittal dated February 13, 2014, as supplemented on March 12, 2014, are authorized. As stated previously, the NRC staff has determined that there are sufficient funds in the Trusts to complete legitimate radiological decommissioning activities and to conduct irradiated fuel management and site restoration activities. Pursuant to the annual reporting requirements in 10 CFR 50.82(a)(8)(v)–(vii), licensees are required to monitor and report the status of the decommissioning Trust fund and the funding status for managing irradiated fuel. These reports provide the NRC with awareness of and the ability to take action on any actual or potential funding deficiencies. The requested exemption would not allow withdrawal of funds from the SONGS Trusts for any other purpose that is not currently authorized in the regulations without prior notification to the NRC. Therefore, the granting of this exemption to 10 CFR 50.75(h)(2) to allow the licensee to make withdrawals from the Trusts without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii) are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The licensee states that the Trusts contain funds in excess of the estimated costs of radiological decommissioning and that these excess funds are needed for irradiated fuel management and site restoration activities. The NRC does not preclude use of funds from the decommissioning Trust in excess of those needed for radiological decommissioning for other purposes, such as irradiated fuel management or site restoration. The NRC has stated that funding for irradiated fuel management and other site restoration activities may be commingled in the decommissioning Trust provided the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for irradiated fuel management (see NRC Regulatory Issue Summary 2001–07, Rev 1, ''10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning,'' dated January 8, 2009 [ADAMS Accession No. ML083440158], and Regulatory Guide 1.184, Rev 1, ''Decommissioning of Nuclear Power Reactors,'' [ADAMS Accession No. ML13144A840]). To prevent access to those excess funds in the Trusts because irradiated fuel management and site restoration are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the Trusts to cover the cost of activities associated with irradiated fuel management and site restoration in addition to radiological decommissioning is supported by the NRC staff's site-specific decommissioning cost analysis. If SCE cannot use its Trusts for irradiated fuel management and site restoration activities, it would need to obtain additional funding that would not be recoverable from the Trusts, or SCE would have to modify its decommissioning approach and methods. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when the regulation was adopted.

Therefore, since the underlying purposes of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) would be achieved by allowing SCE to use a portion of the Trusts for irradiated fuel management and site restoration activities without prior NRC notification, and compliance with the rules would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment, (see Environmental Assessment and Finding

of No Significant Impact published on July 23, 2014, 79 FR 42837).

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE exemptions from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(2) to allow withdrawals from the SONGS, Units 2 and 3 Trusts, for irradiated fuel management and site restoration activities without prior NRC notification.

The exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 5th day of September 2014.

For the Nuclear Regulatory Commission.

A. Louise Lund, Acting Director,

Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–21932 Filed 9–12–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31245; 812–14240]

BNY Mellon Funds Trust, *et al.;* Notice of Application

September 9, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from sections 12(d)(1)(A), (B), and (C) of the 1940 Act, under sections 6(c) and 17(b) of the 1940 Act for an exemption from sections 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY: *Summary of the Application:* Applicants request an order that would permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management investment companies, registered closed-end management investment companies, ''business development companies,'' as defined by section 2(a)(48) of the 1940 Act (''business development companies''), and registered unit investment trusts that are within or outside the same group of investment companies as the acquiring investment companies.

Applicants: BNY Mellon Funds Trust (''BNY Mellon Funds''); Dreyfus BNY Mellon Funds, Inc. (''Dreyfus BNY Mellon Funds''); Dreyfus Premier Investment Funds, Inc. (''Premier Investment Funds''); Strategic Funds, Inc. (''Strategic Funds'') (each an ''Investment Company,'' and collectively, the ''Investment Companies''); The Dreyfus Corporation (''Adviser''); and MBSC Securities Corporation (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on November 19, 2013, and amended on April 10, 2014 and August 8, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 6, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Jeff Prusnofsky, Esq., The Dreyfus Corporation, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: David Joire, Senior Counsel, at (202) 551–6866, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Investment Company is an open-end management investment company that is registered under the 1940 Act and has multiple series which pursue distinct investment objectives and strategies. BNY Mellon Funds is organized as a Massachusetts business trust. Dreyfus BNY Mellon Funds, Premier Investment Funds and the Strategic Funds are organized as Maryland corporations.[1]

2. The Adviser, a New York corporation, is a registered investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to each of the Funds of Funds (as defined below).[2] The Distributor is a Broker (as defined below) and serves as the existing Funds' principal underwriter and distributor.

3. Applicants request relief to the extent necessary to permit: (a) A Fund (each, a ''Fund of Funds,'' and collectively, the ''Funds of Funds'') to acquire shares of registered open-end management investment companies (each an ''Unaffiliated Open-End Investment Company''), registered closed-end management investment companies, business development companies (each registered closed-end management investment company and each business development company, an ''Unaffiliated Closed-End Investment Company'' and, together with the Unaffiliated Open-End Investment Companies, the ''Unaffiliated Investment Companies''), and registered unit investment trusts (''UITs'') (the ''Unaffiliated Trusts,'' collectively with the Unaffiliated Investment Companies, the ''Unaffiliated Funds''), in each case, that are not part of the same ''group of investment companies'' as the Funds of Funds;[3] (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (the ''1934 Act'') (''Broker'') to sell shares of such Unaffiliated Funds to the Funds of

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[1] Applicants request that the order apply to each existing and each future series of the Investment Companies, and to each existing and future registered open-end management investment company or series thereof which is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and which is part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Investment Companies (each a ''Fund'' and collectively, ''Funds''). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] All references to the term ''Adviser'' include successors-in-interest to the Adviser. A successor-in-interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. BNY Mellon Fund Advisers, a division of the Adviser, is the investment adviser to the series of BNY Mellon Funds and is deemed to be incorporated within the term ''Adviser'' as used herein.

[3] For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies and business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

Funds; (c) the Funds of Funds to acquire shares of other registered investment companies, including open-end management investment companies and series thereof, closed-end management investment companies and UITs, as well as business development companies (if any), in the same group of investment companies as the Funds of Funds (collectively, the ''Affiliated Funds,'' and, together with the Unaffiliated Funds, the ''Underlying Funds''); [4] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the Funds of Funds.[5] Applicants also request an order under sections 6(c) and 17(b) of the 1940 Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds organized as open-end management investment companies and UITs to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the 1940 Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the 1940 Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) of the 1940 Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) of the 1940 Act from the limitations of sections 12(d)(1)(A), (B) and (C) to the extent necessary to permit: (i) The Funds of Funds to acquire shares of Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) and (C) of the 1940 Act; and (ii) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the 1940 Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. Applicants assert that the concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds because they are part of the same group of investment companies. To limit the control a Fund of Funds or Fund of Funds Affiliate [6] may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the 1940 Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the ''Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the 1940 Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the 1940 Act to a Fund of Funds (''Sub-Adviser'') and any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the ''Sub-Adviser Group'').

5. With respect to closed-end Underlying Funds, applicants note that although closed-end funds (including business development companies) may not be unduly influenced by a holder's right of redemption, closed-end Underlying Funds may be unduly influenced by a holder's ability to vote a large block of stock. To address this concern, applicants submit that, with respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such

[4] Certain of the Underlying Funds may be registered under the 1940 Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (collectively, ''ETFs'' and each, an ''ETF''). In addition, certain of the Underlying Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the 1940 Act. In accordance with condition 12, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies'' as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies'' as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

[5] Applicants state that they do not believe that investments in business development companies present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

[6] A ''Fund of Funds Affiliate'' is the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser(s), sponsor, promoter or principal underwriter of any Unaffiliated Fund or any person controlling, controlled by or under common control with any of those entities.

Unaffiliated Closed-End Investment Company's shares. Applicants state that, in this way, an Unaffiliated Closed-End Investment Company will be protected from undue influence by a Fund of Funds through the voting of the Unaffiliated Closed-End Investment Company's shares.

6. Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[7]

7. To further ensure that an Unaffiliated Investment Company understands the implications of a Fund of Funds' investment under the requested exemptive relief, prior to its investment in the shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the 1940 Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that each of their boards of directors or trustees (each, a ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (the ''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (including an ETF or an Unaffiliated Closed-End Investment Company) would also retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the 1940 Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, an Unaffiliated Investment Company (other than an ETF or an Unaffiliated Closed-End Investment Company whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds. Finally, subject solely to the giving of notice to a Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Fund (including an ETF or an Unaffiliated Closed-End Investment Company) could terminate a Participation Agreement with the Fund of Funds.

8. Applicants state that they do not believe that the proposed arrangement will result in excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the 1940 Act (the ''Independent Board Members''), will find that the management or advisory fees charged under a Fund of Funds' advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the 1940 Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants further state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830'').[8]

10. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the 1940 Act in excess of the limits contained in section 12(d)(1)(A) of the 1940 Act, except in certain circumstances identified in condition 12 below.

B. Section 17(a)

1. Section 17(a) of the 1940 Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the 1940 Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under the common control of the Adviser and, therefore, affiliated persons of one another. Applicants also state that the Funds of Funds and Underlying Funds organized as open-end management investment companies and UITs may also be deemed to be affiliated persons of one another if a Fund of Funds owns 5% or more of the outstanding voting securities of one or more of such Underlying Funds. Applicants state that the sale of shares by Underlying Funds organized as open-end management investment companies and UITs to the Funds of Funds and the purchase of those shares from the Funds of Funds by such Underlying Funds (through redemptions) could be deemed to violate section 17(a).[9]

3. Section 17(b) of the 1940 Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act. Section 6(c) of the 1940 Act permits the Commission to exempt any person or transactions from any provision of the 1940 Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b)

[7] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, sub-adviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, sub-adviser, member of an advisory board or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the 1940 Act.

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement Financial Industry Regulatory Authority rule to NASD Conduct Rule 2830.

[9] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the 1940 Act. The Participation Agreement also will include this acknowledgement.

and 6(c) of the 1940 Act. Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund that is an open-end investment company will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each such Underlying Fund.[10] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and any Underlying Fund, and with the general purposes of the 1940 Act.

Applicants' Conditions

A. Investments by Funds of Funds in Underlying Funds

Applicants agree that the order granting the requested relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of Section 2(a)(9) of the 1940 Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of Section 2(a)(9) of the 1940 Act. With respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for Section 3(c)(1) or Section 3(c)(7) of the 1940 Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by Section 12(d)(1)(E) of the 1940 Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by or under common control with the Sub-Adviser acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the 1940 Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Board Members, will adopt procedures reasonably designed to ensure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Investment Company or Unaffiliated Trust or any Unaffiliated Fund Affiliate of such Unaffiliated Investment Company or Unaffiliated Trust in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of Section 12(d)(1)(A)(i) of the 1940 Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Board Members, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Board Members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of Section 12(d)(1)(A)(i) of the 1940 Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that

[10] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the 1940 Act, of an ETF to purchase or redeem shares from the ETF. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is also an investment adviser to the Fund of Funds. Applicants further note that a Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund (including business development companies) through secondary market transactions at market prices rather than through principal transactions with the closed-end fund (or business development company). Accordingly, applicants are not requesting section 17(a) relief with respect to principal transactions with closed-end funds (including business development companies).

purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently, in an easily accessible place, a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of Section 12(d)(1)(A)(i) of the 1940 Act, setting forth (1) the party from whom the securities were acquired, (2) the identity of the underwriting syndicate's members, (3) the terms of the purchase, and (4) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in Section 12(d)(1)(A)(i) of the 1940 Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under Section 15 of the 1940 Act, the Board of each Fund of Funds, including a majority of the Independent Board Members, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to Rule 12b–1 under the 1940 Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on Section 3(c)(1) or Section 3(c)(7) of the 1940 Act, in excess of the limits contained in Section 12(d)(1)(A) of the 1940 Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with Section 12(d)(1)(E) of the 1940 Act and either is an Affiliated Fund or is in the same ''group of investment companies'' as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading Section 12(d)(1) of the 1940 Act); (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to engage in inter-fund borrowing and lending transactions; or (d) acquires securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21888 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31246; 812–14322]

Validea Capital Management, LLC, et al.; Notice of Application

September 9, 2014.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: ETF Series Solutions (the ''Trust''), Validea Capital Management, LLC (''Validea''), and Quasar Distributors, LLC (''Quasar'').

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of the Trust to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Creation Units for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on June 16, 2014, and amended on September 8, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders

a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 6, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549. Applicants: Validea Capital Management, LLC, 363 Ridgewood Road, West Hartford, CT 06107; ETF Series Solutions and Quasar Distributors, LLC, 615 East Michigan Street, 4th Floor, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at (202) 551–6882 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will offer Funds (as defined below), each of which will have distinct investment strategies and will attempt to achieve its investment objective by utilizing an active management strategy.

2. Validea, a Connecticut limited liability company, is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). An Adviser will be investment adviser to each Fund and may enter into subadvisory agreements with one or more affiliated or unaffiliated investment sub-advisers to a Fund (each, a ''Sub-Adviser''). Any Sub-Adviser will be registered or not subject to registration under the Advisers Act. Quasar, a Delaware limited liability company, is, and any other Distributor will be, registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act'').[1] A Distributor will serve as the principal underwriter and distributor for each of the Funds.

3. Applicants request that the order apply to future series of the Trust, including the Initial Fund, or of any other open-end investment company that may be created in the future that, in each case, (a) is an actively managed exchange-traded fund (''ETF''), (b) is advised by Validea or an entity controlling, controlled by, or under common control with Validea (each such entity or any successor entity thereto, an ''Adviser'')[2] and (c) complies with the terms and conditions of the application (individually a ''Fund,'' and collectively, the ''Funds'').[3]

4. The Funds may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets. Funds that invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets are ''Global Funds.'' Funds that invest solely in foreign equity securities or foreign fixed income securities are ''Foreign Funds.'' The Funds may also invest in ''Depositary Receipts''[4] and may engage in TBA Transactions (defined below). Applicants further state that, in order to implement each Fund's investment strategy, the Adviser and/or Sub-Advisers of a Fund may review and change the securities, or instruments, or other assets or positions held by the Fund (''Portfolio Positions'') daily.[5]

5. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund; (ii) any Acquiring Fund (as defined below); and (iii) any Brokers selling Shares of a Fund to an Acquiring Fund or any principal underwriter of a Fund. A management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Fund within the meaning of section 12(d)(1)(G)(ii) of the Act and that acquires Shares of a Fund in excess of the limits of Section 12(d)(1)(A) of the Act is referred to as an ''Acquiring Management Company'' or an ''Acquiring Trust,'' respectively, and the Acquiring Management Companies and Acquiring Trusts are referred to collectively as ''Acquiring Funds.''[6]

6. A Creation Unit will consist of at least 25,000 Shares and applicants expect that the trading price of a Share will range from $20 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC,'' and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

7. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business

[1] For purposes of the requested order, the term ''Distributor'' shall include any other entity that acts as the distributor and principal underwriter of the Creation Units of Shares of the Funds in the future and complies with the terms and conditions of the application.

[2] For the purposes of the requested order, ''successor'' is limited to an entity that would result from a reorganization into another jurisdiction or a change in the type of business organization.

[3] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[4] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited with the Depositary. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the Depositary for any Depositary Receipts held by a Fund.

[5] If a Fund invests in derivatives, then (a) the Fund's board of trustees or directors (for any entity, the ''Board'') will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[6] An Acquiring Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying

Continued

Day[8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[10] or (c) TBA Transactions,[11] short positions and other positions that cannot be transferred in kind[12] will be excluded from the Creation Basket.[13] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

8. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Global Funds and Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

9. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (a ''Listing Market''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Listing Market will disseminate, every 15 seconds throughout the regular trading hours, through the facilities of the Consolidated Tape Associate, an estimated NAV, which is an amount per Share representing the current value of the Portfolio Positions that were publicly disclosed prior to the commencement of trading in Shares on the Listing Market.

10. Each Fund will recoup the settlement costs charged by NSCC and DTC by imposing a fee (the ''Transaction Fee'') on investors purchasing or redeeming Creation Units. Where a Fund permits an in-kind purchaser or redeemer to deposit or receive cash in lieu of one or more Deposit or Redemption Instruments, the purchaser or redeemer may be assessed a higher Transaction Fee to offset the cost of buying or selling those particular Deposit or Redemption Instruments. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

11. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a Listing Market and it is expected that the relevant Listing Market will designate one or more member firms to maintain a market for the Shares.[15] The price of Shares trading on a Listing Market will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

12. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16] Applicants believe that the structure and operation of the Funds

redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day that the Trust is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Listing Market (including NYSE Arca, Inc.), one or more member firms of that Listing Market will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

13. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

14. Neither a Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on a Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

15. Each Fund's Web site (''Web site''), which will be publicly available prior to the offering of Shares, will include the Fund's prospectus (''Prospectus''), statement of additional information (''SAI''), and summary prospectus, if used. The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on a Listing Market, each Fund shall post on the Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the calculation of the NAV at the end of that Business Day.[17]

[17] Under accounting procedures followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants state that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers and (c) to ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants assert that the protections intended to be afforded by Section 22(d) and rule 22c–1 are adequately addressed by the proposed methods for creating, redeeming and pricing Creation Units and pricing and trading Shares. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces but do not occur as a result of unjust or discriminatory manipulation. Finally, applicants assert that competitive forces in the marketplace should ensure that the margin between NAV and the price for

the Shares in the secondary market remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Positions in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fifteen (15) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Positions of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fifteen (15) days following the tender of a Creation Unit.[18]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the protections intended to be afforded by Section 22(e) are adequately addressed by the proposed method and securities delivery cycles for redeeming Creation Units. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of fifteen (15) calendar days[19] would not be inconsistent with the spirit and intent of section 22(e). Applicants represent that each Fund's Prospectus and/or SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fifteen (15) calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) with respect to Foreign and Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Acquiring Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Acquiring Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address concerns regarding the potential for undue influence. To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Acquiring Management Company (''Acquiring Fund Advisor''), sponsor of an Acquiring Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Acquiring Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Acquiring Fund Advisor or Sponsor (''Acquiring Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Acquiring Fund (''Acquiring Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Advisor or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor (''Acquiring Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate[20] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, employee or Sponsor of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the Board of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any Board, the ''Independent Trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management

[18] Applicants acknowledge that no relief obtained from the requirements of Section 22(e) of the Act will affect any obligations that it may otherwise have under Rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[19] Certain countries in which a Fund may invest have historically had settlement periods of up to 15 calendar days.

[20] An ''Acquiring Fund Affiliate'' is any Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Acquiring Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[21]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Funds must enter into an agreement with the respective Funds (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgement from the Acquiring Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Section 17(a) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as ''the power to exercise a controlling influence over the management or policies'' of the fund and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of a Trust of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Acquiring Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[22]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the relevant Funds and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[23] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement.

21. Applicants believe that: (a) With respect to the relief requested pursuant to section 17(b), the proposed transactions are fair and reasonable, and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and, where applicable, Acquiring Fund, and the proposed transactions are consistent with the general purposes of the Act; and (b) with respect to the relief requested pursuant to section 6(c), the requested exemption for the proposed transactions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange-Traded Fund Relief

1. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. The Web site, which is and will be publicly accessible at no charge, will

[21] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[22] Applicants anticipate that most Acquiring Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Acquiring Fund because an investment adviser to the Funds is also an investment adviser to that Acquiring Fund.

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

3. As long as a Fund operates in reliance on the requested order, its Shares will be listed on a Listing Market.

4. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on the Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Sub-Advisers, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of that Fund's Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Advisor or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The Board of an Acquiring Management Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Advisor and any Acquiring Fund Sub-Advisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in the Shares of a Fund exceeds the limits in section l2(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board of a Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board of the Fund will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Fund were made.

14. Before investing in Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their Boards and their investment adviser(s), or their Sponsors or trustees (''Trustee''), as applicable, understand the terms and conditions of the requested order, and agree to fulfill their responsibilities under the requested order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy

of the requested order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–l under the Act) received from the Fund by the Acquiring Fund Advisor, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Advisor, Trustee or Sponsor, or its affiliated person by the Fund in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Advisor will waive fees otherwise payable to the Acquiring Fund Sub-Advisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Advisor, or an affiliated person of the Acquiring Fund Sub-Advisor, other than any advisory fees paid to the Acquiring Fund Sub-Advisor or its affiliated person by the Fund in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Advisor. In the event that the Acquiring Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the Board of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73023; File No. SR–ISE–2014–10]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Related To Limiting Certain Types of Complex Orders From Legging Into the Regular Market

September 9, 2014.

I. Introduction

On February 25, 2014, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to complex orders. The proposed rule change was published for comment in the **Federal Register** on March 14, 2014.[3] On April 23, 2014, the Commission extended the time period in which to either approve the proposal, disapprove the proposal, or to institute proceedings to determine whether to approve or disapprove the proposal, to June 12, 2014.[4] On June 10, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received five comment letters on proposal.[6] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend ISE Rule 722 to prohibit certain types of complex orders from legging into the regular market (*i.e.,* executing against individual quotes for each of the legs of the complex order in the regular market).[7] Specifically, ISE proposes that complex orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts will only trade against other complex orders in the complex order book and will not be permitted to leg into the regular market.[8] ISE also proposes that complex orders with three option legs where all legs are buying or all legs are selling, regardless of whether the options are a calls or puts, will only trade against other complex orders in the complex order book and will not be permitted to leg into the regular market.[9] ISE describes these types of two and three leg complex order strategies as ''atypical'' complex order strategies in that they are geared toward an aggressive directional capture of volatility.[10]

The Exchange further proposes to amend ISE Rule 722 to prevent legging orders [11] from being generated on behalf of the two-legged complex orders where

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71669 (March 10, 2014), 79 FR 14563 (''Notice'').

[4] *See* Securities Exchange Act Release No. 72006 (April 23, 2014), 79 FR 24031 (April 29, 2014).

[5] *See* Securities Exchange Act Release No. 72359 (June 10, 2014), 79 FR 34387 (June 16, 2014).

[6] *See* letters to Elizabeth Murphy, Secretary, Commission, from Kurt Eckert, Principal, Wolverine Trading, LLC, dated July 7, 2014 (''Wolverine Letter''); Ellen Green, Vice President, Financial Services Operations, Securities Industry and Financial Markets Association, dated July 8, 2014 (''SIFMA Letter''); Wouter Stinis, Head of Trading, Optiver US, LLC, dated July 9, 2014 (''Optiver Letter''); letter to Kevin M O'Neill, Deputy Secretary, Commission, from John Kinahan, Interim-CEO, Group One Trading, L.P., dated July, 7, 2014 (''Group One Letter''); letter to the Office of the Secretary, Commission, from Martha Redding, Chief Counsel and Assistant Corporate Secretary, NYSE, Inc. dated July 10, 2014 (''NYSE Letter'').

[7] *See* Notice, *supra* note 3, at 14564. ISE Rule 722(b)(3)(ii) rule states that complex orders up to a maximum number of legs (determined by the Exchange on a class basis as either two legs or three legs) will be automatically executed against bids and offers on the Exchange for the individual legs of the complex order provided the complex order can be executed while maintaining a permissible ratio by such bids and offers.

[8] *See* Notice, *supra* note 3, at 14564. The Exchange offers some examples of such strategies as follows: (i) Buy Call 1, Buy Call 2; (ii) Sell Call 1, Sell Call 2; (iii) Buy Put 1, Buy Put 2; (iv) Sell Put 1, Sell Put 2. *See id.*

[9] *See id.* The Exchange offers some examples of such strategies as follows: (i) Buy Call 1, Buy Call 2, Buy Put 1; (ii) Buy Put 1, Buy Put 2, Buy Put 3; (iii) Buy Call 1, Buy Call 2, Buy Call 3; (iv) Buy Put 1, Buy Put 2, Buy Call 3; (v) Sell Put 1, Sell Put 2, Sell Call 1. *See id.*

[10] *See id.* Hereinafter these two and three legged complex order strategies that are the subject of this proposal will be referred to as ''directional complex orders.'' ISE states that most traditional complex order strategies used by retail or professional investors, unlike directional complex orders, seek to hedge the potential move of the underlying security or to capture a premium from an anticipated market event. *See id.*

[11] ISE Rule 715(k) defines a legging order as a limit order on the regular limit order book that represents one side of a complex order that is to buy or sell an equal quantity of two options series resting on the Exchange's complex order book.

both legs are buying or both legs are selling and both legs are calls or both legs are puts.[12] According to the Exchange, preventing the generation of legging orders for these types of two-legged complex orders is necessary to effectuate the proposed limitation to exclude these types of complex orders from trading in the regular market.[13]

In addition, the Exchange proposes to amend Supplemental Material .08 to ISE Rule 716 (Facilitation Mechanism and Solicited Order Mechanism) and Supplemental Material .10 to ISE Rule 723 (Price Improvement Mechanism) to ensure that directional complex orders do not leg into the regular market through an auction.[14] ISE represents that, under its current rules, if an improved net price for a complex order in the Exchange's auctions can be achieved from bids and offers for the individual legs of the complex order in the regular market, the complex order would receive that better net price.[15] ISE proposes to prevent directional complex orders from interacting with the regular market during an auction in connection with the Exchange's proposal in order to prevent directional complex orders from executing against the regular market.[16] Accordingly, the Exchange proposes to amend Supplemental Material .08 to ISE Rule 716 and Supplemental Material .10 to ISE Rule 723 to provide that if an improved net price can be achieved from bids and offers for the individual legs for directional complex orders during an auction, ISE will cancel the auction at the end of the auction's exposure period.[17]

According to the Exchange, the proposed rule amendments are designed to prevent directional complex orders from bypassing the Exchange's market maker risk parameters for the regular market.[18] ISE states that the market maker risk parameters are designed to automatically remove a market maker's quotes in all series of an options class when any of four parameter settings established by the market maker are triggered.[19] ISE describes these market maker risk parameters as a functionality that allows market makers to provide liquidity across many different options series without being at risk of executing the full cumulative size of all of their quotes before being given adequate opportunity to adjust their quotes.[20] According to ISE, when a complex order legs into the regular market, all of the legs of a complex order are considered as a single transaction for purposes of the market maker risk parameters, and not as a series of individual transactions.[21] Thus, the trading system performs the market maker risk parameter calculations after the entire complex order executes against interest in the regular market. According to the Exchange, the manner in which complex orders leg into the regular market may cause market makers to trade above limits set in their market maker risk parameters.[22] As a result, the Exchange believes that market makers may alter their trading behavior to account for the additional risk by widening quotes, hurting the Exchange's quality of markets and the quality of markets in general.[23] Further, according to ISE, directional complex orders that bypass market makers' risk parameters may result in artificially large transactions that distort the market for related instruments, including the underlying security or related options series.[24] The Exchange believes that the potential risk to market makers of allowing directional complex orders to execute against market makers' quotes in the regular market outweighs the potential benefit of allowing directional complex orders to execute against interest in the regular market.[25] By limiting directional complex orders from legging into the regular market, the Exchange believes that market makers will post tighter and more liquid markets for regular orders and traditional complex orders, while reducing the frequency and size of related market distortions.[26]

Finally, ISE represents that directional complex orders may trade against other complex orders in the ISE complex order book and may rest on the ISE complex order book until they are traded or canceled by the member that entered them.[27]

III. Summary of Comment Letters

As previously noted, the Commission received five comment letters.[28] All of the commenters support the proposal and believe the Commission should approve it.

Several commenters state that they rely on market maker risk parameter mechanisms to prevent them from exceeding a set amount of risk without having the opportunity to update the price or size of their quotes to better reflect the state of the current market.[29] One commenter, a national securities exchange, states that market makers and other participants who contribute to price discovery by posting displayed bids and offers incur significant risk of taking on large options positions on the same side of the market, potentially causing a liquidity provider to accumulate unacceptable risk levels very quickly.[30] This commenter states that, because of this, options exchanges make available to their market makers and other market participants risk protection tools that restrict the amount of risk a liquidity provider can accumulate per unit time before their quotes or orders are disabled.[31] Another commenter, a market maker, states that it relies on the exchange-level market maker risk parameter mechanisms to ensure that its quotes are removed from the market when its risk tolerance is exceeded.[32] According to this commenter, it is because of these market maker risk parameters that market makers are able to quote tight spreads and deep liquidity.[33]

Commenters generally agree that directional complex orders allow market participants to circumvent a market-maker's risk parameters.[34] Several

[12] *See* Notice, *supra* note 3, at 14565. The Exchange notes that legging orders cannot be generated for complex orders with three options legs, and, therefore, is not proposing to prevent the generation of legging orders for complex orders with three option legs where all legs are buying or all legs are selling, regardless of whether the options are calls or puts. *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See* Notice, *supra* note 3, at 14565.

[17] *See id.*

[18] *See id.* at 14564 *and* ISE Rule 804(g) (Automated Quotation Adjustments). *See also* Supplemental Material .04 to ISE Rule 722 (Automated Spread Quotation Adjustments).

[19] *See* Notice, *supra* note 3, at 14564.

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* Notice, *supra* note 3, at 14565. ISE notes that the number of directional complex orders is small relative to the total number of complex orders executed on the Exchange on a given day. *See id.*

[26] *See id.*

[27] *See id.*

[28] *See supra* note 6.

[29] *See e.g.,* Group One Letter, *supra* note 6, at 1; Wolverine Letter, *supra* note 6, at 1.

[30] *See* NYSE Letter, *supra* note 6, at 1.

[31] *See id.*

[32] *See* Group One Letter, *supra* note 6, at 1. *See also* Wolverine Letter, *supra* note 6, at 1 (stating that market makers are reliant on exchange-level market maker risk parameters mechanisms to protect market makers from assuming undue risk if multiple resting quotes are executed in rapid succession).

[33] *See* Group One Letter, *supra* note 6, at 1. *See also* Wolverine Letter, *supra* note 6, at 1 (stating that market makers are able to provide tight, deep, competitive markets based on the understanding that they can, to a reasonable degree, control the amount of risk they assume within a single trade or sequence of trades before being able to recalculate and republish their quotes).

[34] *See* Wolverine Letter, *supra* note 6, at 2; Optiver Letter, *supra* note 6, at 2; Group One Letter, *supra* note 6, at 1; NYSE Letter, *supra* note 6, at 2; and SIFMA Letter, *supra* note 6, at 3.

commenters assert that directional complex orders are not traditional complex orders used by retail and professional investors.[35] One commenter notes that, while any complex order, traditional or directional, legging into the market could circumvent a market-maker's risk parameters, such circumvention is justifiable for traditional complex orders but not directional complex orders.[36] This commenter explains that traditional complex orders, such as spreads or straddles, are designed to provide some degree of directional protection, where gains in one leg may be at least partially offset by losses in another, which, according to the commenter, renders the risk of these traditional complex orders executing as a single transaction more tolerable.[37] However, according to this commenter, directional complex orders often increase the net directional exposure because they consist of all bullish or bearish positions where no one leg hedges any other, as is the case for traditional complex orders.[38]

Generally, all of the commenters agree that directional complex orders restrict market-makers' ability to mitigate their risk and, in turn, their ability to quote in larger sizes with tighter spreads across many different options series.[39] One commenter states that without the protection offered by the market maker risk parameters, its only remaining controls at its disposal to protect against the risk of directional complex orders are to widen quoted spreads and/or reduce the size of its quotes in the single leg market.[40] This commenter also notes that it may even cancel all its quotes in related instruments on other exchanges where the commenter provides liquidity in response to an execution of a directional complex order against its quotes, or may even stop quoting altogether on venues where directional complex orders are permitted to circumvent a market maker's risk parameters.[41] One commenter states that these directional complex orders may force market makers to hedge their position more urgently than for other transactions, which hedging may cause a larger, temporary, market impact in the underlying securities than normal hedging activity does.[42] One commenter states that it would be able to provide larger published quotes and/or tighter spreads if the proposal is approved.[43]

Two commenters state that they believe that the number of directional complex orders is small relative to the total number of complex orders executed on the Exchange in a given day.[44] Some commenters note that most directional complex orders come from market makers.[45] One commenter states that, according to one market participant, 95% of directional complex orders that executed against that participant's quotes over the last year originated from the market making desk of one firm.[46] According to this commenter, of the complex order flow received by that same market participant from institutional and retail customers over the past year, zero directional complex orders came from institutional customers and just 0.1% of retail complex orders were directional.[47] Another commenter notes that the average trade number of contracts executed in traditional complex orders against the commenter's quotes in 2014 was 14.8 contracts per trade, which is, according to the commenter, generally consistent with the Options Clearing Corporation's data indicating an average number of contracts per average transaction of 15.6 contracts on the Exchange.[48] The commenter then notes that the average number of contracts per transaction against the commenter's quotes for directional complex orders was 157.3 contracts.[49]

Two commenters state that they believe that the potential benefits of preventing directional complex orders from legging into the regular market under the Exchange's proposal outweighs any benefits of continuing to allow directional complex orders to leg into the regular market.[50] One commenter asserts that market maker risk protections in the regular market must have priority over directional complex orders that leg into that same regular market.[51] Another commenter states that it believes that approval of the proposal will deter potentially nefarious activity without reducing liquidity for regular orders or traditional complex orders.[52]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[53] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[54] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that directional complex orders may continue to trade against other complex orders on the Exchange's complex order book, and that market participants may submit the individual legs of a directional complex order separately to the regular market for execution should they so choose. The Commission also notes that all five

[35] *See e.g.,* Wolverine Letter, *supra* note 6, at 2; Optiver Letter, *supra* note 6, at 1–2; and Group One Letter, *supra* note 6, at 2.

[36] *See* Wolverine Letter, *supra* note 6, at 1–2. *See also* NYSE Letter, *supra* note 6, at 2.

[37] *See* Wolverine Letter, *supra* note 6, at 1.

[38] *See* Wolverine Letter, *supra* note 6, at 2. *See also* NYSE Letter, *supra* note 6, at 2 (noting that most complex orders ''. . . are 'self-hedged,' *i.e.,* comprising one or more 'long' sides offset by one or more 'short' sides'').

[39] *See* Wolverine Letter, *supra* note 6, at 2; Optiver Letter, *supra* note 6, at 4; Group One Letter, *supra* note 6, at 1–2; NYSE Letter, *supra* note 6, at 1–2; and SIFMA Letter, *supra* note 6, at 4–5.

[40] *See* Optiver Letter, *supra* note 6, at 3.

[41] *See* Optiver Letter, *supra* note 6, at 3–4.

[42] *See* SIFMA Letter, *supra* note 6, at 4. This commenter also notes that retail investors' limit orders may also be adversely impacted by directional complex orders because such orders can result in large price swings, which may result in stop orders being triggered. *Id.*

[43] *See* Wolverine Letter, *supra* note 6, at 2. *See also* Group One letter, *supra* note 6, at 2 (noting that by allowing market makers to rely on the Exchange's market maker risk parameters, ''market makers can continue to provide large size quotes with tight spreads''); *and* Optiver Letter, *supra* note 6, at 5 (asserting that approval would ''further allow tighter markets and increased liquidity for both complex orders and the regular market'').

[44] *See* SIFMA Letter, *supra* note 6, at 5; Optiver Letter, *supra* note 6, at 4 (noting that it believes 3-legged directional complex orders represents less than 1% of total orders).

[45] *See* SIFMA Letter, *supra* note 6, at 3; Optiver Letter, *supra* note 6, at 2 (noting that, in the commenter's experience, ''these [directional] order types are overwhelmingly used by market makers'').

[46] *See* SIFMA Letter, *supra* note 6, at 3.

[47] *See id.* Two commenters state that they believe that the number of directional complex orders is small relative to the total number of complex orders executed on the Exchange in a given day.

[48] *See* Optiver Letter, *supra* note 6, at 3.

[49] *See id.*

[50] *See* SIFMA Letter, *supra* note 6, at 5; Optiver Letter, *supra* note 6, at 5.

[51] *See* Optiver Letter, *supra* note 6, at 5.

[52] *See* Group One Letter, *supra* note 6, at 2. Two commenters also express support for the part of the Exchange's proposal that would require that an auction be canceled at the end of the auction's exposure period if an improved net price can be achieved from the bids and offers for the individual legs of a directional complex order during an auction. *See* SIFMA Letter, *supra* note 6, at 3; Optiver Letter, *supra* note 6, at 2.

[53] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[54] 15 U.S.C. 78f(b)(5).

commenters expressed support for the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–ISE–2014–10) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Kevin M. O'Neill,

Deputy Secretary.

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[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73027; File No. SR–NYSEArca–2014–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2.100, Which Addresses the Exchange's Emergency Powers Revising How Certain Messages Are Disseminated

September 9, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2.100, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 2.100, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.[4]

Background

In 2009, the Exchange adopted Rule 2.100 to provide the New York Stock Exchange LLC (''NYSE''), which is an affiliate of the Exchange (''Affiliated Exchange''), with the authority to declare an Emergency Condition [5] with respect to trading on or through the systems and facilities of the Affiliated Exchange and to act as necessary in the public interest and for the protection of investors.[6] As amended in 2013, the term ''Affiliated Exchange'' means NYSE, NYSE MKT LLC (''NYSE MKT''), or a national securities exchange otherwise designated by the Exchange as an affiliated entity.[7] The authority in Rule 2.100 may be exercised when, due to an Emergency Condition, an Affiliated Exchange's systems and facilities cannot be utilized. If such an Emergency Condition is declared, a qualified Exchange officer may designate the Exchange to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of the Affiliated Exchanges so that the Affiliated Exchanges, as self-regulatory organizations (''SROs''), can remain operational. During such an Emergency Condition, the Exchange also would continue to operate simultaneously.

In November 2013, the Commission approved amendments to Rule 2.100 that were designed to more effectively delineate the SRO functions of the Exchange and its Affiliated Exchanges during an Emergency Condition, reflect the operational preferences of the industry, and reflect the structure of Affiliated Exchange member organization connectivity to and system coding for Affiliated Exchange systems.[8] To date, the Exchange has not invoked Rule 2.100 nor have the Affiliated Exchanges invoked their respective rules.

Under current Rule 2.100(b)(2)(A), beginning on the next trading day following the declaration of an Emergency Condition, NYSE Arca would, on behalf of and at the direction of the Affiliated Exchange, disseminate (i) the official opening, re-opening, and closing trades of Affiliated Exchange-listed securities to the Consolidated Tape as messages of the Affiliated Exchange, and (ii) any notification for Affiliated Exchange-listed securities to the Consolidated Quotation System (''CQS'') of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of both the Affiliated Exchange and NYSE Arca.

Under current Rule 2.100(b)(2)(B), bids and offers for Affiliated Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would

[4] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, referred to as the ''NYSE Arca Marketplace.'' For the purposes of this filing and in the text of Rule 2.100, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca or the Exchange.

[5] The definition of ''Emergency Condition'' is the one used in Section 12(k)(7) of the Act and is also used by and the Affiliated Exchanges and the Securities and Exchange Commission (''Commission''). Section 12(k)(7) defines an emergency to mean ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. § 78l(k)(7).

[6] *See* Securities Exchange Act Release No. 61178 (December 16, 2009), 74 FR 68434 (December 24, 2009) (SR–NYSEArca–2009–90). The text of Rule 2.100 refers to the ''Corporation,'' which is NYSE Arca Equities. *See* NYSE Arca Equities Rule 1.1(k).

[7] *See* Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR–NYSEArca–2013–77; SR–NYSE–2013–54; SR–NYSEMKT–2013–66). This release approved the amendment to Rule 2.100 as well as amendments to NYSE Rule 49 and adoption of NYSE MKT Rule 49—Equities.

[8] *See supra* n. 7.

be reported to the CQS as bids and offers of NYSE Arca, except that the opening quote and any re-opening quote would be reported to the CQS as a bid and/or offer of both the Affiliated Exchange and NYSE Arca. Bids and offers for Affiliated Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing auctions, which would be reported as Affiliated Exchange executions and Affiliated Exchange volume only.

Proposed Rule Change

After further review, the Exchange has determined that it is not feasible for certain notifications that are disseminated via CQS to be disseminated as messages of both the Affiliated Exchange and NYSE Arca. Specifically, CQS can only process notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting from a single market. Because the Affiliated Exchanges are the primary markets for NYSE- or NYSE MKT-listed securities, the Exchange believes that it is more appropriate to continue to disseminate these notifications as Affiliated Exchange market messages during an Emergency Condition. As such, the Exchange proposes to amend Rule 49(b)(2)(A)(ii)—Equities [sic] so that these messages would only be disseminated as Affiliated Exchange messages.

For similar reasons, CQS supports dissemination of re-opening quote messages from only a single market. Specifically, in order to support a re-opening quote, a single market must disseminate a ''resume'' trading message, which then signals CQS to accept and display quotes from all other markets. Because the Affiliated Exchanges are the primary markets for NYSE- and NYSE MKT-listed securities, the Exchange believes it is appropriate to disseminate notifications of re-opening quotes and related ''resume'' messages as an Affiliated Exchange market message during an Emergency Condition.[9] As such, the Exchange proposes to amend Rule 2.100(b)(2)(B) so that any re-opening quote would only be reported to the CQS as a bid and/or offer of the Affiliated Exchange.

The Exchange notes that it has conducted two tests with customers to disseminate messages as proposed.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Affiliated Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. The proposed change will take into account CQS system limitations while still providing for the appropriate dissemination of primary market messages. The Exchange believes that the proposed rule change would strengthen business continuity planning for itself and Affiliated Exchange member organizations, thereby benefiting market participants and investors generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Affiliate Exchange-listed securities on NYSE Arca during an Emergency Condition and remove a duplicative notification that cannot, upon further review, be feasibly achieved. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of how the Exchange would disseminate messages on behalf of Affiliated Exchanges during an Emergency Condition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver is consistent with the protection of investors and the public interest because it would permit the Exchange, the Affiliate Exchanges, and the Affiliate Exchanges' member organizations to more quickly adopt effective business continuity plans that will help avoid market closures in the event of an emergency, thereby maintaining liquidity for the benefit of market participants and investors generally. In support of the requested waiver, the Exchange notes that it has already successfully conducted two tests with customers to disseminate messages in the proposed manner, each time without negative results or feedback.[15] Additionally, the Affiliated Exchanges, NYSE and NYSE MKT, have filed similar proposals to account for these same proposed changes.[16] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates

[9] By contrast, CQS supports the receipt of opening quotes of both the Affiliated Exchange and NYSE Arca. The Exchange believes it is appropriate to disseminate the opening quote as messages of both the Affiliated Exchange and NYSE Arca in order to signal to those market participants that are looking for a primary market message as a cue that NYSE- and NYSE MKT-listed securities are open for trading.

[10] The Exchange conducted customer tests on September 21, 2013 and March 22, 2014. *See http://markets.nyx.com/nyse/trader-updates/view/12682* and *http://markets.nyx.com/nyse/trader-updates/view/13092,* respectively.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] *See supra* note 10.

[16] *See* SR–NYSE–2014–48 and SR–NYSEMKT–2014–75.

the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–96. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–96 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21873 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73026; File No. SR–NYSEArca–2014–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.60(b) To Enhance the Functionality of the Limit Order Filter

September 9, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 28, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.60(b) to enhance the functionality of the Limit Order Filter. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 6.60(b) to enhance the functionality of the Limit Order Filter in use on the Exchange. The Exchange's enhancement is designed to help maintain a fair and orderly market by providing limit orders received before the opening of trading the same protection those orders are afforded during Core Trading Hours.

As set forth in proposed Rule 6.60(b), the Exchange currently employs a filter for incoming limit orders, pursuant to which the Exchange rejects limit orders priced a specified percentage away from the NBB or NBO. As the Exchange receives limit orders, the Exchange System will check the price of the limit order against the contra-side NBB or NBO at the time of order entry to determine whether the limit order is within the specified percentage.[4] If the limit order is priced outside of the specified percentage, the limit order will be rejected. As this filter relies on an NBBO at the time of Exchange receipt of the order, it is only available after the Exchange has opened a series.

The Exchange proposes to amend Rule 6.60(b) to expand the functionality of the Limit Order Filter to protect limit orders received prior to the opening of trading. As proposed, for limit orders received before the opening of trading, the Limit Order Filter would operate immediately before conducting a Trading Auction (as set forth in Rule 6.64). The enhancement is designed to provide the same level of protection to market participants who enter limit

[4] Pursuant to Rule 6.60(b), unless determined otherwise by the Exchange and announced to OTP Holders via Trader Update, the specified percentage will be 100% for the contra-side NBB or NBO priced at or below $1.00 and 50% for contra-side NBB or NBO priced above $1.00.

orders before the open as it does for those who enter limit orders during Core Trading. The Exchange believes that using the best bids and offers available immediately before conducting the Trading Auction helps assure an accurate state of the market.

Pursuant to Rule 6.64(a), a Trading Auction is the process by which trading is initiated in a specified options class. Pursuant to 6.64(b)(D), prior to conducting the Auction Process, the Exchange system must have market maker quotes or an NBBO that creates a bid-ask differential that does not exceed those specified under Rules 6.37(b)(1)(A)–(E). Immediately, prior to conducting the Auction Process, the Exchange will use the contra-side bid or offer of this bid-ask differential as the parameters for the Limit Order Filter being applied to limit orders received before the open of trading. The Exchange will announce the implementation date of this change through a Trader Update.

For example, assume the Exchange receives a sell order with a limit of $2.00 at 9:00:00 a.m. Eastern (which is before the open). If the Exchange is about to open that series at 9:30:02 a.m. where the best available bid is $4.00, because the $2.00 sell order is 50% below the bid, that limit order would be rejected immediately before the series opens. Likewise, if the Exchange is about to open a series in which the best available offer at $0.75, a buy order received pre-open with a limit price at or above $1.50 (which is 100% above the offer) would be rejected. In both these [sic] scenarios, orders that otherwise may cause price dislocation would be rejected before they could cause such harm to the market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by helping to mitigate the potential risks associated with the entry of limit orders before the opening that ultimately are priced a specified percentage away from the prevailing contra-side market existing at the open. The Exchange believes that a limit order priced a specified percentage away from the prevailing contra-side market existing at the open is evidence of a market participant error. By rejecting such an order, the Exchange believes it is promoting just and equitable principles of trade by preventing potential price dislocation that could result through subsequent executions during Core Trading of the balance of the aggressively priced limit order. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that an existing price protection, *i.e.,* the Limit Order Filter, would be applicable to all limit orders, regardless of when they are entered.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In support of its request, the Exchange states that the protections offered by this proposal are designed to contribute to a fair and orderly market and enhance the protection of investors by offering a level of price protection to pre-open limit orders that is not presently available. The Exchange states that waiving the 30-day delayed operative date will enable all market participants to benefit from the price protection offered by this proposal without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–97 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–97, and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21872 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72020; File No. SR–NYSEMKT–2014–72]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fees for Non-Display Use of NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT BBO, and To Establish Fees for Non-Display Use of NYSE MKT Order Imbalances

September 9, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 26, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees for non-display use of NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT BBO, and to establish fees for non-display use of NYSE MKT Order Imbalances, operative on September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its non-display fees for NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT BBO, to establish such fees for NYSE MKT Order Imbalances, and to establish managed non-display services fees for NYSE MKT BBO, operative on September 1, 2014.[4]

The Exchange established the current non-display and managed non-display services fees for NYSE MKT OpenBook, NYSE MKT Trades, and NYSE MKT BBO in April 2013.[5] The Exchange now proposes to change those fees and to establish similar fees for NYSE MKT Order Imbalances.

Under the proposal, non-display use would continue to mean accessing, processing, or consuming an Exchange data product delivered via direct and/or Redistributor [6] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). As is the case today, non-display and managed non-display services fees would apply to the Non-Display Use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms.

The Exchange is proposing to expand the types of uses considered Non-Display Use to also include non-trading uses. In addition, the proposal would specify that Non-Display Use would include any trading use, rather than only certain types of trading, such as high frequency or algorithmic trading, as under the current fee structure. Under the proposal, examples of Non-Display Use would include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. The Exchange believes that non-trading uses benefit data recipients by allowing users to automate functions, achieving

[4] The Exchange's affiliates have submitted or will be submitting similar proposals. *See, e.g.,* SR–NYSE–2014–43.

[5] *See* Securities Exchange Act Release No. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR–NYSEMKT–2013–32) (''2013 Release'').

[6] ''Redistributor'' means a vendor or any person that provides a real-time NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

greater speed and accuracy, and in turn, for example, reducing costs of labor to perform the functions manually. This approach would address the difficulties of monitoring and auditing different types of trading versus non-trading uses of the data and the burden of counting devices used for non-trading purposes under the current fees.

Proposed Changes to Non-Display Fees

The Exchange proposes to amend the fee structure applicable to Non-Display Use of NYSE MKT OpenBook, NYSE MKT BBO, and NYSE MKT Trades and to establish such fees for NYSE MKT Order Imbalance. Specifically, the Exchange proposes certain changes to the three categories of, and fees applicable to, data recipients. The Exchange also proposes corresponding changes to the Fee Schedule text to remove references to the current category descriptions.

Under the proposal, Category 1 Fees would apply when a data recipient's Non-Display Use of real-time market data is on its own behalf as opposed to use on behalf of its clients. This proposal represents an expansion of the application of Category 1 Fees, which currently apply solely to the Non-Display Use of real time market data for the purpose of principal trading, to usage of such data for non-trading purposes.

Under the proposal, Category 2 Fees would apply to a data recipient's Non-Display Use of real-time market data on behalf of its clients as opposed to on its own behalf. This proposal also represents an expansion of the application of Category 2 Fees, which currently apply solely to trading activities to facilitate a customer business, to usage of such data for non-trading purposes. As under the current fee, if a data recipient's use of Exchange market data is covered by Category 1 and Category 2, then the data recipient must pay both categories of fees.[7]

The Exchange believes its proposal to apply Category 1 Fees and Category 2 Fees to Non-Display Use of market data for non-trading purposes would address the difficulties of monitoring and auditing trading versus non-trading uses of the data and the burden of counting devices used for purposes of applying the per-device fees. As discussed in more detail in the 2013 Release,[8] the ability to accurately count devices and audit such counts creates administrative challenges for vendors, data recipients, and the Exchange.

Under the proposal, Category 3 Fees would apply to data recipients' Non-Display Use of real-time market data for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platform(s), such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Currently, Category 3 Fees apply where a data recipient's non-display use of market data is, in whole or in part, for the purpose of providing reference prices in the operation of one or more trading platforms. The Exchange believes its proposed revision to its description of the data recipients to whom Category 3 Fees apply is more precise because it focuses on the functions of internally matching orders.

In addition, the Exchange is proposing to change the application of Category 3 Fees to data recipients that also use data for purposes that give rise to Category 1 and/or Category 2 Fees. Currently, a data recipient is not liable for Category 3 Fees for those market data products for which it is also paying Category 1 and/or Category 2 Fees.[9] Under the proposal, a data recipient's Non-Display Use of real-time market data for Category 3 purposes would require such data recipient to pay Category 3 Fees in addition to any Category 1 Fees or Category 2 Fees it is required to pay for Non-Display Use of market data.

There will continue to be no monthly or other reporting requirements for data recipients' Non-Display Use. However, the Exchange continues to reserve the right to audit data recipients' Non-Display Use of NYSE MKT market data products in accordance with the Exchange's vendor and subscriber agreements.

Data recipients that receive real-time NYSE MKT market data for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before September 1, 2014. The Non-Display Use Declaration would replace the current declaration on the NYSE Euronext Non-Display Usage Declaration.[10] A firm subject to Category 3 Fees would be required to identify each platform that uses data on a Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration. Beginning in 2016, data recipients would be required to submit, by January 31 of each year, a Non-Display Use Declaration. In addition, if a data recipient's use of real-time NYSE MKT market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient would be required to update it at the time of the change to reflect the change of use.

Proposed Changes to Fees for Managed Non-Display Services

The Exchange also proposes to change the fees for managed non-display services for NYSE MKT OpenBook and NYSE MKT Trades and establish managed non-display service fees for NYSE MKT BBO and NYSE MKT Order Imbalances. Managed non-display services fees would apply, as they do currently, where data recipients' non-display applications are hosted by an approved third party.[11] To be an approved third party, the third party must manage and control the access to real-time NYSE MKT market data for the data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information.

The managed non-display services fee would only apply if a data recipient is receiving real-time NYSE MKT market data for Non-Display Use from a third party Redistributor[12] that is approved by the Exchange. As for the current managed non-display services fees, this Redistributor must manage and control the access to NYSE MKT OpenBook, NYSE MKT Trades, NYSE MKT BBO, and NYSE MKT Order Imbalances for these applications and may not allow their further internal distribution or external redistribution. The Redistributor of the managed non-display services and the data recipient must be approved under the Exchange's Global Data Products Unit-of-Count Policy.[13] If a data recipient receives NYSE MKT OpenBook, NYSE MKT Trades, NYSE MKT BBO, and NYSE MKT Order Imbalances from a Redistributor that is not approved by the Exchange, then the non-display fees

[7] *See* 2013 Release, *supra* note 5, at 21175.

[8] *See* 2013 Release, *supra* note 5, at 21174.

[9] *See* 2013 Release, *supra* note 5, at 21175.

[10] As described in more detail in the Statutory Basis section, in order to modulate the overall fee increase that could apply, if a firm subject to Category 3 Fees has more than three platforms, it would only be required to declare three platforms. If a data recipient only subscribes to products for which there are no non-display usage fees, *e.g.,* NYSE Realtime Reference Prices, then no declaration is required.

[11] *See* 2013 Release, *supra* note 5, at 21176.

[12] *See id.*

[13] The Unit-of-Count Policy is described in the 2013 Release, *supra* note 5, at note 10 and accompanying text.

would apply, and data recipients would not be liable for managed non-display fees for those market data products for which they pay non-display fees.

A data recipient of real-time NYSE MKT market data through an approved Redistributor would continue to have no reporting requirements. However, a Redistributor would be required to report to NYSE MKT on a monthly basis the data recipients that are receiving real-time NYSE MKT market data through the Redistributor's managed non-display service and the real-time NYSE MKT market data that such data recipients are receiving through such service. This monthly reporting requirement would be new, though the Exchange currently has the right to audit data recipients' non-display use of NYSE MKT market data products in accordance with the Exchange's vendor and subscriber agreements.

Comparison of Current Fees to Proposed Fees

The chart below compares the proposed changes to current monthly fees:

Data feed	Current fee	Proposed fee
NYSE MKT OpenBook Non-Display Category 1	$1,500	$2,000.
NYSE MKT OpenBook Non-Display Category 2	1,500	$2,000.
NYSE MKT OpenBook Non-Display Category 3	1,500	$2,000.
NYSE MKT OpenBook Managed Non-Display	500	$750.
NYSE MKT BBO Non-Display Category 3	500	$500, capped at $1,500.
NYSE MKT BBO Managed Non-Display	n/a	$150.
NYSE MKT TradesManaged Non Display	400	$600.
NYSE MKT Order Imbalances Category 1	n/a	$500.
NYSE MKT Order Imbalances Category 2	n/a	$500.
NYSE MKT Order Imbalances Category 3	n/a	$500, capped at $1,500.
NYSE MKT Order Imbalances Managed Non-Display	n/a	$100.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually. The Exchange also notes that The NASDAQ Stock Market (''NASDAQ'') and NASDAQ OMX PHLX (''Phlx'') do not make any distinction in their non-display use fees between trading or non-trading uses, and as such, the proposed change will harmonize the Exchange's approach with those exchanges. Finally, the Exchange notes that eliminating the trading versus non-trading distinction would substantially simplify fee calculations and ease administrative burdens for the Exchange.

After further experience, the Exchange also believes that it is more equitable and not unfairly discriminatory to eliminate the distinction for non-trading versus trading uses in light of the significant value of both types of uses. The Exchange notes that because non-display fees are flat fees, the expansion to cover non-trading uses could only result in a fee increase for a data recipient that is using the data solely for non-trading purposes and is only subject to per-device fees; at this time, the Exchange has not identified such a data recipient. Based on data available to the Exchange, all data recipients use the data for at least one trading purpose, and therefore the changes to the fees that they will pay under the proposal would not be due to the elimination of the distinction between trading and non-trading uses. The Exchange further notes that based on Non-Display Use Declarations submitted to date, some users have declared no Non-Display Use, and as such the proposed changes would have no impact on them.

The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of its market data products and can correctly assess fees for the uses of those products. The annual submission requirement is equitable and not unfairly discriminatory because it will apply to all users.

The Exchange believes that requiring Redistributors to provide monthly reports of data recipients that are receiving the managed non-display service is reasonable because as a matter of practice, the Exchange already has been requiring such reporting pursuant to its right under the vendor and subscriber agreements to request such information, and there is no indication that this has been burdensome for Redistributors. The reporting requirement is equitable and not unfairly discriminatory because it will apply to all Redistributors and help to ensure that ultimate data recipients are receiving data in accordance with the Exchange's rules.

The Exchange believes that the proposed fee increases of $1,000 [sic] per month for each of Categories 1, 2, and 3 for NYSE MKT OpenBook and NYSE MKT Trades are reasonable. In establishing the non-display fees in April 2013, the Exchange set its fees substantially below comparable fees charged by certain of its competitors.[16] After gaining further experience with its new display/non-display fee structure, the Exchange believes that the proposed fees better reflect the significant value of the non-display data to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs,

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4), (5).

[16] *See* 2013 Release, *supra* note 5, at 21176.

thereby benefiting end users. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[17]

The fee increases are also reasonable in that they support the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves. For example, the Exchange has begun to make its proprietary data products available over both its existing distribution channel as well as the XDP protocol.

Charging a separate fee for Category 3 data recipients that already pay a fee under Category 1 or 2 is reasonable because it eliminates what is effectively a discount for such data recipients under the current Fee Schedule and results in a more equitable allocation of fees to users that derive a benefit from a Category 3 use, and as such is not unfairly discriminatory. The current fee can be viewed as having an effective non-display fee cap of $3,000 for NYSE MKT OpenBook, $2,000 for NYSE MKT Trades, and $1,000 for NYSE MKT BBO while the proposed fee would have an effective non-display fee cap of $10,000 for NYSE MKT OpenBook, $7,500 for NYSE MKT Trades, and $2,500 for NYSE MKT BBO. The Exchange believes that the proposed fees (and their associated caps) more closely correspond to the value that Category 3 recipients derive from the various uses of the data, some of which are operating various types of alternative trading venues that directly compete for order flow with the Exchange. Limiting the fees in Category 3 to no more than three trading platforms is reasonable because it modulates the size of the fee increase for certain recipients as compared to what they pay under the current fee structure, in much the same manner as the current fee does by limiting the non-display fees to a maximum of two categories. The Exchange does not believe that it will be burdensome for Category 3 recipients to determine, or the Exchange to audit, whether a recipient has one, two, three or more separate platforms.

The proposed non-display fees for NYSE MKT Order Imbalances are reasonable because they reflect the valuable non-display uses of this data feed for recipients and will be easier for the Exchange to administer than counting devices, as is required under the current Fee Schedule. The fees are equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the NYSE MKT Order Imbalances feed.

The proposed monthly fees of $150 for NYSE MKT BBO managed non-display data and $100 for NYSE MKT Order Imbalances managed non-display data are reasonable because they are less than other managed non-display fees charged by the Exchange for other managed non-display products as well as by other exchanges for comparable products.[18] The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the feeds.

The proposed NYSE MKT OpenBook and NYSE MKT Trades managed non-display fees are reasonable because they remain less than the comparable fees for other exchanges' similar products.[19] These managed non-display fees also are equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to the feeds.

The fees are also competitive with offerings by other exchanges, which structure and set their fees in a variety of ways. For example, NASDAQ professional subscribers pay monthly fees for non-display usage based upon direct access to NASDAQ Level 2, NASDAQ TotalView,[20] or NASDAQ OpenView, which range from $300 per month for customers with one to 10 subscribers to $75,000 for customers with 250 or more subscribers.[21] NASDAQ also offers an enterprise license for its last sale data at $50,000 per month.[22] In addition, Phlx offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[23] The Non-Display Enterprise License covers non-display subscriber fees for all Phlx proprietary direct data feed products and is in addition to any other associated distributor fees for Phlx proprietary direct data feed products. NASDAQ OMX BX, Inc. (''BX'') also offers an alternative non-display usage fee of $16,000 per month for its BX TotalView data feed.[24] NASDAQ and Phlx also both offer managed non-display data solutions at higher overall fees than the Exchange proposes to charge.[25]

The Exchange also notes that all of the products described herein are entirely optional. The Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase any of the products. Firms that do purchase non-display products do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange for order flow; those firms are able to determine for themselves whether any specific product such as these are attractively priced or not.

Firms that do not wish to purchase the data at the new prices have a wide variety of alternative market data products from which to choose,[26] or if the non-display data products do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not require those data products. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best

[17] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[18] NASDAQ offers a Managed Data Solution that assesses a monthly Managed Data Solution Administration fee of $1,500 and monthly Subscriber fees of $60 for non-professionals to $300 for professionals. *See* NASDAQ Rule 7026(b). Phlx charges a monthly Managed Data Solution Administration fee of $2,000 and a monthly Subscriber fee of $500. The monthly License fee is in addition to the monthly Distributor fee of $3,500 (for external usage), and the $500 monthly Subscriber fee is assessed for each Subscriber of a Managed Data Solution. *See* Securities Exchange Act Release No. 70748 (October 23, 2013), 78 FR 64569 (October 29, 2013) (SR–Phlx–2013–105).

[19] *See id.*

[20] NASDAQ disseminates its Net Order Imbalance Indicator for the NASDAQ Opening and Closing Crosses and NASDAQ IPO/Halt Cross as part of the TotalView product.

[21] *See* NASDAQ Rule 7023(b)(4).

[22] *See* NASDAQ Rule 7039(b).

[23] Alternatively, Phlx charges each professional subscriber $40 per month. *See* Section IX of the Phlx Pricing Schedule.

[24] *See* NASDAQ OMX BX Rule 7023(a)(2). Alternatively, BX charges each professional subscriber $40 per month.

[25] *See supra* note 188 [sic].

[26] *See supra* notes 18–24. Because NYSE MKT BBO and NYSE MKT Trades are subsets of the consolidated core data offered by the CTA and CQS, customers may choose to purchase those consolidated data products or free delayed data instead.

execution obligations.[27] Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.[28]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.''' [29]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically or offer any significant benefits.[30]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [31]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [32] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative

[27] *See* In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014).

[28] For example, Goldman Sachs Execution and Clearing, L.P. has disclosed that it does not use proprietary market data in connection with Sigma X, its ATS. *See* response to Question E3, available at *http://www.goldmansachs.com/media-relations/in-the-news/current/pdf-media/gsec-order-handling-practices-ats-specific.pdf.* By way of comparison, IEX has disclosed that it uses proprietary market data feeds from all registered stock exchanges and LavaFlow ECN. *See http://www.iextrading.com/about/.*

[29] *NetCoalition,* 615 F.3d at 535.

[30] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[31] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[32] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

trading systems, and more than 250 broker-dealers.[33]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are distributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available the NYSE MKT products described herein unless their customers request them, and customers will not elect to pay the proposed increased fees for non-display uses unless the non-display uses of these data products can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of their data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in May 2014 more than 80% of the transaction volume on each of NYSE, NYSE Arca, and NYSE MKT was executed by market participants that purchased one or more proprietary market data products. A super-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[34] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[35]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as various forms of ATSs, including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting

[33] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

[34] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314, 57317 (September 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (September 14, 2010), 75 FR 57321, 57324 (September 20, 2010) (SR–NASDAQ–2010–111).

[35] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

Facilities compete to attract transaction reports from the non-SRO venues.[36]

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, have provided certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[37] Similarly, LavaFlow ECN provides market data to its subscribers at no charge.[38] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.[39]

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. For example, with respect to NYSE MKT Trades and NYSE MKT BBO, the data appears in both the real-time core data offered by the SIPs for a fee and free SIP data that is offered on a 15-minute time delay. With respect to NYSE MKT Trades, NYSE MKT BBO, NYSE MKT OpenBook, and NYSE MKT Order Imbalances, a close substitute product is offered by several competitors.[40] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed non-display fees are generally lower than the maximum non-display fees charged by other exchanges such as NASDAQ, Phlx, and BX for comparable products.[41]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010. As noted above, LavaFlow ECN provides market data to its subscribers at no charge.[42]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[43] of the Act and subparagraph (f)(2) of Rule 19b–4[44] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[45] of the Act to determine whether the proposed rule

[36] FINRA's Alternative Display Facility also receives over-the-counter trade reports that it sends to CTA.

[37] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[38] *See* "LavaFlow—ADF Migration," available at *https://www.lavatrading.com/news/pdf/LavaFlow_ADF_Migration.pdf.*

[39] The Exchange notes that a small number of Category 3 non-display data recipients could be using the market data strictly for competitive purposes (*e.g.,* other exchanges and ATSs) or for business purposes unrelated to trading or investment (*e.g.,* Internet portals that wish to attract "eyeballs" to their pages primarily generate advertising revenue for themselves). The Exchange does not believe that the proposed fees will impose any unnecessary burden on these competitors or other businesses.

[40] *See supra* notes 188–244 [sic]. With respect to order imbalances, the Exchange further notes that other venues trade NYSE listed securities before the Exchange's opening cross at 9:30 a.m., and therefore indicative price information is available through these venues.

[41] *Id.*

[42] *See supra* note 38.

[43] 15 U.S.C. 78s(b)(3)(A).

[44] 17 CFR 240.19b–4(f)(2).

[45] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–72 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21866 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73021; File No. SR–NYSE–2014–47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the New York Stock Exchange LLC Price List To Provide That the Monthly DMM Credit for Certain Securities Be Prorated to the Number of Trading Days in a Month That a Security Is Assigned to a DMM

September 9, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 25, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM.

On March 2, 2014, the Exchange adopted a new monthly credit for DMMs for each security that has a consolidated average daily volume (''ADV'') of less than 250,000 shares during the billing month in any month in which the DMM meets the Less Active Securities Quoting Requirement.[4] The flat dollar credit supplements the DMM credit in securities that do not trade actively and is applicable to all Exchange-listed securities regardless of price.[5]

The Exchange proposes to revise the Price List to provide that the rebate would be prorated to the number of trading days in a month that a stock is assigned to a DMM. The Exchange believes it is appropriate to prorate the rebate to the number of trading days that a stock is assigned to a DMM to ensure that the monthly rebate has a nexus to the time for which a DMM has affirmative obligations for that stock pursuant to Rule 104. For example, if a stock is assigned to more than one DMM unit within a month, such as when a stock is transferred temporarily from one DMM to another and then returned to the original DMM, the Exchange does not believe that it is appropriate that both DMMs that were assigned that stock in a given month should both be eligible for the full monthly rebate. Similarly, if a stock begins trading at the Exchange mid-month, such as because of an initial public offering or transfer of a listed security from another exchange, the Exchange does not believe

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The DMM meets the ''Less Active Securities Quoting Requirement'' when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of $1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

[5] *See* Securities Exchange Act Release No. 71684 (March 11, 2014), 79 FR 14758 (March 17, 2014).

it is appropriate for a DMM to receive a full monthly credit. For example, in a month with 20 trading days, assume a less active security transfers from DMM 1 to DMM 2 after the 15th trading day. The DMM monthly rebate would be prorated for the two DMM firms as follows: DMM 1 would be rebated $150 (15 assigned trading days/20 trading days in the month × $200) and DMM 2 would be rebated $50 (5 assigned trading days/20 trading days in the month x $200). The Exchange believes that prorating the rebate for the number of trading days in a month that a stock is assigned to a DMM will ensure that the DMM with responsibility for the stock receives the appropriate rebate for the responsibilities performed for that symbol in the month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed prorating of the DMM monthly rebate is reasonable because it would provide a nexus between the rebate paid to a DMM and the number of days that a DMM has been assigned a stock. The Exchange therefore believes that the proposed prorating of the monthly DMM rebate is equitable and not unfairly discriminatory because it directly ties the monthly rebate to the number of trading days for which a DMM has regulatory responsibility for a stock pursuant to Rule 104. The Exchange also believes that the proposed prorating is equitable and not unfairly discriminatory because all DMMs would be treated the same.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would not burden competition because it would be applicable to DMMs only and ensures that an existing rebate is associated more closely with when a DMM is assigned a stock, which may be shorter than a full month.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. For these reasons, the Exchange believes that the proposed rule change reflects the competitive environment and is therefore consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–47 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21867 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73024; File No. SR–NYSEMKT–2014–76]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 967NY(b) To Enhance the Functionality of the Limit Order Filter

September 9, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 28 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 967NY(b) to enhance the functionality of the Limit Order Filter. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 967NY(b) to enhance the functionality of the Limit Order Filter in use on the Exchange. The Exchange's enhancement is designed to help maintain a fair and orderly market by providing limit orders received before the opening of trading the same protection those orders are afforded during Core Trading Hours.

As set forth in proposed Rule 967NY(b), the Exchange currently employs a filter for incoming limit orders, pursuant to which the Exchange rejects limit orders priced a specified percentage away from the NBB or NBO. As the Exchange receives limit orders, the Exchange System will check the price of the limit order against the contra-side NBB or NBO at the time of order entry to determine whether the limit order is within the specified percentage.[4] If the limit order is priced outside of the specified percentage, the limit order will be rejected. As this filter relies on an NBBO at the time of Exchange receipt of the order, it is only available after the Exchange has opened a series.

The Exchange proposes to amend Rule 967NY(b) to expand the functionality of the Limit Order Filter to protect limit orders received prior to the opening of trading. As proposed, for limit orders received before the opening of trading, the Limit Order Filter would operate immediately before conducting a Trading Auction (as set forth in Rule 952NY). The enhancement is designed to provide the same level of protection to market participants who enter limit orders before the open as it does for those who enter limit orders during Core Trading. The Exchange believes that using the best bids and offers available immediately before conducting the Trading Auction helps assure an accurate state of the market.

Pursuant to Rule 952NY(a), a Trading Auction is the process by which trading is initiated in a specified options class. Pursuant to 952NY(b)(D), prior to conducting the Auction Process, the Exchange system must have market maker quotes or an NBBO that creates a bid-ask differential that does not exceed those specified under Rules 925NY(b)(4). Immediately, prior to conducting the Auction Process, the Exchange will use the contra-side bid or offer of this bid-ask differential as the parameters for the Limit Order Filter being applied to limit orders received before the open of trading. The Exchange will announce the implementation date of this change through a Trader Update.

For example, assume the Exchange receives a sell order with a limit of $2.00 at 9:00:00 a.m. Eastern (which is before the open). If the Exchange is about to open that series at 9:30:02 a.m. where the best available bid is $4.00, because the $2.00 sell order is 50% below the bid, that limit order would be rejected immediately before the series opens. Likewise, if the Exchange is about to open a series in which the best available offer at $0.75, a buy order received pre-open with a limit price at or above $1.50 (which is 100% above the offer) would be rejected. In both these [sic] scenarios, orders that otherwise may cause price dislocation would be rejected before they could cause such harm to the market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by helping to mitigate the potential risks associated with the entry of limit orders before the opening that ultimately are priced a specified percentage away from the prevailing contra-side market existing at the open. The Exchange believes that a limit order priced a specified percentage away from the prevailing contra-side market existing at the open is evidence of a market participant error. By rejecting such an order, the Exchange believes it is promoting just and equitable principles of trade by preventing potential price dislocation that could result through subsequent executions during Core Trading of the balance of the aggressively priced limit order. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that an existing price protection, *i.e.,* the Limit Order Filter, would be applicable to all limit orders, regardless of when they are entered.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 967NY(b), unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, the specified percentage will be 100% for the contra-side NBB or NBO priced at or below $1.00 and 50% for contra-side NBB or NBO priced above $1.00.

[5] 15 U.S.C. § 78f(b).

[6] 15 U.S.C. § 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In support of its request, the Exchange states that the protections offered by this proposal are designed to contribute to a fair and orderly market and enhance the protection of investors by offering a level of price protection to pre-open limit orders that is not presently available. The Exchange states that waiving the 30-day delayed operative date will enable all market participants to benefit from the price protection offered by this proposal without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–76, and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21870 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73022; File No. SR–NYSEArca–2014–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of InfraCap MLP ETF Under NYSE Arca Equities Rule 8.600

September 9, 2014.

I. Introduction

On July 9, 2014, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of InfraCap MLP ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on July 28, 2014.[3] On July 25, 2014, NYSE Arca filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72651 (July 22, 2014), 79 FR 43801 (''Notice'').

Amendment No. 1 to the proposal.[4] On August 8, 2014, NYSE Arca filed Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by ETFis Series Trust I (''Trust''). The Trust is registered with the Commission as an investment company.[6]

Etfis Capital LLC (''Adviser'') will serve as the investment adviser to the Fund and Infrastructure Capital Advisors, LLC (''Sub-Adviser'') will serve as sub-adviser for the Fund. The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Exchange states that the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer; that the Adviser has implemented a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the portfolio; and that the Adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.[7]

ETF Distributors LLC will be the principal distributor of the Fund's Shares. The Bank of New York Mellon will serve as the administrator, accountant, custodian, and transfer agent for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including portfolio holdings and investment restrictions.[8]

Principal Fund Investments

According to the Exchange, the Fund seeks total return primarily through investments in equity securities of publicly-traded master limited partnerships and limited liability companies taxed as partnerships (''MLPs'').[9] The Fund will seek to achieve its investment objective by normally[10] investing up to 100% (but not less than 80%) of its total assets in exchange-traded securities of MLPs in the energy infrastructure sector. The Fund will focus on investing in MLPs selected by the Sub-Adviser that trade on the New York Stock Exchange (''NYSE'') or the NASDAQ Stock Market (''Nasdaq'') and that, as their principal business, operate assets used in the gathering, transporting, processing, storing, refining, distributing, mining, or marketing of natural gas, natural gas liquids, crude oil, refined petroleum products, or coal.

According to the Exchange, the Fund will typically focus on ''midstream'' MLPs which are MLPs that collect, gather, process, transport, and store natural resources and their byproducts (primarily crude oil, natural gas, and refined petroleum products), generally without taking ownership of the energy products.[11]

The Fund expects to typically invest in a portfolio of between 25 and 50 MLPs, but there is no limit on the number of MLPs in which the Fund will invest.[12] The Sub-Adviser's investment decisions will be based on a variety of quantitative, qualitative, and relative

[4] Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, the Exchange amended the proposed rule change to: (a) Clarify the type of investment company securities that the Fund may invest in as part of its principal investment strategy; (b) clarify that the real estate investment trust interests that the Fund may invest in as part of its non-principal investment strategy will be exchange-traded; (c) state that not more than 10% of the assets of the Fund will be invested in equity securities that are traded on an exchange that is not a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange does not have in place a comprehensive surveillance sharing agreement; (d) describe how the over-the-counter (''OTC'') securities in which the Fund invests will be valued for purposes of calculating the Fund's Net Asset Value (''NAV'') of the Fund, and specify where pricing information for such securities may be obtained; and (e) state, for surveillance purposes, that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). *See* Amendment No. 1, available at: *http://www.sec.gov/comments/sr-nysearca-2014-79/nysearca201479-1.pdf.* Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] Amendment No. 2 amended the filing, as modified by Amendment No. 1, to: (a) Reflect a name change to the Fund from ''InfraCap Active MLP ETF'' to ''InfraCap MLP ETF;'' and (b) clarify that all of the principal investments of the Fund, including the other open-end and closed-end investment companies that the Fund may invest in as part of its principal investment strategy, will be exchange-traded. Amendment No. 2 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 2 is not subject to notice and comment.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). The Exchange states that on February 26, 2014, the Trust filed with the Commission a post-effective amendment to its registration statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (''Registration Statement''). In addition, the Exchange states that the Trust filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14080), dated June 19, 2013, and that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812–14080).

[7] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange states that, in the event (a) the Adviser or any sub-adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, or changes to, the portfolio, and that adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[8] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, investment strategies, risks, NAV calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice, Amendment Nos. 1 and 2, and the Registration Statement, as applicable. *See* Notice, Amendment Nos. 1 and 2, and Registration Statement, *supra* notes 3, 4, 5, and 6 respectively.

[9] According to the Exchange, the Fund may invest in MLP units, securities of companies holding primarily general partner or managing member interests in MLPs, and securities that themselves own interests in MLPs (*e.g.,* exchange-traded funds (''ETFs''), exchange-traded notes (''ETNs''), and other exchange-traded open-end and closed-end investment companies that invest in MLPs). The Exchange states that, for purposes of this filing, ETFs include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Exchange further states that, for purposes of this filing, ETNs include securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (Index-Linked Securities).

[10] The term ''normally'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. According to the Registration Statement, the Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions. According to the Registration Statement, when the Fund takes a temporary defensive position, it may not be able to achieve its investment objective.

[11] According to the Exchange, Midstream MLPs may also operate ancillary businesses, including the marketing of energy products and logistical services related thereto, but are typically not engaged in the mining, production, or distribution of energy products.

[12] Under normal circumstances, the Fund will not invest more than 15% of its total assets in any one issuer.

valuation factors. The Sub-Adviser will typically evaluate potential investments with respect to certain key variables that the Sub-Adviser believes make a business successful over time, including, without limitation, a company's competitive position, its perceived ability to earn a high return on capital, the historical and projected stability and reliability of its earnings and cash flow, its anticipated ability to generate cash in excess of its growth needs, and its access to additional capital. The Sub-Adviser also expects to utilize its personnel's experience in evaluating energy infrastructure investments and long-term relationships with energy industry participants to help identify investment opportunities.

Other Fund Investments

According to the Exchange, although the Fund will normally invest not less than 80% of its total assets as described above, the Fund has flexibility to invest the remaining 20% of its assets in other types of securities, including exchange-traded equity securities of large, medium, and small capitalization companies; money market mutual funds; ETFs; and other open-end or closed-end investment companies unrelated to the energy infrastructure sector, when the Sub-Adviser believes they offer more attractive opportunities or to meet liquidity, redemption, or short-term investing needs.

According to the Exchange, the Fund may invest up to 20% of its total assets in securities convertible into common stock. Convertible securities eligible for purchase by the Fund will be exchange-traded and include convertible bonds, convertible preferred stocks, and warrants. The Fund will not invest directly in real estate, but may invest in exchange-traded readily marketable securities issued by companies that invest in real estate or interests therein. The Fund may also invest in readily marketable interests in exchange-traded real estate investment trusts.

According to the Exchange, the Fund may invest in money market instruments and foreign debt traded on U.S. exchanges or in OTC markets, and the Fund may invest in equity securities (including equity securities in the form of American Depositary Receipts) traded on U.S. exchanges or in the OTC markets.

The Fund may also invest, or establish short positions, in ETFs, exchange-traded options, or futures contracts in an effort to hedge against market, interest rate, or commodity risks in the Fund's portfolio.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed to be illiquid by the Sub-Adviser.[13] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may lend portfolio securities in an amount equal to up to 33% of its total assets to broker-dealers, major banks, or other recognized domestic institutional borrowers of securities that the Sub-Adviser has determined are creditworthy under guidelines established by the Board of Trustees. The Fund may not lend securities to any company affiliated with the Sub-Adviser. Each loan of securities will be collateralized by cash, securities, or letters of credit. The Fund might experience a loss if the borrower defaults on the loan.

The Fund will not invest in swaps. The Fund's investments will be consistent with its investment objective.

The Fund will not invest in unsponsored ADRs. The Fund will invest only in ADRs, futures, and options that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the assets of the Fund will be invested in equity securities that are traded on an exchange that is not a member of the ISG or with which the Exchange does not have in place a comprehensive surveillance sharing agreement.

The Fund may use leverage (including margin borrowing) to the extent permitted by the 1940 Act. However, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of an index.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with the requirements of Section 6 of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[18]

[13] In determining the liquidity of the Fund's investments, the Sub-Adviser may consider various factors including: (i) The frequency of trades and quotations; (ii) the number of dealers and prospective purchasers in the marketplace; (iii) dealer undertakings to make a market; (iv) the nature of the security (including any demand or tender features); and (v) the nature of the marketplace for trades (including the ability to assign or offset the Fund's rights and obligations relating to the investment).

[14] 15 U.S.C. 78f.

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[18] According to the Exchange, the IOPV calculations will be estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV will be calculated by an independent third party calculator and will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States. Premiums and discounts between the

which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[19] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[20] The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. Eastern Time) on each day that the Exchange is open.[21] A basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio securities and other Fund investments will be readily available from the national securities exchanges trading those securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Quotation and last sale information for underlying securities that are exchange-listed—including equity securities of MLPs and large, medium, and small capitalization companies, ETFs, ETNs, ADRs, and convertible securities—will be available via the CTA high-speed line. Information relating to futures will be available from the exchange on which such futures are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Information for investment companies, including money market mutual funds and open-end and closed-end investment companies, will be available from publicly available pricing sources, including Bloomberg, IDC, and Reuters. Quotation information for foreign debt securities, domestic debt securities, and equity securities that trade in OTC markets may be obtained from brokers and dealers who make markets in those securities or through nationally recognized pricing services through subscription agreements. The Fund's Web site (*www.infracapmlp.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[22] The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[23] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.[24] In addition, the Exchange states that, while neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, the

IOPV and the market price may occur. The Exchange states that the IOPV should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which will be calculated only once a day.

[19] According to the Exchange, several major market data vendors currently display or make widely available IOPVs taken from the CTA or other data feeds.

[20] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[21] The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The Exchange represents that for purposes of calculating NAV, exchange-traded securities will be valued at market closing price or, if no sale has occurred, at the last quoted bid price on the primary exchange on which they are traded. Price information for exchange-traded securities—including equity securities of MLPs and large, medium, and small capitalization companies, ETFs, ETNs, ADRs, convertible securities, and options—will be taken from the exchange where the security is primarily traded. Futures will be valued at the settlement price determined by the applicable exchange. Foreign debt securities, domestic debt securities, and equity securities, in each case that trade in the OTC market, will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or on other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all such securities to determine the market price. The Fund's foreign and domestic debt securities that trade in the OTC market will generally be valued at bid prices. Investment company securities, including money market mutual funds and open-end and closed-end investment companies, will be valued at NAV, utilizing pricing services. In computing the Fund's NAV, the value of the Fund's portfolio holdings is based on the holdings' closing price on local markets when available. When a portfolio holding's market price is not readily available or does not otherwise accurately reflect the fair value of such security, the Fund will use that holding's fair value as determined in good faith in accordance with the Fund's fair value pricing procedures, which will be approved by the Board of Trustees. In addition, the Fund may fair value foreign equity portfolio holdings each day the Fund calculates its NAV. Accordingly, the Fund's NAV may reflect certain portfolio holdings' fair values rather than their market prices. In valuing non-exchange traded securities, the Fund will first use publicly available pricing sources, including Bloomberg, IDC, and Reuters. Non-exchange traded securities will only be fair valued if their market prices are not readily available. To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV is calculated based upon the NAVs reported by those registered open-end investment companies.

[22] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[23] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[24] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, or changes to, the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.[25] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded assets held by the Fund with other markets that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-traded assets held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded assets held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[27] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will normally invest up to 100% (but not less than 80%) of its total assets in exchange-traded securities of MLPs in the energy infrastructure sector.

(7) The Fund will not invest in swaps.

(8) The Fund will not invest in unsponsored ADRs. The Fund will invest only in ADRs, futures, and options that are traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(9) Not more than 10% of the assets of the Fund will be invested in equity securities that are traded on an exchange that is not a member of the ISG or with which the Exchange does not have in place a comprehensive surveillance sharing agreement.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed to be illiquid by the Sub-Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(11) The Fund's investments will be consistent with its investment objective. The Fund may use leverage (including margin borrowing) to the extent permitted by the 1940 Act. However, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of an index.

(12) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice and Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act[28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2014–79), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21868 Filed 9–12–14; 8:45 am]

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[25] *See supra* note 7 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[26] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[27] 17 CFR 240.10A–3.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73025; File No. SR–NASDAQ–2014–089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7018 Fees

September 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to modify NASDAQ Rule 7018 [sic] fees assessed for execution and routing securities listed on NASDAQ, the New York Stock Exchange (''NYSE'') and on exchanges other than NASDAQ and NYSE.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend NASDAQ Rule 7018 to modify fees assessed for execution and routing securities listed on NASDAQ (''Tape C''), NYSE (''Tape A'') and on exchanges other than NASDAQ and the NYSE (''Tape B'').

The Exchange is proposing to no longer offer a recently adopted credit[3] provided to members that qualify under certain requirements of the Market Quality Incentive Programs of Rule 7014. Specifically, NASDAQ will no longer provide a credit of $0.0001 per share executed to a member that either qualifies for a credit under Rule 7014(c)(3) or that is designated as a Qualified Market Maker (''QMM'') under Rule 7014(d). The credit currently provided is based on the shares executed through the qualifying MPID under Rules 7014(c)(3) or 7014(d), and is provided in addition to any other credit or rebate for which the member may qualify. NASDAQ believes that the elimination of this program is warranted since it has failed to increase liquidity in Tape A securities or to provide members with additional incentive to improve market quality.

Additionally, a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, of 100,000 or more contracts per day in a month executed through one or more of its Nasdaq Option Market MPIDs qualifies for a credit of $0.0029 per share executed. NASDAQ is proposing to decrease the Consolidated Volume requirement for this tier from 0.15% to shares representing more than 0.10% of Consolidated Volume. The Exchange believes that the proposed lower Consolidated Volume requirement will encourage market participant activity and will also support price discovery and liquidity provision.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. This proposal is reasonable, equitable and not unfairly discriminatory for the reasons noted below.

NASDAQ believes that eliminating the recently adopted $0.0001 per share executed credit in NYSE-listed securities provided to members that either qualify for a credit under Rule 7014(c)(3) or that is [sic] designated as a QMM under Rule 7014(d) is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. Specifically, the Exchange believes it is equitable and not unfairly discriminatory because it is being eliminated for all members that meet the requirements of either Rule 7014(c)(3) or 7014(d) and that receive the credit for its [sic] executions in NYSE-listed securities. NASDAQ also believes that eliminating the credit is reasonable because the Exchange has determined that although the credit was designed to increase liquidity in Tape A securities and to provide members with additional incentive to improve market quality, the program failed to have such an impact.

NASDAQ also believes the proposed rule change is reasonable since the Exchange must balance its desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them. As a consequence, NASDAQ must choose carefully the credits it provides, so that it promotes activity it deems most important while foregoing offering other credits, which may also improve market quality yet prove too costly. NASDAQ notes that the credit, in the end, did not suffice as an additional incentive to members to improve the quality of the market in NYSE-listed securities on NASDAQ.

NASDAQ believes that the proposed rule changes to the rebate tiers through which members may earn a $ 0.0029 per share executed rebate are reasonable because they will make it easier for members to receive a rebate at that level, by lowering the volume requirements for existing tiers. In addition, the proposed rule changes are consistent with an equitable allocation of fees because they reflect an allocation of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72810 (August 11, 2014), 79 FR 48281 (August 15, 2014) (SR–NASDAQ–2014–078).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

rebates to liquidity providers designed to encourage beneficial market activity, with greater incentives for market participants to provide liquidity and the proposed rule changes are not unfairly discriminatory because they apply uniformly across all markets. Finally, the changes are not unfairly discriminatory because they increase the availability of higher rebates without eliminating any of the other means by which a member may earn a higher rebate under Rule 7018(a).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[6] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as [sic] the ability of members to develop their own routing capabilities. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result.

Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–089. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–089, and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O' Neill,

Deputy Secretary.

[FR Doc. 2014–21871 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73028; File No. SR–NYSE–2014–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 49, Which Addresses the Exchange's Emergency Powers Revising How Certain Messages Are Disseminated

September 9, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 49, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 49, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.

Background

In 2009, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[4] The authority in Rule 49 may be exercised when, due to an Emergency Condition, the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca, Inc. (''NYSE Arca'') the Exchange's affiliate, to serve as a backup facility so that the Exchange, as a self-regulatory organization (''SRO''), can remain operational.[5] NYSE Arca also would continue to operate simultaneously. In November 2013, the Securities and Exchange Commission (''Commission'') approved amendments to Rule 49 that were designed to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an Emergency Condition, reflect the operational preferences of the industry, and reflect the structure of member organization connectivity to and system coding for exchange systems.[6] To date, the Exchange has not invoked Rule 49.

Under current Rule 49(b)(2)(A), beginning on the next trading day following the declaration of an Emergency Condition, NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate (i) the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as messages of the Exchange, and (ii) any notification for Exchange-listed securities to the Consolidated Quotation System (''CQS'') of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of both the Exchange and NYSE Arca.

Under current Rule 49(b)(2)(B), bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the CQS as bids and offers of NYSE Arca, except that the opening quote and any re-opening quote would be reported to the CQS as a bid and/or offer of both the Exchange and NYSE Arca. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing auctions, which would be reported as Exchange executions and Exchange volume only.

Proposed Rule Change

After further review, the Exchange has determined that it is not feasible for certain notifications that are disseminated via CQS to be disseminated as messages of both the Exchange and NYSE Arca. Specifically, CQS can only process notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting from a single market. Because the Exchange is the primary market for NYSE-listed securities, the Exchange believes that it is more appropriate to continue to disseminate these notifications as NYSE market messages during an Emergency Condition. As such, the Exchange proposes to amend Rule 49(b)(2)(A)(ii)—Equities [sic] so that the messages would only be disseminated as NYSE messages.

For similar reasons, CQS supports dissemination of re-opening quote messages from only a single market. Specifically, in order to support a re-opening quote, a single market must disseminate a ''resume'' trading message, which then signals CQS to accept and display quotes from all other markets. Because the Exchange is the primary market for NYSE-listed securities, the Exchange believes it is appropriate to disseminate notifications of re-opening quotes and related ''resume'' messages as NYSE market messages during an Emergency Condition.[7] As such, the Exchange proposes to amend Rule 49(b)(2)(B) so that any re-opening quote would only be reported to the CQS as a bid and/or offer of the Exchange.

The Exchange notes that it has conducted two tests with customers to disseminate messages as proposed.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to promote just and equitable principles of trade and to remove

[4] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105). Under current Rule 49, an ''Emergency Condition'' means an emergency as defined in Section 12(k)(7) of the Act, which is ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. 78l(k)(7).

[5] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the ''NYSE Arca Marketplace.'' For the purposes of this filing and in the text of Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

[6] *See* Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR–NYSE–2013–54; SR–NYSEMKT–2013–66; SR–NYSEArca–2013–77). This release approved the amendment to Rule 49 as well as amendments to NYSE Arca Rule 2.100 and adoption of NYSE MKT LLC (''NYSE MKT'') Rule 49—Equities.

[7] By contrast, CQS supports the receipt of opening quotes of both the Exchange and NYSE Arca. The Exchange believes it is appropriate to disseminate the opening quote as messages of both the Exchange and NYSE Arca in order to signal to those market participants that are looking for a primary market message as a cue that NYSE-listed securities are open for trading.

[8] The Exchange conducted customer tests on September 21, 2013 and March 22, 2014. *See http://markets.nyx.com/nyse/trader-updates/view/12682* and *http://markets.nyx.com/nyse/trader-updates/view/13092,* respectively.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. The proposed change will take into account CQS system limitations while still providing for the appropriate dissemination of primary market messages. The Exchange believes that the proposed rule change would strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition and remove a duplicative notification that cannot, upon further review, be feasibly achieved. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of how NYSE Arca would disseminate messages on behalf of the Exchange during an Emergency Condition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver is consistent with the protection of investors and the public interest because it would permit the Exchange and its member organizations to more quickly adopt effective business continuity plans that will help avoid market closures in the event of an emergency, thereby maintaining liquidity for the benefit of market participants and investors generally. In support of the requested waiver, the Exchange notes that it has already successfully conducted two tests with customers to disseminate messages in the proposed manner, each time without negative results or feedback.[13] Additionally, the Exchange's affiliates, NYSE MKT and NYSE Arca, have filed similar proposals to account for these same proposed changes.[14] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–48 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] *See supra* note 8.

[14] *See* SR–NYSEMKT–2014–75 and SR–NYSEArca–2014–96.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73019; File No. SR–NYSEMKT–2014–74]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Adjust the Pricing Related to the Retail Liquidity Program Under Rule 107C—Equities

September 9, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 26, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adjust the pricing related to the Retail Liquidity Program under Rule 107C—Equities. The Exchange proposes to implement the fee change effective September 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to adjust the pricing related to the Retail Liquidity Program under Rule 107C—Equities. The Exchange proposes to implement the fee change effective September 1, 2014.

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for Exchange-traded securities (including but not limited to Exchange-listed securities and securities listed on the NASDAQ Stock Market, LLC traded pursuant to unlisted trading privileges (''UTP'')) while also providing the potential for price improvement to such order flow.[4] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a ''Retail Order,'' which is defined in Rule 107C(a)(3)—Equities as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[5] In addition to RMOs, Retail Liquidity Providers (''RLPs'') were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of ''Retail Price Improvement Orders'' (''RPIs''), which are non-displayed interest that is better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, ''PBBO'').[6] Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders are not currently charged or provided with a credit (*i.e.,* they are free) if the RLP satisfies the applicable percentage requirement of Rule 107C—Equities. The Exchange proposes to instead provide a credit of $0.0003 per share. RPIs of an RLP that does not satisfy the applicable percentage requirement of Rule 107C—Equities would remain subject to the existing fee of $0.0003 per share.

A fee of $0.0003 per share also currently applies to non-RLP member organization executions of RPIs against Retail Orders, unless the non-RLP member organization executes an average daily volume (''ADV'') during the month of at least 10,000 shares of RPIs, in which case no charge or credit applies (*i.e.,* the execution is free). The Exchange proposes to instead provide a credit of $0.0003 per share to such RPI executions if the non-RLP member organization satisfies the 10,000 ADV threshold.

RMOs currently receive a credit of $0.0005 per share for executions of Retail Orders if executed against RPIs or MPL Orders.[7] The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (*i.e.,* no credit or charge).[8]

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[4] *See* Rule 107C—Equities. *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSEAmex–2011–84).

[5] RMO is defined in Rule 107C(a)(2)—Equities as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C—Equities to submit Retail Orders.

[6] *See* 17 CFR 242.600(b)(57). RLP is defined in Rule 107C(a)(1)—Equities as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C—Equities. RPI is defined in Rule 107C(a)(4)—Equities and consists of non-displayed interest in Exchange-traded securities that is priced better than the PBBO by at least $0.001 and that is identified as such.

[7] Retail Orders are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.

[8] The Exchange would continue to charge an RMO according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book.

[9] In the Exhibit 5 for SR–NYSEMKT–2014–43, the Exchange inadvertently omitted ellipses immediately above new text in the Price List with the heading ''Transaction Fees and Credit For ETPs Traded Pursuant to Unlisted Trading Privileges.'' Ellipses would have indicated that the Retail Liquidity Program pricing table that appeared immediately above that new text was unchanged and part of the newly designated section for non-ETPs traded UTP. Due to the missing ellipses, the Price List was posted on the Exchange's Web site in May 2014 with that particular Retail Liquidity Program pricing table removed. The Exchange did not intend this result and has billed non-ETPs traded UTP in accordance with that Retail Liquidity Program pricing table, which is the same pricing as listed and ETP securities. The attached Exhibit 5 corrects the omission and reflects that Retail Liquidity Program pricing table for non-ETPs traded UTP as existing text.

Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately two years ago.[12] At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for Exchange-traded securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of $0.0003 per share for RLP executions of RPIs against Retail Orders if the RLP satisfies the applicable percentage requirement of Rule 107C—Equities is reasonable because it would further incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Providing a credit of $0.0003 per share for non-RLP member organization executions of RPIs against Retail Orders if the non-RLP member organization executes an ADV during the month of at least 10,000 shares of RPIs also is reasonable because it would incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.

The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of the Retail Liquidity Program. Despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs. Additionally, Retail Order executions are always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.[13] Orders that remove liquidity are generally charged a fee according to the Price List, but Retail Orders would continue to be subject to alternative pricing (*i.e.,* no charge rather than a fee) that would continue to contribute to maintaining or increasing the proportion of retail flow in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[14] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse order flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RLPs and non-RLP member organizations being available for interaction with the Retail Orders. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See* Securities Exchange Act Release No. 67609 (August 7, 2012), 77 FR 48193 (August 13, 2012) (SR–NYSEMKT–2012–35).

[13] A Retail Order is an Immediate or Cancel Order. *See* Rule 107C(a)(3)—Equities. *See also* Rule 107C(k)—Equities for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

[14] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's Web site) (''White Speech''); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site) (''Schapiro Speech''). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in ''dark'' venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[15] 15 U.S.C. 78f(b)(8).

regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–74 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21865 Filed 9–12–14; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73029; File No. SR–NYSEMKT–2014–75]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 49—Equities, Which Addresses the Exchange's Emergency Powers Revising How Certain Messages Are Disseminated

September 9, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 49—Equities, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 49—Equities, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.

Background

In 2013, the Exchange adopted Rule 49—Equities, based on already-existing New York Stock Exchange (''NYSE'') Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.[4] The Exchange adopted Rule 49—Equities based on corresponding NYSE Rule 49 to align its authority with its affiliates and mitigate the possibility of having to close in the event of a future emergency condition.[5] The authority in Rule 49—Equities may be exercised when, due to an Emergency Condition, the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE MKT Trading Floor, cannot be utilized. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca, Inc. (''NYSE Arca'') the Exchange's affiliate, to serve as a backup facility so that the Exchange, as a self-regulatory organization (''SRO''), can remain operational.[6] NYSE Arca also would continue to operate simultaneously. In approving Rule 49—Equities, the Securities and Exchange Commission (''Commission'') approved text, based on a corresponding amendment to NYSE Rule 49, that was designed to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an Emergency Condition, reflect the operational preferences of the industry, and reflect the structure of member organization connectivity to and system coding for exchange systems.[7] To date, the Exchange has not invoked Rule 49—Equities.

Under current Rule 49(b)(2)(A)—Equities, beginning on the next trading day following the declaration of an Emergency Condition, NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate (i) the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as messages of the Exchange, and (ii) any notification for Exchange-listed securities to the Consolidated Quotation System (''CQS'') of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of both the Exchange and NYSE Arca.

Under current Rule 49(b)(2)(B)—Equities, bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the CQS as bids and offers of NYSE Arca, except that the opening quote and any re-opening quote would be reported to the CQS as a bid and/or offer of both the Exchange and NYSE Arca. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing auctions, which would be reported as Exchange executions and Exchange volume only.

Proposed Rule Change

After further review, the Exchange has determined that it is not feasible for certain notifications that are disseminated via CQS to be disseminated as messages of both the Exchange and NYSE Arca. Specifically, CQS can only process notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting from a single market. Because the Exchange is the primary market for NYSE MKT-listed securities, the Exchange believes that it is more appropriate to continue to disseminate these notifications as NYSE MKT market messages during an Emergency Condition. As such, the Exchange proposes to amend Rule 49(b)(2)(A)(ii)—Equities so that the messages would only be disseminated as NYSE MKT messages.

For similar reasons, CQS supports dissemination of re-opening quote messages from only a single market. Specifically, in order to support a re-opening quote, a single market must disseminate a ''resume'' trading message, which then signals CQS to accept and display quotes from all other markets. Because the Exchange is the primary market for NYSE MKT-listed securities, the Exchange believes it is appropriate to disseminate notifications of re-opening quotes and related ''resume'' messages as an NYSE MKT market message during an Emergency Condition.[8] As such, the Exchange proposes to amend Rule 49(b)(2)(B)—Equities so that any re-opening quote would only be reported to the CQS as a bid and/or offer of the Exchange.

The Exchange notes that it has conducted two tests with customers to disseminate messages as proposed.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market

[4] *See* Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR–NYSE–2013–54; SR–NYSEMKT–2013–66; SR–NYSEArca–2013–77). This release approved the Exchange's adoption of Rule 49—Equities as well as amendments to already-existing NYSE Rule 49.

[5] *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105). *See also* SR–NYSE–2013–54, *supra* note 3. Under current Rule 49—Equities, an ''Emergency Condition'' means an emergency as defined in Section 12(k)(7) of the Act, which is ''(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.'' 15 U.S.C. 78l(k)(7).

[6] NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the ''NYSE Arca Marketplace.'' For the purposes of this filing and in the text of Rule 49—Equities, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

[7] *See supra* note 4.

[8] By contrast, CQS supports the receipt of opening quotes of both the Exchange and NYSE Arca. The Exchange believes it is appropriate to disseminate the opening quote as messages of both the Exchange and NYSE Arca in order to signal to those market participants that are looking for a primary market message as a cue that NYSE MKT-listed securities are open for trading.

[9] The Exchange conducted customer tests on September 21, 2013 and March 22, 2014. *See http://markets.nyx.com/nyse/trader-updates/view/12682* and *http://markets.nyx.com/nyse/trader-updates/view/13092,* respectively.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

and a national market system. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. The proposed change will take into account CQS system limitations while still providing for the appropriate dissemination of primary market messages. The Exchange believes that the proposed rule change would strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition and remove a duplicative notification that cannot, upon further review, be feasibly achieved. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of how NYSE Arca would disseminate messages on behalf of the Exchange during an Emergency Condition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver is consistent with the protection of investors and the public interest because it would permit the Exchange and its member organizations to more quickly adopt effective business continuity plans that will help avoid market closures in the event of an emergency, thereby maintaining liquidity for the benefit of market participants and investors generally. In support of the requested waiver, the Exchange notes that it has already successfully conducted two tests with customers to disseminate messages in the proposed manner, each time without negative results or feedback.[14] Additionally, the Exchange's affiliates, NYSE and NYSE Arca, have filed similar proposals to account for these same proposed changes.[15] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–75. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–75 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21875 Filed 9–12–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] *See supra* note 9.

[15] *See* SR–NYSE–2014–48 and SR–NYSEArca–2014–96.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Final Environmental Assessment (EA) for the Midland International Air and Space Port, City of Midland, Midland County, Texas, and Finding of No Significant Impact (FONSI)

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

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321, et seq.), Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of the Final EA for the Midland International Air and Space Port, City of Midland, Midland County, Texas, and FONSI.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Federal Aviation Administration, 800 Independence Avenue SW., Suite 325, Washington, DC 20591; email *Daniel.Czelusniak@faa.gov;* or phone (202) 267–5924.

SUPPLEMENTARY INFORMATION: The Final EA was prepared to analyze the potential environmental impacts of the City of Midland's proposal to operate a commercial space launch site at the Midland International Airport (MAF) in Midland County, Texas and offer the site to XCOR Aerospace, Inc. (XCOR) for the operation of the Lynx horizontal take-off and horizontal landing reusable launch vehicle (RLV) and engine testing. To operate a commercial space launch site, the City of Midland must obtain a commercial space launch site operator license from the FAA. Under the Proposed Action addressed in the EA, the FAA would: (1) Issue a launch site operator license to the City of Midland for the operation of a commercial space launch site at MAF, (2) issue experimental permits and/or launch licenses to XCOR that would allow XCOR to conduct launches of the Lynx RLV from MAF, and (3) provide approval to modify the existing Airport Layout Plan (ALP) to reflect the designation of a launch site boundary, installation of aboveground propellant storage tanks, and construction of a concrete pad for engine testing. Proposed launch operations would begin in 2014 and continue through 2018. The frequency of launch operations would initially be one launch per week, eventually increasing to two launches per day, five days a week. Fifty-two annual launch operations are proposed in 2014. The total number of annual launch operations would increase each year until 2018 when 520 annual launch operations are proposed.

The Final EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative. Under the No Action Alternative, the FAA would not issue a launch site operator license to the City of Midland and thus would not issue experimental permits and/or launch licenses to XCOR for operation of the Lynx RLV at MAF. Also, there would be no need to update the ALP for MAF, and thus there would be no approval of a revised ALP. Existing commercial aviation and military operations would continue at MAF.

The impact categories considered in the Final EA include air quality; compatible land use; Department of Transportation Act: Section 4(f); fish, wildlife, and plants; floodplains; hazardous materials, pollution prevention, and solid waste; historical, architectural, archaeological, and cultural resources; natural resources and energy supply; noise; socioeconomic impacts, environmental justice, and children's environmental health and safety risks; water quality; and wetlands. The Final EA also considers the potential cumulative environmental impacts.

The FAA has posted the Final EA and FONSI on the FAA Web site at *http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/operator/.*

The FAA published a Notice of Availability of the Draft EA in the **Federal Register** on March 24, 2014. A Notice of Availability of the Draft EA was also published in the Midland Reporter-Telegram, Odessa American, and Big Spring Herald on March 30, 2014 and in the Big Lake Wildcat on April 3, 2014. The FAA mailed copies of the Draft EA to the following agencies: Texas Historical Commission (State Historic Preservation Officer), Texas Parks and Wildlife Department, and U.S. Fish and Wildlife Service. An electronic version of the Draft EA was also made available on the FAA Web site. In addition, the FAA printed and mailed a copy of the Draft EA to the following libraries: Midland County Library, Ector County Library, and Reagan County Library. The FAA held an open house public meeting on April 8, 2014 from 5:30 p.m. to 8:30 p.m. at the University of Texas of the Permian Basin, Center for Energy and Economic Diversification. The public comment period ended on April 24, 2014. The FAA received two public comments on the Draft EA, both in support of the Proposed Action. No substantive changes were made to this Final EA.

Issued in Washington, DC, on September 9, 2014.

Daniel Murray,

Manager, Space Transportation Development Division.

[FR Doc. 2014–21905 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–71]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 6, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0331 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda Robeson, ARM–210, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *Brenda.Robeson@faa.gov;* (202) 267–4712.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 10, 2014.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2014–0331.

Petitioner: PMI Global Services, Inc.

Section of 14 CFR Affected: 14 CFR 91.211(b)(1)(ii).

Description of Relief Sought: Petitioner requests relief from the requirement that one pilot crewmember wear and use an oxygen mask while at flight altitudes above flight level 410. The relief would enable domestic and international 14 CFR part 91 operations of company aircraft equipped with quick donning oxygen masks and automatic emergency descent mode technology.

[FR Doc. 2014–21939 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0123; Notice 2]

Thor Industries, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Livin' Lite RV, Inc.(Livin' Lite), a wholly owned subsidiary of Thor Industries, Inc. (Thor), has determined that certain model year Livin' Lite RV trailers manufactured between November 7, 2008 and September 10, 2013, do not fully comply with paragraph S9 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less* and paragraph S10 of FMVSS No. 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Thor has filed an appropriate report dated November 7, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Harry Thompson, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5289, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. *Thor's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Thor has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on March 28, 2014 in the **Federal Register** (79 FR 17649). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2013–0123.''

II. *RV Trailers Involved:* Affected are approximately 3,465 RV trailers manufactured between November 7, 2008 and September 10, 2013. The trailer models affected are Livin' Lite model year (MY) 2008–2014 Quicksilver, MY 2009–2014 Camplite, MY 2009–2014 VRV, MY 2009–2014 Bearcat, and MY 2013–2014 Axxess.

III. *Noncompliance:* Thor explains that the noncompliance is that of the absence of the Cargo Carrying Capacity (CCC) label that is required by paragraph S9 of FMVSS No. 110 and paragraph S10 of FMVSS No. 120 for all motor homes and RV Trailers.

IV. *Rule Text:* Paragraph S9 of FMVSS No. 110 requires in pertinent part:

> . . . S9.3 Each motor home and RV Trailer single stage or final stage manufacturer must affix either a motor home occupant and cargo carrying capacity (OCCC) label (Figure 3) or a RV trailer cargo carrying capacity (CCC) label (Figure 4) to its vehicles that meets the following criteria . . .

Paragraph S10 of FMVSS No. 120 requires in pertinent part:

> . . . S10.4 Each motor home and RV Trailer single stage or final stage manufacturer must affix either a motor home occupant and cargo carrying capacity (OCCC) label (Figure 1) or a RV trailer cargo carrying capacity (CCC) label (Figure 2) to its vehicles that meets the following criteria . . .

V. *Summary of Thor's Analyses:* Thor stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The cargo carrying capacity information displayed on the CCC label is redundant since it is also displayed on the Tire Placard Label as required by paragraph S4.3 of FMVSS No. 110.

2. Although the Tire Placard Label is not required on trailers over 10,000 lbs GVWR, Thor placed the Tire Placard Label on all trailers it produced and is located on the trailer tongue next to the Federal Certification Label.

3. The Livin' Lite Owner's manuals (which can be found on *www.livinlite.com*) instruct owners on the loading of their vehicle and where to find the required ratings that are displayed on the Federal Certification Label.

4. The Manufacturer's Certificate of Origin (MSO) also contains both the Gross Vehicle Weight Rating (GVWR) and the unloaded vehicle weight (UVW). The difference of these two numbers would also give the owner the available CCC of the trailer.

5. Thor had received no complaints or inquiries regarding cargo carrying capacity from any of its owners or dealers.

6. Thor also stated its belief that NHTSA has previously stated (72 FR 68442–68466, December 4, 2007) that the most important time for RV purchasers to receive the CCC information is at the point-of-sale.

Thor has additionally informed NHTSA that it has corrected the noncompliance so that all future production of these trailers will fully comply with FMVSS Nos. 110 and 120.

In summation, Thor believes that the described noncompliance of the subject trailers is inconsequential to motor vehicle safety, and that its petition, to exempt Thor from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision

NHTSA Analysis: Thor reported a noncompliance with FMVSS Nos. 110 and 120. However, the specifications listed on Livin Lite's Web site for the models identified in Thor's report that it filed under 49 CFR part 573 show a maximum GVWR of 10,000 lbs. As such, the noncompliance is limited only to the requirements of paragraph S9.3 of FMVSS No. 110.

The 3,465 affected RV trailers do not have the required cargo carrying capacity label. As noted above, FMVSS No. 110, S9 requires an RV label to state the vehicle's VIN, maximum weight of cargo, and, if applicable, the weight of a full load of potable water. FMVSS No. 110, S4.3(a) requires the vehicle's capacity weight to be stated on the vehicle placard, i.e., the weight of cargo should not exceed XXX kg or XXX lbs. The placard is located adjacent to the 49 CFR 567 certification label which contains the VIN. So the missing information is the water weight. Livin Lite's specifications for the affected vehicles list water volumes of 20–63 gallons. Thor provided a sample of the missing label in its petition stating the water weight in kg and lbs, which the label indicates is calculated using the conversions 1 kg/liter and 8.3 lbs/gallon. Therefore, the water weights are 20 gallons = 166 lbs to 63 gallons = 523 lbs. The model 11FDB trailer has a 20 gallon fresh water capacity which relates to 24 percent of its load capacity of 705 lbs. This appears to be the model with the highest percentage of water weight within its cargo carrying capacity weight. However, it is a very small trailer with limited storage space. Specifications for the other RVs indicate a water weight of 17 percent or less.

We confirmed that the owner's manual on Livin Lite's Web site provides warnings to not overload its RVs. The manual advises against loading an RV with maximum liquid capacities including the holding tanks, and filling the full volume of storage compartments and cupboards. An additional prominent warning in the manual states ''Never overload your trailer. Do not exceed the rated load of the RV or the rated load of any axle!'' Furthermore, the Livin Lite Web site has a link to the Recreation Vehicle Industry Association's publication ''Trailer Life, 2012 Towing Guide.'' It states on page 7: ''The only surefire way to find out what your trailer weighs is to load it as usual for a trip and weigh it at a public scale,'' making sure not to exceed the Gross Vehicle Weight Rating (GVWR) or a Gross Axle Weight Rating (GAWR). We believe Livin Lite's warnings and additional information are sufficient guidance to owners of the affected RVs.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Thor has met its burden of persuasion that the subject noncompliance is inconsequential to motor vehicle safety. Accordingly, Thor's petition is hereby granted and Thor is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant vehicles that Thor no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Thor notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–21884 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0093; Notice 1]

Grote Industries, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Grote Industries, LLC (Grote), has determined that certain Grote bulk nylon air brake tubing manufactured during the period December 2013 to March 2014 does not fully comply with paragraph S11.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 106; *Brake Hoses.* Grote has filed an appropriate report dated June 13, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is October 15, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: 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 Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-

addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Grote's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Grote submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Grote's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Equipment Involved: Affected are approximately 869 spools of Grote nylon air brake tubing that was manufactured during the period December 2013 to March 2014.

III. Noncompliance: Grote explains that the noncompliance is that, due to a production error, the affected air brake tubing is not properly marked in accordance with paragraph S11.2.1(a) of FMVSS No. 106, which requires plastic air brake tubing to be marked with a designation that identifies the manufacturer of the tubing. In addition, some of the tubing also does not comply with paragraph S11.2.1(e) of FMVSS No. 106 which requires plastic air brake tubing to be marked with the letter ''A'' to indicate intended use in air brake systems. Specifically, all of the subject brake tubing was mismarked with the number ''1913'' in addition to ''GROTE'' and some of the tubing was also mismarked with the letter ''B,'' instead of the letter ''A.''

IV. Rule Text: Paragraph S11.2 of FMVSS No. 106 requires in pertinent part:

S11.2 Labeling

S11.2.1 Plastic air brake tubing. Plastic air brake tubing shall be labeled, or cut from bulk tubing that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on tubing that is sold as part of a motor vehicle.

(a) The symbol DOT, constituting a certification by the hose manufacturer that the hose conforms to all applicable motor vehicle safety standards. . . .

(e) The letter ''A'' shall indicate intended use in air brake systems.

V. Summary of Grote's Analyses: Grote stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

Grote believes that these labeling noncompliances are inconsequential to motor vehicle safety because both the manufacturer designation and the intended use are otherwise clearly marked on the tubing.

Grote stated its belief that the purpose of the manufacturer identification requirement is to permit identification of products in the event of a product recall. If a recall of the subject air brake tubing was to become necessary the affected tubing could easily be identified by the GROTE name, which is conspicuously marked on all of the affected tubing.

Grote also stated its belief that the manufacturer associated with the identification number ''1913'' has not existed since 1977 and are are not aware of any manufacturer currently marketing air brake tubing under the ''Samuel Moore'' brand.[1]

The purpose of the ''A'' letter designation requirement is to indicate that the product is intended for use in air brake applications. As noted above, some of the products are marked as ''SAE J844 Type B'' instead of the letter ''A.'' Type B tubing is an SAE J844 designation that identifies reinforced air brake tubing. This designation is widely recognized among truck maintenance and service personnel. Regardless, the subject hose is also clearly and prominently marked with the phrase, ''GROTE AIR BRAKE,'' eliminating any possible confusion or misunderstanding as to the intended application of the product.

In addition, Grote stated its belief that NHTSA has made analogous inconsequentiality determinations in similar situations related to other products where a required label was missing, but the product contained other markings that conveyed the same or similar information. See Bridgestone Americas Tire Operations, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 35357 (June 12, 2013); Bridgestone Americas Tire Operations, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4396 (Jan. 26, 2006); and Delphi Corporation, Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 41331 (July 8, 2004).

Grote also informed NHTSA that it has corrected the noncompliance so that all future production nylon air brake tubing will comply with FMVSS No. 106.

In summation, Grote believes that the described noncompliance of the subject nylon air brake tubing is inconsequential to motor vehicle safety, and that its petition, to exempt Grote from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject equipment that Grote no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after Grote notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–21882 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–59–P

[1] After receiving Grote's petition, based on a submission from Eaton Corporation, NHTSA revised its records to indicate that the brake hose manufacturer identification ''1913'' ceded to Eaton Corporation due to its acquisition of Moore, Samuel, and Company, Synflex Division.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0083; Notice 1]

China Manufacturers Alliance, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: China Manufacturers Alliance, LLC (CMA) and Double Coin Holdings, Ltd (DCHL) have determined that certain Double Coin and Dynatrac brand truck & bus radial replacement tires that were imported by CMA and manufactured by DCHL do not fully comply with paragraph S6.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles.* CMA and DCHL filed an appropriate report dated June 17, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is October 15, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: 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 Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. CMA and DCHL's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CMA and DCHL submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of CMA and DCHL's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Replacement Tires Involved: Affected are approximately 1,753,089 Double Coin and Dynatrac brand truck & bus radial (TBR) replacement tires that were imported by CMA and manufactured by DCHL tires from June 2011 to June 2014 (DOT date codes 2711 to 2614). Refer to CMA and DCHL's 49 CFR part 573 report for descriptions of the tire sizes and other specifics.

III. Noncompliance: CMA and DCHL describe the noncompliance as the inadvertent omission of the letter marking that designates the tire Load Range from the tire sidewall.

IV. Rule Text: Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less that 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires. . . .

(j) The letter designating the tire load range.

V. Summary of CMA and DCHL's Analyses: CMA and DCHL stated their belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. CMA has certified that the subject tires are fully compliant to all requirements of FMVSS No. 119 except for the aforementioned omission issue. The tires are manufactured to the specifications and are able to carry the specified weight designed for these tires and as mandated by FMVSS No. 119.

2. CMA stated that NHTSA tested two samples from the tires in question for endurance and found them to comply with the required standards of FMVSS No. 119, and that in addition to the S6.5 required markings, CMA also includes redundant safety markings on some of the most critical criterion of a TBR tire. With FMVSS No. 119 requiring items S6.5 (a-j) as mandatory, CMA also lists data that assists dealers/consumers in recognizing the tire's abilities and performance. Included on the sidewall of these tires, but not mandatory requirements by FMVSS No. 119, are Load Index for both single and dual placement of the tire, Ply Rating and Speed Rating.

3. CMA believes that Load Index is a redundant data point for Load Range. Both measure the important max load/max pressure data required on the tire sidewall. In addition, the Tire and Rim Association (TRA) data book lists a conversion chart as to Load Range and Ply Rating correlation. Thus, the information that the Load Range letter is meant to convey is already included on

the tire in two other ways, i.e. Load Index and Ply Rating.

4. CMA has certified that the subject tires have been properly manufactured to the requirements of FMVSS No. 119 including all static and dynamic requirements and design requirements for max load requirements as well as additional information for consumers to review that correlate to load range so the noncompliance is one of format of the markings.

5. CMA believes that there is little to no risk of overloading by an end-user because of the inclusion of the Load Index and Ply Ratings. Even in the absence of the Load Range, an end-user would have to ignore the max load/max pressure data on the tire and the ply rating in order to create a risk as to motor vehicle safety.

6. CMA also believes that because the tires in question meet the performance standards of FMVSS No. 119, and the information conveyed by the Load Range is imparted to end-users by both the required Load Index and the optional Ply Rating, the absence of the Load Range on these tires is inconsequential as to motor vehicle safety.

CMA and DCHL has additionally informed NHTSA that it has corrected the noncompliance so that all future production replacement tires will comply with FMVSS No. 119.

In summation, CMA and DCHL believe that the described noncompliance of the subject replacement tires is inconsequential to motor vehicle safety, and that its petition, to exempt CMA and DCHL's from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject replacement tires that CMA and DCHL no longer controlled at the time that it determined that the noncompliance existed. However, any decision on this petition does not relieve replacement tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant replacement tires under their control after CMA and DCHL notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–21883 Filed 9–12–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Loans in Areas Having Special Flood Hazards

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''Loans in Areas Having Special Flood Hazards.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by: October 15, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0202, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0202, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, (202) 874–5090, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Loans in Areas Having Special Flood Hazards—12 CFR parts 22 and 172.

OMB Control Number: 1557–0202.

Description: The regulations require national banks and Federal savings associations to make disclosures and keep records regarding whether a property held as security for a loan is located in a special flood hazard area.

This information collection is required by section 303(a) [1] and title V of the Riegle Community Development and Regulatory Improvement Act,[2] the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968,[3] the Flood Disaster Protection Act of 1973,[4] and by OCC regulations implementing those statutes. The information collection requirements are contained in 12 CFR parts 22 and 172.

Sections 22.6 and 172.6 require a national bank or Federal savings association to use the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (FEMA) and to maintain a

[1] 12 U.S.C. 4804.

[2] 42 U.S.C. 4104(a).

[3] 12 U.S.C. 4104a and 4104b.

[4] 12 U.S.C. 4012a and 4106(b).

completed copy of that form for the period of time the bank or savings association owns the loan.

Sections 22.7 and 172.7 require a national bank, Federal savings association, or its loan servicer, if a borrower has not obtained flood insurance, to notify the borrower to obtain adequate flood insurance coverage or the bank, savings association, or servicer will purchase flood insurance on the borrower's behalf.

Sections 22.9 and 172.9 require a national bank or Federal savings association making, extending, increasing, or renewing a loan secured by a building or a mobile home located in a special flood hazard area to advise the borrower and the loan servicer that the property is located in a special flood hazard area; provide a description of the flood insurance purchase requirements; and provide information regarding the availability of insurance under the National Flood Insurance Program and of Federal assistance in the event of a declared Federal flood disaster. In lieu of providing the borrower notice, a national bank or Federal savings association may obtain a satisfactory written assurance from a seller or lessor that, within a reasonable time before completion of the sale or lease transaction, the seller or lessor provided such notice to the purchaser or lessee. For the period of time the national bank or Federal savings association owns the loan, the national bank or Federal savings association must maintain a record of the borrower's and loan servicer's receipts of these notices and, where appropriate, the written assurance from the seller or the lessor.

Sections 22.10 and 172.10 require a national bank or Federal savings association making, increasing, extending, renewing, selling, or transferring a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer and of any change in servicers.

These information collection requirements ensure national bank and Federal savings association compliance with applicable Federal law, further bank or savings association safety and soundness, provide protections for financial institutions and the public, and further public policy interests.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,251.

Estimated Responses per Respondent: 2,729.

Estimated Total Annual Responses: 6,142,979.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 363,012 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The OCC issued a notice for this collection for 60 days of comment on June 20, 2014, (79 FR 35413). Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2014.

Stuart E. Feldstein,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 2014–21845 Filed 9–12–14; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Fair Housing Home Loan Data System Regulation

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Fair Housing Home Loan Data System Regulation.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: You should submit your comments by October 15, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0159, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0318, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: oira *submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from 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) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

The OCC is proposing to extend approval of the following information collection:

Title: Fair Housing Home Loan Data System Regulation.

OMB Control No.: 1557–0159.

Description: The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). The OCC is responsible for ensuring that national banks and Federal savings associations comply with those laws. The OCC needs this information to fulfill its statutory responsibilities.

The information collection requirements are as follows:

- 12 CFR 27.3(a) requires national banks that are required to collect data on home loans under Regulation C [1] to present the data on Form FR HMDA–LAR,[2] or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3(a) also lists exceptions to the HMDA–LAR recordkeeping requirements. Federal savings associations generate this information pursuant to the CFPB's Regulation C, 12 CFR part 1003.
- 12 CFR 27.3(b) lists the information national banks should seek to obtain from an applicant as part of a home loan application, and also sets forth the information that banks must disclose in collecting certain information from an applicant.
- 12 CFR 27.3(c) sets forth additional information a national bank must maintain in the loan file.
- 12 CFR 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.
- 12 CFR 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action taken on an application or after withdrawal of an application.
- 12 CFR 27.7 requires a national bank to submit the information required by §§ 27.3 and 27.4 to the OCC upon its request prior to a scheduled examination using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Form in Appendix IV to part 27.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,927.

Estimated Total Annual Burden: 31,704 hours.

The OCC issued a **Federal Register** notice for 60 days of comment on June 20, 2014. 79 FR 34513. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 10, 2014.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–21965 Filed 9–12–14; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 CFR 27.3(a) references Regulation C as 12 CFR part 203, as it was adopted prior to the transfer of Regulation C to the Consumer Financial Protection Bureau (CFPB). Regulation C is now codified at 12 CFR part 1003.

[2] Loan Application Register, *http://www.ffiec.gov/hmda/pdf/hmdalar2011.pdf.*

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Update of Entities and Vessels Identified Pursuant to the Iranian Transactions and Sanctions Regulations and Executive Order 13599

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing updated information of eight entities and eight vessels previously identified as the Government of Iran or as property of the Government of Iran under the Iranian Transactions and Sanctions Regulations (the ''ITSR''), 31 CFR Part 560, and Executive Order 13599, and has revised the entries on OFAC's list of Specially Designated Nationals and Blocked Persons to reflect the new information.

DATES: The updates made by the Director of OFAC of the entities and vessels identified in this notice, pursuant to the ITSR and Executive Order 13599, are effective on July 29, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On February 5, 2012, the President issued Executive Order 13599, ''Blocking Property of the Government of Iran and Iranian Financial Institutions'' (the ''Order''). Section 1 (a) of the Order blocks, with certain exceptions, all property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch.

Section 7(d) of the Order defines the term ''Government of Iran'' to mean the Government of Iran, any political subdivision, agency, or instrumentality

thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran.

The ITSR implements Section 1(a) of the Order. Section 560.304 of the ITSR defines the term ''Government of Iran'' to include: ''(a) The state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran; (b) Any entity owned or controlled directly or indirectly by the foregoing; (c) Any person to the extent that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, on behalf of any of the foregoing; and (d) Any other person determined by the Office of Foreign Assets Control to be included within [(a) through (c)].'' Section 560.313 of the ITSR further defines an ''entity owned or controlled by the Government of Iran'' to include ''any corporation, partnership, association, or other entity in which the Government of Iran owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government.''

On July 29, 2014, the Director of OFAC identified amended address information of eight entities and new names and/or flagging information of eight vessels previously identified as the Government of Iran or property in which the Government of Iran has an interest that are blocked pursuant to the Order and the ITSR and, accordingly, revised the entries on OFAC's list of Specially Designated Nationals and Blocked Persons to reflect the new information.

The listing for these entities and vessels is as follows:

Entities

1. GRACE BAY SHIPPING INC, Care of Sambouk Shipping FCZ, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
2. MONSOON SHIPPING LTD, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; Valletta, Malta; Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
3. BLUE TANKER SHIPPING SA, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; Majuro MH, Marshall Islands; Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
4. GARBIN NAVIGATION LTD, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
5. KONING MARINE CORP, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
6. JUPITER SEAWAYS SHIPPING, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
7. HERCULES INTERNATIONAL SHIP, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; 80 Broad Street, Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].
8. HERMIS SHIPPING SA, Care of Sambouk Shipping FCZ, Office 101, 1st Floor, FITCO Building No 3, Inside Fujairah Port, PO Box 50044, Fujairah, United Arab Emirates; Panama City, Panama; Monrovia, Liberia; Additional Sanctions Information—Subject to Secondary Sanctions [IRAN].

Vessels

9. BRIGHT (f.k.a. ZAP) Crude Oil Tanker Mongolia flag; Former Vessel Flag Liberia; Vessel Registration Identification IMO 9005235 (vessel) [IRAN].
10. CARIBO (f.k.a. NEREYDA) Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9011246 (vessel) [IRAN].
11. HUMANITY (f.k.a. OCEAN NYMPH) Crude Oil Tanker Mongolia flag; Former Vessel Flag Panama; Vessel Registration Identification IMO 9180281 (vessel) [IRAN].
12. ATLANTIC (f.k.a. SEAGULL) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9107655 (vessel) [IRAN].
13. DESTINY (f.k.a. ULYSSES 1) Crude Oil Tanker Mongolia flag; Former Vessel Flag Liberia; Vessel Registration Identification IMO 9177155 (vessel) [IRAN].
14. AURA (f.k.a. OCEAN PERFORMER) Crude Oil Tanker Mongolia flag; Former Vessel Flag Liberia; Vessel Registration Identification IMO 9013749 (vessel) [IRAN].
15. BICAS (f.k.a. GLAROS) Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9077850 (vessel) [IRAN].
16. ORIENTAL (f.k.a. LEYCOTHEA) Crude Oil Tanker Unknown flag; Former Vessel Flag Panama; Vessel Registration Identification IMO 9183934 (vessel) [IRAN].

Dated: September 8, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–21901 Filed 9–12–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13224, 13382, 13599, 13622, 13645, and the Iranian Transactions and Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 22 persons whose property and interests in property are blocked pursuant to one or more of the following authorities: Executive Order (E.O.) 13224, 13382, E.O. 13599, E.O. 13622, E.O. 13645, and the Iranian Transactions and Sanctions Regulations (ITSR), as well as the names of 6 vessels that OFAC has identified as blocked property of one or more person whose property and interests in property are blocked. Finally, OFAC is publishing revised information for 2 persons on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective August 29, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On August 29, 2014, OFAC blocked the property and interests in property of the following 5 persons pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individual

1. HOSSEINI, Sayyed Jabar; DOB 03 Oct 1955; Additional Sanctions Information—

Subject to Secondary Sanctions (individual) [SDGT] [IFSR] (Linked To: LINER TRANSPORT KISH).

Entities

1. PIONEER LOGISTICS (a.k.a. PIONEER LOGISTICS HAVACILIK), EGS Bloklari B 1 Blok K 1, D114 Yesilkoy Bakirkoy, Istanbul, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: MAHAN AIR).
2. ASIAN AVIATION LOGISTICS COMPANY LIMITED, 805 Srinakarin Road, 2nd Floor Zone A 21 Tower, Suan Luang, Bangkok 10540, Thailand; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR] (Linked To: MAHAN AIR).
3. CASPIAN AIRLINES (a.k.a. CASPIAN AIR), Mehrabad International Airport, Tehran, Iran; No. 5 Sabounchi St., Beheshti Ave., Tehran, Iran; Email Address *casp_avia@hotmail.com;* Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR].
4. MERAJ AIR, Meraj Blvd., First of Mohammad Ali Ave., Azadi Sq., Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IFSR].

On August 29, 2014, OFAC published the following revised information for 1 person on OFAC's SDN List whose property and interests in property is blocked pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

1. POUYA AIR (a.k.a. POUYA AIRLINES; a.k.a. YAS AIR; a.k.a. YAS AIR KISH; a.k.a. YASAIR CARGO AIRLINE), Mehrabad International Airport, Next to Terminal No. 6, Tehran, Iran; Number 37, Ahour Alley, Shariati St., Tehran, Iran; Web site *www.pouyaair.com;* Email Address *info@pouyaair.com;* Additional Sanctions Information—Subject to Secondary Sanctions [SDGT] [IRGC] [IFSR].

On August 29, 2014, OFAC blocked the property and interests in property of the following 6 persons pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

Individuals

1. GHOLAMI, Ali; Additional Sanctions Information—Subject to Secondary Sanctions; Passport 24471008 (Iran); Managing Director (individual) [NPWMD] [IFSR] (Linked To: SAZEH MORAKAB CO. LTD).
2. BOZORG, Marzieh; Additional Sanctions Information—Subject to Secondary Sanctions; Passport 16650550 (Iran); Commercial Director (individual) [NPWMD] [IFSR] (Linked To: SAZEH MORAKAB CO. LTD).
3. IMANIRAD, Mohammad Javad; Additional Sanctions Information—Subject to Secondary Sanctions; Passport S7127156 (Iran) (individual) [NPWMD] [IFSR] (Linked To: ALUMINAT).
4. IMANIRAD, Arman; DOB 07 Jun 1984; POB Arak, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport WSl 88312 (Canada) (individual) [NPWMD] [IFSR] (Linked To: ALUMINAT).

Entities

1. SAZEH MORAKAB CO. LTD, Unit 1, Third Floor, No. 183 Rashid St., Tehran, Tehi-an-Pars, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [NPWMD] [IFSR].
2. NEFERTITI SHIPPING COMPANY (a.k.a. NEFERTITI SHIPPING; a.k.a. NEFERTITI SHIPPING AND MARITIME SERVICES), 6, El Horeya Rd., El Attarein, Alexandria, Egypt; Inside Damietta Port, New Damietta City, Damietta, Egypt; 403, El Nahda St., Port Said, Port Said, Egypt [NPWMD] [IFSR] (Linked To: ISLAMIC REPUBLIC OF IRAN SHIPPING LINES).

On August 29, 2014, OFAC published the following revised information for 1 person on OFAC's SDN List whose property and interests in property are blocked pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

1. SHAHID HEMMAT INDUSTRIAL GROUP (a.k.a. ARDALAN MACHINERIES COMPANY; a.k.a. SAHAND ALUMINUM PARTS INDUSTRIAL COMPANY; a.k.a. ''ARMACO''; a.k.a. ''SAPICO''; a.k.a. ''SHIG''), Damavand Tehran Highway, Tehran, Iran; P.O. Box 16595–159, Tehran, Iran; No. 5, Eslami St., Golestane Sevvom St., Pasdaran St., Tehran, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [NPWMD] [IFSR].

On August 29, 2014, OFAC identified the following 5 persons whose property and interests in property are blocked pursuant to E.O. 13599, ''Blocking Property of the Government of Iran and Iranian Financial Institutions,'' and the ITSR:

Entities

1. KHAVARMIANEH BANK (a.k.a. MIDDLE EAST BANK), No. 22, Second Floor Sabounchi St., Shahid Beheshti Ave., Tehran, Iran; SWIFT/BIC KHMI IR TH; All offices worldwide [IRAN].
2. KISH INTERNATIONAL BANK (a.k.a. KISH INTERNATIONAL BANK OFFSHORE COMPANY PJS), NBO–9, Andisheh Blvd., Sanayi Street, Kish Island, Iran; All offices worldwide [IRAN].
3. GHARZOLHASANEH RESALAT BANK, Biside the No. 1 Baghestan Alley, Saadat Abad Ave., Kaj Sq., Tehran, Iran; All offices worldwide [IRAN].
4. KAFOLATBANK (a.k.a. CJSC KAFOLATBANK), Apartment 4/1, Academics Rajabovs Street, Dushanbe, Tajikistan; SWIFT/BIC KACJ TJ 22; All offices worldwide [IRAN].
5. GHAVAMIN BANK (a.k.a. ''GHAVAMIN FINANCIAL & CREDIT INS.''), No. 252 Milad Tower, Beginning of Africa Blvd., Argentina Sq, Tehran, Iran; All offices worldwide [IRAN].

On August 29, 2014, OFAC blocked the property and interests in property of the following one person pursuant to E.O. 13622, ''Authorizing Additional Sanctions With Respect to Iran'':

Entity

1. ASIA BANK (a.k,a. CHEMEXIMBANK; a.k.a. COMMERCIAL BANK 'CHEMEXIMBANK' LTD), Offices 7–15, 67–69, 4 ul fiinlca, Moscow 109012, Russia; 267–270 offices, 4, Ilinlca Street, Moscow 109012, Russia; SWIFT/BIC CHEB RU MM; Web site *www.chemexim.ru;* alt. Web site *www.asia-bank.ru*; BIK (RU) 044585333; All offices worldwide [EO13622].

On August 29, 2014, OFAC blocked the property and interests in property of the following 5 persons pursuant to E.O. 13645, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect To Iran'':

Individuals

1. POLAT, Muzaffer; DOB 20 Jul 1975; POB Van, Turkey; nationality Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Executive Order 13645 Determination—Material Support; Passport UO8215942 (Turkey); alt. Passport U05400998 (Turkey); Residency Number 784197524398415 (United Arab Emirates); ah. Residency Number 062368408 (United Arab Emirates); alt. Residency Number 122808985 (United Arab Emirates) (individual) [E013645] (Linked To: PETRO ROYAL FZE).
2. KADDOURI, Abdelhak; DOB 30 Apr 1977; POB Leuzigen, Bern, Swhzerland; nationality Switzerland; citizen Switzerland; Additional Sanctions Information—Subject to Secondary Sanctions; Executive Order 13645 Determination—Material Support (individual) [EOl3645].
3. SEYYEDI, Seyedeh Hanieh Seyed Nasser Mohammad; DOB 20 Aug 1985; POB Orumiyeh, Iran; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Executive Order 13645 Determination—Material Support; Passport K95579809 (Iran); ah. Passport XI3556955 (Iran) (individual) [E013645].

Entities

1. LISSOME MARINE SERVICES LLC, Unit 1202, Al Attar Tower, Sheildi Zayed Road, Dubai, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions; Executive Order 13645 Determination—Material Support; Vessel Registration Identification IMO 5689933 [E013645] (Linked To: NATIONAL IRANIAN TANKER COMPANY).
2. FAYLACA PETROLEUM (a.k.a. FAYLACA PETROLEUM SUPPLIERS EST.), Office No. 209, Tower A, Al Majarah, P.O. Box 44636, Sharjah, Dubai, United Arab Emirates; Web site

www.faylacapetroleum.com; Email Address *info@faylacapetroleum.com;* Additional Sanctions Information—Subject to Secondary Sanctions; Executive Order 13645 Determination—Material Support; License 113988 [E013645].

On August 29, 2014, OFAC identified 6 vessels as blocked property of one or more person whose property and interests in property are blocked pursuant to E.O. 13645, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect To Iran'':

Vessels

1. KATERINA 1 Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9031959 (vessel) [EOl3645].
2. GAS CAMELLIA LPG Tanker St. Kitts and Nevis flag; Vessel Registration Identification IMO 8803381 (vessel) [E013645].
3. MARIA Chemical/Products Tanker St. Kitts and Nevis flag; Vessel Registration Identification IMO 9110626 (vessel) [EOl3645].
4. SUN OCEAN Chemical/Products Tanker Panama flag; Vessel Registration Identification IMO 9408358 (vessel) [E013645].
5. TESS Crude Oil Tanker St. Kitts and Nevis flag; Vessel Registration Identification IMO 8913564 (vessel) [EOl3645].
6. NAMI Chemical/Products Tanker Panama flag; Vessel Registration Identification IMO 8419178 (vessel) [EOl3645].

Dated: September 8, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–21898 Filed 9–12–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulations Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning statement of liability of lender, surety, or other person for withholding taxes.

DATES: Written comments should be received on or before November 14, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Stacey Becker, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Christie A. Preston at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Christie.A.Preston@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Affordable Care Act Uniform Explanation of Coverage Documents.

OMB Number: 1545–2229.

Regulation Number: TD 9575.

Abstract: This document contains regulations regarding disclosure of the summary of benefits and coverage and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act. This document implements the disclosure requirements to help plans and individuals better understand their health coverage, as well as other coverage options.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This information collection is being submitted for revision purposes.

Type of Review: Renewal of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Not-for-profit institutions.

Estimated Number of Respondents: 858.

Estimated Time per Respondent: 756 hours 59 minutes.

Estimated Total Annual Burden Hours: 649,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 8, 2014.

Stacey Becker,

Director, Tax Forms and Publication.

[FR Doc. 2014–21961 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held October 15, 2014.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, October 15, 2014 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with

Ms. Singleton. For more information please contact Ms. Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 150—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21959 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 16, 2014.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, October 16, 2014, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21956 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 22, 2014.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or (202) 317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, October 22, 2014, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Mr. Simpson. For more information please contact Otis Simpson at 1–888–912–1227 or (202) 317–3332 or write TAP Office, 1111 Constitution Avenue NW., Room 1509-National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21955 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 15, 2014.

FOR FURTHER INFORMATION CONTACT: Russ Pool at 1–888–912–1227 or 206–220–6542.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, October 15, 2014, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Russ Pool. For more information please contact Mr. Pool at 1–888–912–1227 or 206–220–6542, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21957 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 9, 2014.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, October 9, 2014, at 2 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21960 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 15, 2014.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, October 15, 2014 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202)317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: September 9, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–21958 Filed 9–12–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: National Academic Affiliations Council Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the National Academic Affiliations Council will be held on October 16–17, 2014, in the Office of Academic Affiliations Conference Room, 1800 G Street NW., Suite 870, Washington, DC. The sessions will begin at 8 a.m. each day and adjourn at 5:00 p.m. on October 16th and at 1:00 p.m. on October 17th. This meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On October 16th, the Council will discuss the new VA Veterans Access, Choice, and Accountability (VACAA) Act of 2014 legislation and the preliminary Graduate Medical Education (GME) resident expansion implementation plans. On October 17th, the Council will hear comments from the Secretary or Under Secretary of Health of the Department of Veteran Affairs and continue the discussion concerning opportunities and challenges impacting academic affiliation relationships. The Council will receive public comments from 12:30 p.m. to 1:00 p.m. on October 17, 2014.

Interested persons may attend and present oral statements to the Council. A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to, *William.Marks@va.gov,* or by mail to William J. Marks M.D., MS–HCM, Chief of Health Professions Education, Office of Academic Affiliations (10A2D), 810 Vermont Avenue NW., Washington, DC 20420. Any member of the public wishing to attend or seeking additional information should contact Dr. Marks via email or by phone at (415) 750–2100.

Dated: September 10, 2014.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2014–21920 Filed 9–12–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 232, 240, 249, et al.

Nationally Recognized Statistical Rating Organizations; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, 249, and 249b

[Release No. 34–72936; File No. S7–18–11]

RIN 3235–AL15

Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') and to enhance oversight, the Securities and Exchange Commission (''Commission'') is: adopting amendments to existing rules and new rules that apply to credit rating agencies registered with the Commission as nationally recognized statistical rating organizations (''NRSROs''); adopting a new rule and form that apply to providers of third-party due diligence services for asset-backed securities; and adopting amendments to existing rules and a new rule that implement a requirement added by the Dodd-Frank Act that issuers and underwriters of asset-backed securities make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. The Commission also is adopting certain technical amendments to existing rules.

DATES: This rule is effective November 14, 2014; except the amendments to § 240.17g–3(a)(7) and (b)(2) and Form NRSRO, which are effective on January 1, 2015; and the amendments to § 240.17g–2(a)(9), (b)(13) through (15), § 240.17g–5(a)(3)(iii)(E), (c)(6) through (8), § 240.17g–7(a) and (b), and Form ABS–15G, which are effective June 15, 2015. The addition of §§ 240.15Ga–2, 240.17g–8, 240.17g–9, 240.17g–10, and Form ABS Due Diligence–15E are effective June 15, 2015.

FOR FURTHER INFORMATION CONTACT: Randall W. Roy, Assistant Director, at (202) 551–5522; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; Rose Russo Wells, Senior Counsel, at (202) 551–5527; Division of Trading and Markets; Harriet Orol, Branch Chief, at (212) 336–0554; Kevin Vasel, Attorney, at (212) 336–0981; Office of Credit Ratings; or, with respect to the rules for issuers and underwriters of asset-backed securities, Michelle M. Stasny, Special Counsel in the Office of Structured Finance, at (202) 551–3674; Division of Corporation Finance; Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission, with respect to NRSROs, is adopting amendments to rules 17 CFR 232.101 (''Rule 101 of Regulation S–T''), 17 CFR 240.17g–1 (''Rule 17g–1''), 17 CFR 240.17g–2 (''Rule 17g–2''), 17 CFR 240.17g–3 (''Rule 17g–3''), 17 CFR 240.17g–5 (''Rule 17g–5''), 17 CFR 240.17g–6 (''Rule 17g–6''), 17 CFR 240.17g–7 (''Rule 17g–7''), and 17 CFR 249b.300 (''Form NRSRO''); and is adopting new rules 17 CFR 240.17g–8 (''Rule 17g–8'') and 17 CFR 240.17g–9 (''Rule 17g–9'').

In addition, the Commission, with respect to providers of third-party due diligence services for asset-backed securities, is adopting new rules 17 CFR 240.17g–10 (''Rule 17g–10'') and 17 CFR 249b.500 (''Form ABS Due Diligence–15E'').

Finally, the Commission, with respect to issuers and underwriters of asset-backed securities, is adopting amendments to 17 CFR 249.1400 (''Form ABS–15G'') and is adopting new rule 17 CFR 240.15Ga–2 (''Rule 15Ga–2'').

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I. Introduction

A. Background

The Dodd-Frank Act,[1] through Title IX, Subtitle C, ''Improvements to the Regulation of Credit Rating Agencies,'' among other things, establishes new self-executing requirements applicable to NRSROs and requires that the Commission adopt rules applicable to NRSROs in a number of areas.[2] It also requires certain studies relating to NRSROs.[3] The NRSRO provisions in the Dodd-Frank Act augment the Credit Rating Agency Reform Act of 2006 (the ''Rating Agency Act of 2006''), which established a registration and oversight program for NRSROs through self-executing provisions added to the Exchange Act and implementing rules adopted by the Commission under the Exchange Act, as amended by the Rating Agency Act of 2006.[4] Title IX, Subtitle C of the Dodd-Frank Act also provides that the Commission shall prescribe the format of a certification that providers of third-party due diligence services must provide to each NRSRO producing a credit rating for an asset-backed security to which the due diligence services relate.[5] Finally, Title IX, Subtitle C of the Dodd-Frank Act establishes a new requirement for issuers and underwriters of asset-backed securities

[1] Public Law 111–203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

[2] *See* Public Law 111–203, 931 through 939H. In addition, Title IX, Subtitle D, ''Improvements to the Asset-Backed Securitization Process,'' contains section 943, which provides that the Commission shall adopt rules, within 180 days, requiring an NRSRO to include in any report accompanying a credit rating of an asset-backed security a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities. *See* Public Law 111–203, 943. On January 20, 2011, the Commission adopted Rule 17g–7 to implement section 943. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Securities Act of 1933 (''Securities Act'') Release No. 9175 (Jan. 20, 2011), 76 FR 4489 (Jan. 26, 2011). Prior to enactment of the Dodd-Frank Act and the adoption of Rule 17g–7, the Commission proposed a different rule to be codified at 17 CFR 240.17g–7. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Securities Exchange Act of 1934 (''Exchange Act'') Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008). This proposed rule would have required an NRSRO to publish a report containing certain information with the publication of a credit rating for a structured finance product or, as an alternative, use ratings symbols for structured finance products that differentiate them from the credit ratings for other types of debt securities. *See id.* In November 2009, the Commission announced it was deferring consideration of action on that proposal and separately proposed a different rule to be codified at 17 CFR 240.17g–7 that would have required an NRSRO to annually disclose certain information. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61051 (Nov. 23, 2009), 74 FR 63866 (Dec. 4, 2009). As discussed above, a different rule from either of these proposals ultimately was adopted and codified at 17 CFR 240.17g–7 in January 2011. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489.

[3] *See* Public Law 111–203, 939(h), 939C, 939D, 939E, 939F. Pursuant to section 939(h) of the Dodd-Frank Act, the Commission submitted a staff report to Congress on standardizing credit rating terminology. *See Report to Congress Credit Rating Standardization Study As Required by Section 939(h) of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Sept. 2012), *available at http://www.sec.gov/news/studies/2012/939h_credit_rating_standardization.pdf* (''2012 Staff Report on Credit Rating Standardization''). Pursuant to section 939F of the Dodd-Frank Act, the Commission submitted a staff report to Congress on the feasibility of establishing a system for assigning NRSROs to determine credit ratings for structured finance products. *See Report to Congress on Assigned Credit Ratings As Required by Section 939F of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dec. 2012), *available at http://www.sec.gov/news/studies/2012/assigned-credit-ratings-study.pdf* (''2012 Staff Report on Assigned Credit Ratings''). Pursuant to section 939C of the Dodd-Frank Act, the Commission submitted a staff report to Congress on the independence of credit rating agencies. *See Report to Congress on Credit Rating Agency Independence Study As Required by Section 939C of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Nov. 2013), *available at http://www.sec.gov/news/studies/2013/credit-rating-agency-independence-study-2013.pdf* (''2013 Staff Report on Credit Rating Agency Independence'').

[4] *See* Public Law 109–291 (2006). The Rating Agency Act of 2006, among other things, amended section 3 of the Exchange Act to add definitions, added section 15E to the Exchange Act to establish self-executing requirements for NRSROs and provide the Commission with the authority to implement a registration and oversight program for NRSROs, amended section 17 of the Exchange Act to provide the Commission with recordkeeping, reporting, and examination authority over NRSROs, and amended section 21B(a) of the Exchange Act to provide the Commission with the authority to assess penalties ''against any person'' in administrative proceedings instituted under section 15E of the Exchange Act. *See* Public Law 109–291, 3 and 4; 15 U.S.C. 78c; 15 U.S.C. 78o–7; 15 U.S.C. 78q; 15 U.S.C. 78u–2. The Commission adopted rules to implement a registration and oversight program for NRSROs in June 2007. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007). The implementing rules were Form NRSRO, Rule 17g–1, Rule 17g–2, Rule 17g–3, Rule 17g–4, Rule 17g–5, and Rule 17g–6. The Commission has twice adopted amendments to some of these rules. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 59342 (Feb. 2, 2009), 74 FR 6456 (Feb. 9, 2009); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009).

[5] *See* Public Law 111–203, 932(a)(8) (adding new paragraph (s)(4)(C) to section 15E of the Exchange Act); 15 U.S.C. 78o–7(s)(4)(C)).

to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[6]

On May 18, 2011, the Commission proposed for comment amendments to existing rules and new rules in accordance with Title IX, Subtitle C of the Dodd-Frank Act and to enhance oversight of NRSROs.[7] The Commission received a number of comment letters in response to the proposals.[8] The comments on specific proposals are summarized below in the corresponding sections of this release discussing the proposals and the amendments and new rules being adopted today.

B. Economic Analysis

The Commission has performed an economic analysis in connection with today's adoption of the amendments and new rules discussed in section II. of this release. The economic analysis is reflected in this section I.B. of the release as well as throughout the rest of the release.[9]

1. Guiding Principles

Title IX, Subtitle C of the Dodd-Frank Act mandates that the Commission prescribe rules to improve regulation of NRSROs.[10] Section 931 of the Dodd-Frank Act, ''Findings,'' introduces Title IX, Subtitle C of the Dodd-Frank Act and provides context to what motivated Congress to enact these provisions with respect to NRSROs.[11] In particular, Congress found:

- Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including NRSROs, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient performance of the U.S. economy.[12]
- Credit rating agencies, including NRSROs, play a critical ''gatekeeper'' role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.[13]
- Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as

[6] *See* Public Law 111–203, 932(a)(8) (adding new paragraph (s)(4)(A) to section 15E of the Exchange Act); 15 U.S.C. 78o–7(s)(4)(A).

[7] *See Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011). The Commission also proposed technical amendments to its existing NRSRO rules. *Id.*

[8] *See* letter from Jeffrey W. Rubin, Chair, Business Law Section, American Bar Association, dated Aug. 19, 2011 (''*ABA Letter*''); letter from Bruce E. Stern, Chairman, Association of Financial Guaranty Insurers, dated Aug. 8, 2011 (''*AFGI Letter*''); letter from Gerald W. McEntee, President, American Federation of State, County and Municipal Employees, dated Aug. 5, 2011 (''*AFSCME Letter*''); letter from Marcus Stanley, Policy Director, Americans for Financial Reform, dated Apr. 1, 2014 (''*AFR II Letter*''); letter from Daryl Schubert, Chair, Auditing Standards Board, American Institute of Certified Public Accountants, dated Aug. 10, 2011 (''*AICPA Letter*''); letter from Larry G. Mayewski, Executive Vice President, A.M. Best, dated Aug. 8, 2011 (''*A.M. Best Letter*''); letter from the Honorable Robert E. Andrews, U.S. Congress, House of Representatives, dated Mar. 3, 2012 (''*Andrews Letter*''); letter from Tom Deutsch, Executive Director, American Securitization Forum, dated Aug. 8, 2011 (''*ASF Letter*''); letter from Chris Barnard dated June 30, 2011 (''*Barnard Letter*''); letter from Joel Barton dated Aug. 8, 2011 (''*Barton Letter*''); letter from Marie Benson dated June 16, 2011 (''*Benson Letter*''); letter from Dennis M. Kelleher, President & CEO, and Stephen W. Hall, Securities Specialist, Better Markets, Inc., dated Aug. 8, 2011 (''*Better Markets Letter*''); letter from Zenia Brown dated May 21, 2011 (''*Brown Letter*''); letter from John J. Cadigan, General Partner, CECO LLC, dated June 15, 2011 (''*Cadigan Letter*''); letter from Nancy Campbell dated Sept. 29, 2011 (''*Campbell Letter*''); letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America, and Marcus Stanley, Policy Director, Americans for Financial Reform, dated Aug. 8, 2011 (''*CFA/AFR Letter*''); letter from Micah Hauptman, Financial Services Counsel, and Barbara Roper, Director of Investor Protection, Consumer Federation of America, dated Mar. 3, 2014 (''*CFA II Letter*''); letter from Robert M. Chandler dated June 8, 2011 (''*Chandler Letter*''); letter from Laurel Leitner, Senior Analyst, Council of Institutional Investors, dated Aug. 8, 2011 (''*CII Letter*''); letter from Susan R. Clark dated June 17, 2011 (''*Clark Letter*''); letter from Steven Cohen, Senior Vice President and General Counsel, Clayton Holdings LLC, dated Aug. 8, 2011 (''*Clayton Letter*''); letter from Gregory W. Smith, Chief Operating Officer, General Counsel, Colorado Public Employees Retirement Association, dated Aug. 8, 2011 (''*COPERA Letter*''); letter from Dave Cowen dated May 23, 2011 (''*Cowen Letter*''); letter from Stephen M. Renna, Chief Executive Officer, CRE Finance Council, dated Aug. 8, 2011 (''*CRE Letter*''); letter from Gary D. Cristofani dated July 28, 2011 (''*Cristofani Letter*''); letter from William Michael Cunningham, Creative Investment Research, Inc., dated May 23, 2005 (''*Cunningham I Letter*''); letter from William Michael Cunningham, Creative Investment Research, Inc., dated July 4, 2011 (''*Cunningham II Letter*''); letter from Bonnie Davis dated June 16, 2011 (''*Davis Letter*''); letter from Theresa Day dated June 16, 2011 (''*Day Letter*''); letter from Daniel Curry, President, and Mary Keogh, Managing Director, Regulatory Affairs, DBRS, Inc., dated Aug. 8, 2011 (''*DBRS Letter*''); letter from Daniel Curry, Chief Executive Officer, and Mary Keogh, Managing Director, Global Regulatory Affairs, DBRS, Inc., dated Dec. 5, 2013 (''*DBRS II Letter*''); letter from Deloitte & Touche LLP dated Aug. 8, 2011 (''*Deloitte Letter*''); letter from Sean Egan, Egan-Jones Ratings Company, dated Aug. 5, 2011 (''*EJR Letter*''); letter from Roberta Y. Ely dated June 17, 2011 (''*Ely Letter*''); letter from Ernst & Young LLP dated Aug. 8, 2011 (''*Ernst & Young Letter*''); letter from Anne S. McCulloch, Senior Vice President and Deputy General Counsel, Federal National Mortgage Association, dated Aug. 8, 2011 (''*Fannie Mae Letter*''); letter from Charles D. Brown, General Counsel, Fitch, Inc., dated Aug. 5, 2011 (''*Fitch Letter*''); letter from Marianne Freebury dated June 16, 2011 (''*Freebury Letter*''); letter from Richard M. Whiting, Executive Director and General Counsel, The Financial Services Roundtable, dated Aug. 8, 2011 (''*FSR Letter*''); letter from Myrna D. Gardner dated June 14, 2011 (''*Gardner Letter*''); letter from Corrine M. Garza dated June 14, 2011 (''*Garza Letter*''); letter from David Gaus dated Nov. 1, 2012 (''*Gaus Letter*); letter from William J. Harrington, dated Aug. 8, 2011 (''*Harrington Letter*''); letter from William J. Harrington dated May 29, 2014 (''Harrington II Letter''); letter from Karrie McMillan, General Counsel, Investment Company Institute, dated Aug. 8, 2011 (''*ICI Letter*''); letter from KPMG LLP dated Aug. 8, 2011 (''*KPMG Letter*''); letter from Markus Krebsz dated Nov. 4, 2010 (''*Krebsz Letter*''); letter from Jules B. Kroll, Chairman and CEO, Kroll Bond Rating Agency, Inc., dated Aug. 8, 2011 (''*Kroll Letter*''); letter from Jules B. Kroll, Chairman and CEO, Kroll Bond Rating Agency, Inc., dated August 19, 2014 (''Kroll II Letter''); letter from Francis Lambert dated Aug. 8. 2011 (''*Lambert Letter*''); letter from Kashif Latif dated May 19, 2011 (''*Latif Letter*''); letter from the Honorable Carl Levin, U.S. Senate, Permanent Subcommittee on Investigations, dated Aug. 8, 2011 (''*Levin Letter*''); letter from Dee Longenbaugh dated June 15, 2011 (''*Longenbaugh Letter*''); letter from Ray Lynch dated June 17, 2011 (''*Lynch Letter*''); letter from Craig R. Mills, CraigRMills LLC, dated Aug. 19, 2011 (''*Mills Letter*''); letter from Michel Madelain, President and Chief Operating Officer, Moody's Investors Service, dated Aug. 8, 2011 (''*Moody's Letter*''); letter from Robert Dobilas, President, Morningstar Credit Ratings, LLC, dated Aug. 8, 2011 (''*Morningstar Letter*''); letter from Kevin Overholt dated June 14, 2011 (''*Overholt Letter*''); letter from Maneesh Pangasa dated July 29, 2011 (''*Pangasa Letter*''); letter from PricewaterhouseCoopers, LLP, dated Aug. 8, 2011 (''*PWC Letter*''); letter from William E. Reno dated June 16, 2011 (''*Reno Letter*''); letter from LaVonne L. Rhyneer dated June 17, 2011 (''*Rhyneer Letter*''); letter from Andrew M. Siff, Esquire, Siff & Associates, PLLC, dated June 13, 2011 (''*Siff Letter*''); letter from Deven Sharma, President, Standard and Poor's Ratings Services, dated Aug. 8, 2011 (''*S&P Letter*''); letter from Anne Rutledge, President, TradeMetrics Corporation, dated Aug. 8, 2011 (''*TradeMetrics Letter*''). Copies of these letters are available on the Commission's Web site at: *http://www.sec.gov/comments/s7-18-11/s71811.shtml.* In addition, in connection with the Commission's solicitation of comments on the Commission's request pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) for approval of the extension of the previously approved collection of information provided for in Rule 17a–7, several commenters submitted letters that are relevant to this rulemaking. *See* letter from Daniel Curry, President, and Mary Keogh, Managing Director, Regulatory Affairs, DBRS, Inc., dated Apr. 14, 2014 (''*DBRS PRA Letter*''); letter from Angela Y. Liang, Assistant General Counsel, Kroll Bond Rating Agency, Inc., dated Apr. 17, 2014 (''*Kroll PRA Letter*''); and letter from Michael Kanef, Chief Regulatory and Compliance Officer, Moody's Investors Service, dated Apr. 28, 2014 (''*Moody's PRA Letter*'').

[9] The discussion of the amendments and new rules in section II of this release is organized into sections that in large part are based on the distinct rulemaking mandates in Title IX, Subtitle C of the Dodd-Frank Act. *See* sections II.A. through II.M. of this release. Each section includes an economic analysis that focuses specifically on the amendments or rules being discussed in the section.

[10] *See* Public Law 111–203, 931 through 939H, entitled ''Improvements to the Regulation of Credit Rating Agencies.''

[11] *See* Public Law 111–203, 931.

[12] *See* Public Law 111–203, 931(1).

[13] *See* Public Law 111–203, 931(2).

other financial ''gatekeepers'' do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.[14]

• In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Commission.[15]

• In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.[16]

The amendments and new rules being adopted today to implement sections 932, 936, and 938 of the Dodd-Frank Act are designed to address these findings of Congress. For example, they are intended to increase the integrity and transparency of credit ratings and promote public oversight and accountability of NRSROs as ''gatekeepers'' for the primary benefit of the users of credit ratings.[17] The amendments and new rules also prescribe new disclosure requirements relating to structured finance products and, in particular, asset-backed securities.[18] These requirements are designed to address concerns about the role of NRSROs in the financial crisis of 2007–2009[19] in terms of how they rated certain types of structured finance products and, in particular, the inherent conflicts of interest in rating these products.[20]

In the market for structured finance products, the pool of assets underlying or referenced by the product is often comprised of hundreds of thousands of loans, each requiring time and expense to evaluate. In these markets, the separation between the borrower and the ultimate provider of credit can introduce significant information asymmetries between the parties involved in the securitization process that creates a structured finance product[21] and investors in the product, who may have less information on the credit quality and other relevant characteristics of the asset pool.[22] Further, disclosures to investors regarding the asset pool may not be sufficiently detailed to allow investors to adequately evaluate the quality of the collateral backing the securities and, thereby, assess the credit risk of the securities. Consequently, the market for structured finance products has evolved as a ''rated'' market in which the credit risk of the products is assessed by credit rating agencies[23] and the valuations of the products depend significantly on credit ratings.[24] To curb their informational disadvantage, certain investors in structured finance products may use credit ratings to inform their investment decisions.[25]

Given that investors may not know the quality of the assets underlying structured finance products, certain originators of these assets may attempt to adversely transfer risks of poor origination decisions to investors by creating complex and opaque structured finance products.[26] This risk is especially pronounced when the originator, sponsor, depositor, or underwriter receives compensation before investors learn about the quality of the assets.[27] Because origination fees

[14] *See* Public Law 111–203, 931(3).

[15] *See* Public Law 111–203, 931(4).

[16] *See* Public Law 111–203, 931(5).

[17] *See* John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia University Law School, *Turmoil in the U.S. credit markets: the role of the credit rating agencies* (Apr. 22, 2008) (testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs), p. 1, *available at http://www.banking.senate.gov/public/_files/OpgStmtCoffeeSenateTestimonyTurmoilintheUSCreditMarkets.pdf* (''Coffee Testimony I'').

[18] The term *structured finance product* as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. This broad category of financial instrument includes an *asset-backed security* as defined in section 3(a)(79) of the Exchange Act (15 U.S.C. 78c(a)(79)) and other types of structured debt instruments, including synthetic and hybrid collateralized debt obligations (''CDOs''). The term *Exchange Act-ABS* as used throughout this release refers more narrowly to an *asset-backed security* as defined in section 3(a)(79) of the Exchange Act. 15 U.S.C. 78c(a)(79).

[19] Throughout this Release, unless indicated otherwise, when the Commission uses the term ''financial crisis'' it is referring to the financial crisis that took place between 2007 and 2009.

[20] *See* Public Law 111–203, 931 (setting forth, among other things, Congress' findings with respect to the role played by credit ratings agencies, the services provided by credit ratings agencies, certain conflicts of interests facing credit rating agencies, and inaccuracies in ratings on structured finance products).

[21] Asset-backed securitization—the process used to create asset-backed securities—is a financing technique in which financial assets are pooled and converted into instruments that may be offered and sold in the capital markets. In a basic securitization structure, an entity—often a financial institution—originates or otherwise acquires a pool of financial assets, such as mortgage loans, either directly or through an affiliate. It then sells the financial assets, again either directly or through an affiliate, for the purpose of depositing them into a specially created investment vehicle that issues securities ''backed'' by those financial assets. Payment on the asset-backed securities depends primarily on the cash flows generated by the assets in the underlying pool (and possibly other rights designed to assure timely payment, generally known as ''credit enhancements''). *See Asset-Backed Securities,* Securities Act Release No. 8518 (Dec. 22, 2004), 70 FR 1506 (Jan. 7, 2005).

[22] *See* Adam B. Ashcraft and Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit,* Staff Report, Federal Reserve Bank of New York, Working Paper No. 318 (2008). The authors identify seven information frictions that can cause moral hazard and adverse selection problems in a subprime mortgage securitization transaction.

[23] *See* Joshua Coval, Jakub Jurek, and Erik Stafford, *The Economics of Structured Finance,* 23(1) J. Econ. Perspectives 3–26 (2009).

[24] *See* Adam Ashcraft, Paul Goldsmith-Pinkham, Peter Hull, and James Vickery, *Credit Ratings and Security Prices in the Subprime MBS Market,* 101(3), Amer. Econ. Rev. 115–119 (2011).

[25] *See* Frank Partnoy, *Overdependence on Credit Ratings Was a Primary Cause of the Crisis,* in *The Panic of 2008: Causes, Consequences, and Implications for Reform* (Edward Elgar Press 2010, Lawrence Mitchell and Arthur Wilmarth, eds.). References to credit ratings in federal regulations also may have contributed to investor reliance on credit ratings. Section 939A of the Dodd-Frank Act requires each federal agency, including the Commission, to review any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instruments and any references to or requirements in such regulations regarding credit ratings. *See* Public Law 111–203, 939A. The section further provides that each such agency shall ''modify any such regulations identified by the review . . . to remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of creditworthiness as each respective agency shall determine as appropriate for such regulations.'' *Id.*

[26] *See* Chris Downing, Dwight Jaffee, and Nancy Wallace, *Is the Market for Mortgage-Backed Securities a Market for Lemons?,* 22(7) Rev. Fin. Stud. 2457–2494 (2009). The authors argue that the quality of the assets sold to investors through securitization is lower than the quality of similar assets that are not sold to investors. They find empirical support for this proposition using a comprehensive dataset of sales of mortgage-backed securities (Freddie Mac Participation Certificates) to special-purpose vehicles over the period 1991 through 2002.

[27] Several parties may be involved in the securitization process that creates an asset-backed security, including an originator, sponsor, depositor, issuing entity, underwriter, and arranger. *See generally Asset-Backed Securities,* 70 FR at 1508. The originator is the entity that creates a financial asset (for example, mortgage loan, auto loan, or credit card receivable) that collateralizes an asset-backed security through an extension of credit or otherwise and that sells the asset to be included in an asset-backed security. The sponsor is the entity that organizes and initiates the asset-backed securities transaction by transferring the financial assets underlying an asset-backed security directly or indirectly to the issuing entity. The depositor is an entity that receives or purchases the financial assets from the sponsor and transfers them to the issuing entity (in some cases the sponsor transfers the financial assets directly to the issuing entity, thereby by-passing the use of a separate depositor). The issuing entity is the trust or other vehicle created at the direction of the sponsor or depositor

Continued

are based on transaction volume and risks are transferred to investors, an originator may have the economic incentive to produce as many assets (for example, mortgage loans) as possible without adequately screening their credit quality.[28]

The rating process for structured finance products differs from the rating process for corporate bonds, whose ratings are largely based on publicly available data such as audited financial statements. The data used in rating structured finance products is primarily provided by the sponsor, depositor, or underwriter.[29] Unlike credit ratings for corporate bonds, credit ratings of structured finance products are ''highly sensitive to the assumptions of (1) default probability and recovery value, (2) correlation of defaults, and (3) the relation between payoffs and the economic states that investors care about most.'' [30] The rating process for these products may happen in the reverse of how a more traditional product is rated because the sponsor, depositor, arranger, or underwriter often decides before the structure is finalized what credit rating it would like for each tranche of securities to be issued, within the limits of what is possible, and structures the product accordingly (for example, with regard to selecting the underlying assets and establishing the credit enhancements applicable to the different tranches of securities). Concerns have been raised that the inherently iterative nature of the process between the credit rating agency and the sponsor, depositor, arranger, or underwriter may give rise to potential conflicts of interest [31] and that credit rating agencies marketing advisory and consulting services to their clients during this process may accentuate the conflict.[32]

Just prior to the financial crisis, the size of the structured finance market was considerable. New issuances of RMBS, for example, peaked in 2006 for a total of $801.7 billion.[33] Low interest rates drove investor demand for products that had high yields but also were highly rated by the credit rating agencies.[34] Mortgage originators largely exhausted the supply of traditional quality mortgages and, to keep up with investor demand for RMBS, subprime lending became increasingly popular. As the number of delinquencies on subprime mortgages suddenly soared in late 2007, RMBS lost a considerable amount of value,[35] and investors began to question the accuracy of credit ratings assigned to RMBS and CDOs linked to RMBS.[36] Certain academic studies argue that, as the structured finance market boomed between 2004 and 2007, NRSROs might have had an incentive to generate revenue by relaxing rating standards,[37] inflating credit ratings,[38] facilitating the sale of asset-backed securities by a small number of large issuers,[39] and reducing due diligence in

that owns or holds the financial assets and in whose name the asset-backed securities are issued. The underwriter is the entity that underwrites the offering of asset-backed securities and sells them to investors. The arranger is an entity that organizes and arranges a securitization transaction, but does not sell or transfer the assets to the issuing entity. It also structures the transaction and may act as an underwriter for the deal. In jurisdictions where an arranger is used, the arranger's role is similar to that of a sponsor in other jurisdictions. In some cases, a single entity may perform more than one function (for example, a financial institution may act as an originator and sponsor). The *issuer* of a structured finance product as used in this release can mean, depending on the context, the issuing entity or the person that organizes and initiates the offering of the structured finance product (for example, the sponsor or depositor). Generally, when this release discusses an issuer taking a specific action in the context of an offering of a structured finance product (for example, making a disclosure), the person that organizes and initiates the offering would be the person taking the action (as opposed to the issuing entity). Further, in the context of the discussion of Rules 17g–10 and 15Ga–2, the term *issuer* (which is defined in Rule 17g–10) includes a sponsor or depositor.

[28] *See* Amiyatosh Purnanandam, *Originate-to-Distribute Model and the Subprime Mortgage Crisis,* 24(6) Rev. Fin. Stud. 1881–1915 (2011). The author argues that, during the financial crisis, banks with high involvement in the originate-to-distribute market originated excessively poor-quality mortgages, consistent with the view that the originating banks did not expend resources to adequately screen the credit quality of their borrowers.

[29] *See Summary Report of Issues Identified in the Commission Staff's Examinations of Select Credit Rating Agencies* (July 2008), *available at http://www.sec.gov/news/studies/2008/craexamination070808.pdf* (''2008 Staff Inspection Report''), pp. 7–10. The report describes the rating process for a residential mortgage-backed security (''RMBS'') and CDO at the three examined credit rating agencies (Standard & Poor's Ratings Services, Moody's Investor's Services, Inc., and Fitch, Inc.). For example, with respect to a involving subprime loans, the arranger of the RMBS typically initiates the rating process by sending the credit rating agency data on each of the subprime loans to be held by the trust (for example, principal amount, geographic location of the property, credit history and FICO score of the borrower, ratio of the loan amount to the value of the property, and type of loan), the proposed capital structure of the trust and the proposed levels of credit enhancement for each tranche issued by the trust. *Id.* at 7. Upon receipt of the information, the credit rating agency assigns a lead analyst who is responsible for analyzing the loan pool, the proposed capital structure, and the proposed credit enhancement levels and, ultimately, for formulating a rating recommendation to a rating committee composed of analysts and/or senior-level analytic personnel. *Id.* at 7. The rating committee votes on the credit ratings for each tranche and usually communicates its decision to the issuer. *Id.* at 9. In most cases, the issuer can appeal a rating decision, although the appeal is not always granted (and, if granted, may not necessarily result in any change in the rating decision). Typically, the credit rating agency is paid for determining the credit rating only if the credit rating is issued.

[30] *See* Coval, Jurek, and Stafford, *The Economics of Structured Finance,* p. 23. The authors argue that, ''unlike corporate bonds, whose fortunes are primarily driven by firm-specific considerations, the performance of securities created by tranching large asset pools is strongly affected by the performance of the economy as a whole.'' *Id.* at 23.

[31] *See* International Organization of Securities Commissions (''IOSCO''), *The Role of Credit Rating Agencies in Structured Finance Markets* (May 2008), p. 5 (''Some critics have argued that the inherently iterative nature of this process may give rise to potential conflicts of interest.'').

[32] *See* Coffee Testimony I, p. 3, (''Today, the rating agency receives one fee to consult with a client, explain its model, and indicate the likely outcome of the rating process; then, it receives a second fee to actually deliver the rating (if the client wishes to go forward once it has learned the likely outcome)''). Rule 17g–6 prohibits, among other things, an NRSRO from conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the NRSRO or any person associated with the NRSRO. *See* 17 CFR 240.17g–6(a)(1).

[33] The total amount of new issuances is calculated by staff in the Commission's Division of Economics and Risk Analysis (''DERA'') using Asset-Backed Alert and Commercial Mortgage Alert databases. The amounts include only non-agency RMBS sold in the United States through Commission-registered offerings, Rule 144A offerings, or traditional private offerings.

[34] *See* Testimony of John B. Taylor, the Mary and Robert Raymond Professor of Economics at Stanford University and George P. Shultz Senior Fellow in Economics at Stanford's Hoover Institution, before the Subcommittee on Monetary Policy and Trade Committee on Financial Services, U.S. House of Representatives (Mar. 5, 2013), *available at http://financialservices.house.gov/uploadedfiles/hhrg-113-ba19-wstate-jtaylor-20130305.pdf.*

[35] *See* Board of Governors of the Federal Reserve System (''Federal Reserve''), *Report to the Congress on Risk Retention* (Oct. 2010), pp. 50–51 (discussing the drop in the triple-A and triple-B ABX.HE 2006–2 index (−70% by the end of 2008 for triple-A rated and −95% for triple-B rated subprime RMBS issued in 2006)).

[36] *See* IOSCO, *The Role of Credit Rating Agencies in Structured Finance Markets,* p. 2.

[37] *See* John M. Griffin and Dragon Yongjun Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67(4) J. Fin. 1293–1328 (2012). The authors analyze a sample of 916 CDOs and find that a large credit rating agency frequently made positive adjustments outside its main model that resulted in increasingly larger AAA tranche sizes. These adjustments are difficult to explain by likely determinants, such as manager experience or credit enhancements, but exhibit a clear pattern: CDOs with smaller model-implied AAA sizes receive larger adjustments and CDOs with larger adjustments experience more severe subsequent downgrading.

[38] *See* Vasiliki Skreta and Laura Veldkamp, *Ratings Shopping and Asset Complexity: A Theory of Ratings Inflation,* 56 J. Monetary Econ. 678–695 (2009); Efraim Benmelech and Jennifer Dlugosz, *The Credit Rating Crisis,* NBER Working Paper No. 15045 (2009); Bo Becker and Todd Milbourn, *How Did Increased Competition Affect Credit Ratings?,* 101 J. Fin. Econ. 493–514 (2011); Andrew Cohen and Mark D. Manuszak, *Ratings Competition in the CMBS Market,* 45(1) J. Money, Credit and Banking 93–119 (2013).

[39] *See* Jie He, Jun Qian, and Philip E. Strahan, *Credit Ratings and the Evolution of the Mortgage-Backed Securities Market,* 101(3) Amer. Econ. Rev., 131–135 (2011). The authors find that in 2006 the

the presence of investors that solely rely on credit ratings.[40] The concerns about the accuracy of credit ratings fueled an emergent reluctance to invest in these products.[41] The new issuances of RMBS totaled $715.3 billion in 2007 and plunged to $34.5 billion in 2008.

In August 2007, the Commission staff initiated examinations of the three largest credit rating agencies to review their role in the turmoil in the subprime mortgage-related securities markets.[42] Among other things, these examinations revealed that the credit rating agencies struggled to adjust the number of staff and resources employed in the rating process to the increasing volume and complexity of RMBS and CDOs.[43] Certain significant aspects of the rating process and methodologies used to rate RMBS and CDOs were not documented or disclosed.[44] The credit rating agencies examined did not have specific written procedures for rating RMBS and CDOs.[45] Also, the credit rating agencies did not appear to have specific written policies and procedures to identify or address errors in their models or methodologies.[46] In certain instances, Commission staff believed that adjustments to models were made without appropriately documenting a rationale for deviations from the model.[47] Processes for performing surveillance and monitoring of outstanding credit ratings on an ongoing basis appeared to be less robust than the processes for determining initial credit ratings.[48] Moreover, in the Commission staff's view, sufficient steps were not taken to prevent considerations of fees, market share, or other business interests from influencing credit ratings or rating criteria.[49] Finally, the examined credit rating agencies appeared to solely rely on the information provided by RMBS sponsors.[50] In particular, they did not appear to verify the integrity and accuracy of such information as, in their view, due diligence duties belonged to other parties and they did not appear to seek representations from sponsors that due diligence was performed.[51]

Following the financial crisis, the Dodd-Frank Act mandated regulatory actions intended to enhance regulation, accountability, and transparency of NRSROs.[52] Generally, the majority of the rulemaking mandated by the Dodd-Frank Act addresses all classes of credit ratings, rather than credit ratings for only structured finance products.[53] In implementing the mandate, the amendments and new rules being adopted today are designed to further enhance the governance of NRSROs in their role as ''gatekeepers'' [54] and increase the transparency of the credit rating process as a whole. Further, as discussed in section II. of this release, the amendments and new rules being adopted today include new requirements designed to enhance transparency with respect to structured finance products, including requirements for NRSROs to disclose information about the performance and history of credit ratings for subclasses of structured finance products and requirements for NRSROs, issuers, underwriters, and providers of third-party due diligence services to disclose information about due diligence services performed with respect to asset-backed securities.[55]

2. Baseline

The amendments and new rules being adopted today primarily affect NRSROs, issuers, and underwriters of asset-backed securities, and providers of third-party due diligence services for asset-backed securities. To the extent that the new requirements change the business practices of the primarily affected parties, such changes may also affect clients of NRSROs (that is, obligors who pay NRSROs to obtain entity credit ratings, issuers who pay NRSROs to obtain credit ratings for their issued securities, subscribers who pay NRSROs to access credit ratings and research, and persons who pay NRSROs for other services), credit raters or credit rating agencies other than NRSROs, parties involved in asset-backed securities markets (other than issuers, underwriters, third-party due diligence providers, and NRSROs), and users of credit ratings in general.

The baseline against which economic costs and benefits, as well the impact of the amendments and new rules being adopted today on efficiency, competition, and capital formation, are measured is the situation in existence today, prior to the adoption of the amendments and rules. The baseline includes an estimate of the number of entities that will likely be directly affected by the amendments and rules and a description of the relevant features of the regulatory and economic environment in which the affected entities operate. The discussion below identifies the main features of the regulatory and economic baseline, which will be further developed in section II of this release discussing the amendments and rules, including in the

mortgage-backed securities (''MBS'') market was highly concentrated among large issuers, with the top five accounting for 39% of all newly issued securities; between 2004 and 2006, a larger fraction of MBS sold by large issuers received triple-A ratings than MBS sold by small issuers; and tranches sold by large issuers then experienced larger price drops than those sold by smaller issuers when the ''housing bubble'' began to unravel.

[40] *See* Patrick Bolton, Xavier Freixas, and Joel Shapiro, *The Credit Ratings Game,* 67(1) J. of Finance 85–111 (2012), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01708.x/full.* The authors develop a model of competition among credit rating agencies that includes two types of investors with different incentives to perform due diligence: sophisticated and ''trusting'' investors. Trusting investors take credit ratings at face value because their compensation depends only marginally on the ex-post returns of the assets they manage. In the authors' view, regulation that forces money managers to only purchase investments with good credit ratings could also provide incentives to be trusting. The authors find that competition can reduce efficiency, as it facilitates rating shopping. Moreover, credit ratings are more likely to be inflated during booms and when investors are more trusting.

[41] *See* Coval, Jurek, and Stafford, *The Economics of Structured Finance.*

[42] *See* 2008 Staff Inspection Report.

[43] *See* 2008 Staff Inspection Report, p. 10–13.

[44] *See* 2008 Staff Inspection Report, p. 13.

[45] *See* 2008 Staff Inspection Report, p. 16 (''One rating agency maintained comprehensive written procedures for rating structured finance securities, but these procedures were not specifically tailored to rating RMBS and CDOs. The written procedures for the two other rating agencies were not comprehensive and did not address all significant aspects of the RMBS and/or CDO ratings process. For example, written materials set forth guidelines for the structured finance ratings committee process (including its composition, the roles of the lead analyst and chair, the contents of the committee memo and the voting process) but did not describe the ratings process and the analyst's responsibilities prior to the time a proposed rating is presented to a ratings committee.'').

[46] *See* 2008 Staff Inspection Report, p. 17.

[47] *Id.* at 19.

[48] *Id.* at 21.

[49] *Id.* at 24.

[50] *Id.* at 18.

[51] *Id.* at 18.

[52] *See* Public Law 111–203, 932, entitled ''Enhanced Regulation, Accountability, and Transparency of Nationally Recognized Statistical Rating Organizations.''

[53] One commenter suggested that the proposed rules are overly broad in their application and ''fail to sufficiently account for the differences between corporate ratings (such as financial strength ratings of insurance companies) and ratings of the structured and asset-backed financial products that contributed to the recent economic crisis.'' *See A.M. Best Letter.* The Commission notes that the amendments and new rules being adopted today reflect the statutory mandate that generally, with one exception, was not limited to certain classes of credit ratings. In particular, sections 932, 936 and 938 of the Dodd-Frank Act generally do not focus exclusively on activities relating to rating structured finance products, with the exception of section 932(s)(4) (which focuses on third-party due diligence services with respect to asset-backed securities).

[54] *See* John C. Coffee, Jr., *Gatekeepers: The Professions and Corporate Governance,* Oxford University Press (2006).

[55] *See* sections II.E.1. and II.E.2. of this release (discussing requirements for NRSROs to disclose performance statistics and rating history information for subclasses of structured finance products); sections II.G. and II.H. of this release (discussing requirements to disclose information about third-party due diligence services provided for asset-backed securities).

focused economic analyses that follow the discussions of the amendments and rules.

a. NRSROs

As discussed above, the Rating Agency Act of 2006, among other things, amended section 3 of the Exchange Act to add definitions, added section 15E to the Exchange Act to establish self-executing requirements for NRSROs and provide the Commission with the authority to implement a registration and oversight program for NRSROs, amended section 17 of the Exchange Act to provide the Commission with recordkeeping, reporting, and examination authority over NRSROs, and amended section 21B(a) of the Exchange Act to provide the Commission with the authority to assess penalties ''against any person'' in administrative proceedings instituted under section 15E of the Exchange Act.[56]

To implement the Rating Agency Act of 2006, the Commission adopted Rules 17g–1 through 17g–6 and Form NRSRO.[57] Section 943 of the Dodd-Frank Act mandates that the Commission adopt rules requiring an NRSRO to include in any report accompanying a credit rating of an asset-backed security a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.[58] In January 2011, the Commission adopted Rule 17g–7 to implement section 943.[59] The Exchange Act, Rules 17g–1 through 17g–7, and Form NRSRO represent the baseline for the amendments and new rules being adopted today in terms of requirements applicable to NRSROs.

Pursuant to section 6 of the Rating Agency Act of 2006, the Commission is required to submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the views of the Commission on the state of competition, transparency, and conflicts of interest among NRSROs.[60] In addition, section 15E(b) of the Exchange Act provides that not later than ninety days after the end of each calendar year, each NRSRO shall file with the Commission an amendment to its registration application, in such form as the Commission, by rule, may prescribe: (1) Certifying that the information and documents in the application for registration continue to be accurate; (2) listing any material change that occurred to such information or documents during the previous calendar year; and (3) amending its credit ratings performance statistics.[61] Rule 17g–1 requires these filings (''annual certifications'') to be made on Form NRSRO.[62] Further, each NRSRO is required to furnish the Commission with annual reports containing audited financial statements and information about revenues and other matters.[63] The Commission's annual reports submitted to Congress and the NRSROs' annual certifications and annual reports are an integral part of establishing the baseline for the amendments and new rules being adopted today, as discussed below.

As of today, there are ten credit rating agencies registered with the Commission as NRSROs.[64] Based on the annual reports the NRSROs furnish with the Commission, in their 2013 fiscal years, the ten NRSROs had $5.4 billion of total revenue—an approximate 6% increase over their 2012 fiscal years. In addition, based on their annual certifications, the NRSROs employed a total of 4,218 credit analysts at the end of the 2013 calendar year. Table 1 shows the number of credit analysts employed by each NRSRO at the end of the 2013 calendar year and, of the total number of credit analysts employed by the NRSROs, the percent of credit analysts at S&P, Moody's, and Fitch (90%) and the remaining seven NRSROs (10%).

TABLE 1—CREDIT ANALYSTS EMPLOYED BY NRSROS (AS OF [—])

NRSROs	Total credit analysts
S&P, Moody's, & Fitch	90%
Other NRSROs	10%
A.M. Best	123
DBRS	98
EJR	7
Fitch	1,102
HR Ratings	34
JCR	57
Kroll	58
Moody's	1,244
Morningstar	30
S&P	1,465
Total	4,218

Note: The total number of credit analysts, including credit analyst supervisors, is provided by each NRSRO in Exhibit 8 to Form NRSRO, which is available on each NRSRO's Web site.

Among other things, the operations of the ten NRSROs differ in terms of business model, classes of credit ratings for which they are registered, history of issuing credit ratings, size, and market share. Of the ten NRSROs, seven operate primarily under the issuer-pay model,[65] in which an obligor pays the NRSRO to rate it as an entity or an issuer pays the NRSRO to rate the securities it issues.[66] One NRSRO operates exclusively under the subscriber-pay model,[67] in which

[56] *See* Public Law 109–291, 3, 4; 15 U.S.C. 78c; 15 U.S.C. 78o–7; 15 U.S.C. 78q; 15 U.S.C. 78u–2.

[57] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33564.

[58] *See* Public Law 111–203, 943.

[59] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489.

[60] *See* Public Law 109–291, 6. The Commission staff annual reports are available at *http://www.sec.gov/ocr.*

[61] *See* 15 U.S.C. 78o–7(b).

[62] *See* paragraph (f) of Rule 17g–1. *See also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33567, 33569–33582.

[63] *See* 17 CFR 240.17g–3.

[64] The ten NRSROs are: A.M. Best Company, Inc. (''A.M. Best''); DBRS, Inc. (''DBRS''); Egan-Jones Ratings Company (''EJR''); Fitch, Inc. (''Fitch''); HR Ratings de Mexico, S.A. de C.V. (''HR Ratings''); Japan Credit Rating Agency, Ltd. (''JCR''); Kroll Bond Rating Agency, Inc. (''Kroll''); Moody's Investor's Services, Inc. (''Moody's''); Morningstar Credit Ratings, LLC (''Morningstar''); and Standard & Poor's Ratings Services (''S&P''). *See* Commission staff, *Annual Report on Nationally Recognized Statistical Rating Organizations* (Dec. 2013), p. 6, *available at http://www.sec.gov/divisions/marketreg/ratingagency/nrsroannrep1213.pdf.* (''2013 Annual Staff Report on NRSROs'').

[65] The seven NRSROs are A.M. Best, DBRS, Fitch, HR Ratings, JCR, Moody's, and S&P. *See* 2013 Annual Staff Report on NRSROs, p. 6.

[66] The issuer-pay model often raises concerns of potential conflicts of interest because the collection of fees from rated entities and issuers of rated securities, as a principal source of revenue, may provide an NRSRO with an economic incentive to issue inflated ratings as a way to promote business with its clients. Several academic studies try to answer theoretically and empirically the question of whether reputational concerns of a credit rating agency effectively neutralize potential conflicts of interest in the issuer-pay model. The conclusions of these studies are neither unanimous nor definite. For example, recently, Kashyap and Kovrijnykh (2013) found that, under the issuer-pay model, a credit rating is less accurate than under the subscriber-pay model. However, the authors found that subscribers tend to ask for a credit rating inefficiently (that is, when the expected quality of the rated entity or security is sufficiently high) and that the subscriber-pay model suffers from a potential free-riding problem. Cole and Cooley (2014) argue that much of the regulatory concerns with the conflict created by issuers paying for ratings are a distraction. The authors argue that in equilibrium, reputation ensures that credit ratings have value and reflect sound assessments of creditworthiness. Regulatory reliance on credit ratings and the importance of risk-weighted capital in prudential regulation more likely contributed to distorted credit ratings than the matter of who pays for them. *See* Anil Kashyap and Natalia Kovrijnykh, *Who Should Pay for Credit Ratings and How?,* NBER working paper No. 18923 (Mar. 2013); Harold Cole and Thomas F. Cooley, *Rating Agencies,* NBER working paper No. 19972 (Mar. 2014).

[67] The one NRSRO is EJR. *See* 2013 Annual Staff Report on NRSROs, p. 6.

subscribers pay a fee to access the credit ratings issued by the NRSRO.[68] Two NRSROs previously operated primarily under the subscriber-pay model but for several years have been issuing an increasing number of credit ratings paid for by the obligor being rated or the issuer of the securities that are rated.[69]

The ten NRSROs also differ by the scope of their business and, in particular, by whether their operations include products and services other than credit ratings,[70] which can be provided through business lines, segments, groups, or divisions within the NRSROs or through affiliated companies or other businesses not within the NRSRO.[71] For credit ratings, there are five classes of credit ratings for which a credit rating agency can be registered as an NRSRO: (1) Financial institutions, brokers, or dealers; (2) insurance companies; (3) corporate issuers; (4) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of Title 17, Code of Federal Regulations, ''as in effect on the date of enactment of this paragraph''); and (5) issuers of government securities, municipal securities, or securities issued by a foreign government.[72] Eight of the NRSROs are registered in multiple classes, while two NRSROs are registered in one class.[73] Table 2 shows the approximate number of outstanding credit ratings as reported by each NRSRO in its annual certification for the 2013 calendar year end, in each of the five categories for which the NRSRO is registered.

TABLE 2—APPROXIMATE NUMBER OF NRSRO CREDIT RATINGS OUTSTANDING BY CLASS OF CREDIT RATING (AS OF [DECEMBER 31, 2013])

NRSROs	Financial institutions	Insurance companies	Corporate issuers	Asset-backed securities	Government securities	Total ratings
S&P, Moody's, & Fitch	84%	74%	92%	90%	99%	97%
Other NRSROs	16%	26%	8%	10%	1%	3%
A.M. Best	N/R	4,492	1,653	56	N/R	6,201
DBRS	13,624	150	3,790	10,706	16,038	44,308
EJR	104	46	877	N/R	N/R	1,027
Fitch	49,821	3,222	15,299	53,612	204,303	326,257
HR Ratings	N/R	N/R	N/R	N/R	189	189
JCR	150	27	463	N/R	56	696
Kroll	15,982	44	2,749	1,401	25	20,201
Moody's	53,383	3,418	40,008	76,464	728,627	901,900
Morningstar	N/R	N/R	N/R	11,567	N/R	11,567
S&P	59,000	7,200	49,700	90,000	918,800	1,124,700
Total	192,064	18,599	114,539	243,806	1,868,038	2,437,046

Note: The approximate number of NRSRO credit ratings outstanding as of December 31, 2013 is provided by each NRSRO in its annual certification, which is available on each NRSRO's Web site. ''N/R'' indicates that an NRSRO is not registered for that class of credit rating.

As shown in Table 2, S&P has the greatest number of outstanding credit ratings in each of the five classes. S&P, Moody's, and Fitch are the top three producers of credit ratings in every class of credit ratings except for insurance companies (in this class, A.M. Best has the second highest number of outstanding credit ratings after S&P). Overall, S&P accounts for about 46% of the total NRSRO credit ratings outstanding, followed by Moody's (37%) and Fitch (13%), implying that two NRSROs (S&P and Moody's) account for 83% of all credit ratings outstanding and three NRSROs (S&P, Moody's, and Fitch) account for approximately 97%. Also, as discussed above, Table 1 shows that these three NRSROs employ 90% of the total number of NRSRO credit analysts. Comparing the number of credit ratings outstanding for established NRSROs and newly registered NRSROs may not provide a complete picture of competition in the industry. The incumbent NRSROs (particularly S&P, Moody's, and Fitch) have a longer history of issuing credit ratings, and their credit ratings include those for

[68] *See* 2013 Annual Staff Report on NRSROs, p. 23. The subscriber-pay model also is subject to potential conflicts of interest. *See id.* at p. 23. For example, the NRSRO may be aware that an influential subscriber holds a securities position (long or short) that could be advantaged if a credit rating upgrade or downgrade causes the market value of the security to increase or decrease; or that the subscriber invests in newly issued bonds and would obtain higher yields if the bonds were to have lower credit ratings. Another example of a conflict in the subscriber-pay model is that the NRSRO may be aware that a subscriber wishes to acquire a particular security but is prevented from doing so because the credit rating of the security is lower than internal investment guidelines or an applicable contract permit.

[69] The two NRSROs are Kroll and Morningstar. *See* 2013 Annual Staff Report on NRSROs, p. 7.

[70] Ancillary services often raise concerns of potential conflicts of interest because, for example, an NRSRO might issue a more favorable credit rating to an issuer in exchange for purchasing ancillary services, or an issuer that purchases a large amount of ancillary services might pressure the NRSRO to issue a more favorable credit rating for the issuer. *See* 2013 Staff Report on Credit Rating Agency Independence, pp. 21–24. Another concern with respect to ancillary services is that they might have involved an NRSRO making recommendations on the structure of a security to be rated. *Id.* at 22–23. Paragraph (c)(5) of Rule 17g–5 prohibits an NRSRO from issuing or maintaining a credit rating with respect to an obligor or security where the NRSRO or a person associated with the NRSRO made recommendations to the obligor or the issuer, underwriter, or sponsor of the security about the corporate or legal structure, assets, liabilities, or activities of the obligor or issuer of the security. *See* 17 CFR 240.17g–5(c)(5). In addition, Rule 17g–6 prohibits, among other things, an NRSRO from: (1) Conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the NRSRO or any person associated with the NRSRO; (2) issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the NRSRO's established procedures and methodologies for determining credit ratings, based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the NRSRO or any person associated with the NRSRO; and (3) modifying, or offering or threatening to modify, a credit rating in a manner that is contrary to the NRSRO's established procedures and methodologies for modifying credit ratings based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the NRSRO or any person associated with the NRSRO. *See* 17 CFR 240.17g–6.

[71] *See* 2013 Staff Report on Credit Rating Agency Independence, p. 19.

[72] *See* 15 U.S.C. 78c(a)(62) (defining the term *nationally recognized statistical rating organization*).

[73] *See* 2013 Annual Staff Report on NRSROs, p. 8.

debt obligations and obligors that were rated long before the establishment of the newer entrants.[74]

Recent trends in the industry structure are shown in Table 3, which reports the inverse of the Herfindahl-Hirschman Index (HHI) as a measure of industry concentration by rating class.[75] The HHI inverse is calculated from 2007 to 2013 for credit ratings outstanding as reported by the NRSROs in each rating class. Table 3 shows that the NRSRO industry concentration for all rating classes has moderately increased as suggested by the decrease in the HHI inverse since 2010. Despite a monotonic increase in competition in the rating class of asset-backed securities, the NRSRO industry remains concentrated, with the three largest NRSROs accounting for approximately 95% of the NRSROs' 2013 fiscal year total revenue, based on the annual reports the NRSROs furnish to the Commission.

TABLE 3—INVERSE OF HERFINDAHL-HIRSCHMAN INDEX BY CLASS OF CREDIT RATING

Year	Financial institutions	Insurance companies	Corporate issuers	Asset-backed securities	Government securities	Total ratings
2007	3.37	4.02	3.27	2.71	2.35	2.65
2008	3.72	4.05	3.79	2.82	2.83	2.99
2009	3.85	3.84	3.18	3.18	2.65	2.86
2010	3.99	3.37	3.17	3.20	2.69	2.88
2011	4.16	3.76	3.02	3.38	2.47	2.74
2012	4.04	3.72	3.00	3.44	2.50	2.75
2013	3.99	3.68	3.03	3.48	2.46	2.72

Note: The inverse of HHI is determined using the approximate numbers of NRSRO credit ratings outstanding reported in the Commission staff annual reports on NRSROs published in June 2008, September 2009, January 2011, March 2012, December 2012, and December 2013. For the 2013 calendar year end, the inverse of HHI is calculated using the number of outstanding credit ratings reported by NRSROs in their annual certifications.

In particular, for the asset-backed security class—which includes, among other things, RMBS, commercial mortgage backed securities (''CMBS''), and consumer finance and other asset-backed securities—Table 4 below shows the number of credit ratings outstanding from 2007 to 2013. The total number of outstanding credit ratings has significantly decreased (by 38%) since 2007, mostly due to pay-downs of existing asset-backed securities that have not been replaced by newly issued asset-backed securities that are rated by NRSROs.[76] While the three largest NRSROs accounted for 97% of the outstanding credit ratings for asset-backed securities in 2007, this number decreased to 90% in 2013.

TABLE 4—APPROXIMATE NUMBER OF CREDIT RATINGS OUTSTANDING IN THE ASSET-BACKED SECURITY CLASS

NRSROs	2007	2008	2009	2010	2011	2012	2013
S&P, Moody's, & Fitch	97%	96%	94%	94%	91%	91%	90%
Other NRSROs	3%	4%	6%	6%	9%	9%	10%
A.M. Best	54	54	54	54	56	55	56
DBRS	840	7,470	8,430	10,091	9,889	10,054	10,706
EJR	—	14	14	13	13	N/R	N/R
Fitch	72,278	77,480	69,515	64,535	58,315	56,311	53,612
HR Ratings	—	—	—	—	—	N/R	N/R
JCR	68	71	64	N/R	N/R	N/R	N/R
Kroll	246	0	0	0	40	352	1,401
Moody's	110,000	109,261	106,337	101,546	93,913	82,357	76,464
Morningstar	10,235	9,200	8,856	8,322	16,070	13,935	11,567
R&I	214	210	186	N/R	—	—	—
S&P	197,700	198,200	124,600	117,900	108,400	97,500	90,000
Total	391,635	401,960	318,056	302,461	286,696	260,564	243,806

Note: "N/R" indicates that an NRSRO is not registered for the asset-backed security class of credit ratings and "—" indicates that the credit rating agency was not registered as an NRSRO for the applicable year. Kroll acquired LACE Financial Corp. in August 2010. Morningstar, formerly known as Realpoint LLC, changed its name in 2011. Rating and Investment Information, Inc. ("R&I") withdrew its registration as an NRSRO with the Commission in October 2011. HR Ratings became registered as an NRSRO in 2012. Statistics come from the Commission staff annual reports on NRSROs published in June 2008, September 2009, January 2011, March 2012, December 2012, and December 2013. For calendar year 2013, the statistics come from the annual certifications of the NRSROs.

In 2013, some of the relatively newer or smaller NRSROs increased their market shares in terms of rating asset-backed securities. Table 5 reports full-year credit rating agency information for 2013, compared to 2007, the year immediately prior to the financial crisis. As the total issuances of asset-backed securities decreased considerably from 2007 to 2013, DBRS has maintained its market share in rating new issuances and has become the most active participant in rating RMBS, while S&P, Moody's and Fitch have lost market shares. DBRS, Kroll, and Morningstar have gained market shares in rating CMBS after the financial crisis and have rated a significant number of newly issued CMBS in 2013. Finally, in the market for rating consumer finance and other asset-backed securities, which has

[74] *See* 2013 Annual Staff Report on NRSROs, p. 12.

[75] The inverse of HHI can be interpreted as the number of equally-sized firms necessary to replicate the degree of concentration in a particular industry.

[76] *See* 2013 Annual Staff Report on NRSROs, p. 12.

the largest number of issuances, DBRS and Kroll have increased their market shares, although S&P, Moody's and Fitch continue to play a significant role.

TABLE 5—MARKET SHARES OF CREDIT RATING AGENCIES FOR RMBS, CMBS, AND CONSUMER FINANCE AND OTHER ASSET-BACKED SECURITIES, 2013 AND 2007

Rank	NRSROs	2013 Issuance ($ mil.)	Number of offerings	Market share (%)	2007 Issuance ($ mil.)	Number of offerings	Market share (%)	2007–2013 Change (%)
Residential mortgage-backed securities								
1	DBRS	$12,501.90	50	61.4	$12,817.60	20	2.9	−2.5
2	Fitch	9,969.60	23	48.9	253,721.10	318	58.2	−96.1
3	S&P	9,597.50	23	47.1	409,532.40	534	94.0	−97.7
4	Kroll	7,908.70	17	38.8	N/A	N/A	N/A	N/A
5	Moody's	3,796.00	9	18.6	324,923.50	421	74.6	−98.8
Total		20,372.00	68	100.0	435,815.60	575	100.0	−95.3
Commercial mortgage-backed securities								
1	Moody's	$62,802.60	67	72.9	$171,787.00	61	74.6	−63.4
2	Fitch	50,447.70	56	58.6	159,687.30	60	69.4	−68.4
3	Kroll	45,140.10	55	52.4	N/A	N/A	N/A	N/A
4	S&P	34,255.20	49	39.8	202,381.00	71	87.9	−83.1
5	DBRS	18,574.90	26	21.6	13,295.30	6	5.8	39.7
6	Morningstar	17,089.00	27	19.8	N/A	N/A	N/A	N/A
Total		86,135.80	122	100.0	230,195.80	86	100.0	−62.6
Consumer finance and other asset-backed securities								
1	S&P	$134,860.60	244	69.3	$576,417.90	884	96.7	−76.6
2	Moody's	114,569.90	155	58.9	563,982.90	735	94.6	−79.7
3	Fitch	113,213.80	156	58.2	342,140.10	418	57.4	−66.9
4	DBRS	16,530.60	51	8.5	43,102.70	73	7.2	−61.6
5	Kroll	3,983.10	16	2.0	N/A	N/A	N/A	N/A
Total		194,600.70	341	100.0	596,016.20	981	100.0	−67.3

Note: A single offering of asset-backed securities may consist of multiple tranches of securities. An NRSRO may rate one or multiple tranches of the securities issued in the offering. Market shares of individual NRSROs do not add up to 100% since more than one NRSRO may rate a particular offering. "N/A" indicates that statistics are not available for 2007. CMBS data relates to U.S. CMBS, including U.S. conduit/fusion and U.S. single borrower. Data comes from Asset-Backed Alert and Commercial Mortgage Alert Web sites, publicly available at *http://www.abalert.com/ranks.php* and *http://www.cmalert.com/ranks.php*.

b. Asset-Backed Security Issuers, Underwriters, and Third-Party Due Diligence Providers

The asset-backed security market that existed in the United States as of the end of 2013 differed significantly from the market prior to the crisis. In 2004, issuing entities of non-agency asset-backed securities held $2.6 trillion in assets, which grew to $4.5 trillion in 2007 and declined to $1.6 trillion in 2013.[77] Table 6 presents issuance amounts, number of offerings, and number of unique issuers for non-agency asset-backed securities, categorized by type of offering.[78] While new issuances of registered asset-backed securities represented the majority of offerings and totaled $1.0 trillion in 2004, they drastically dropped to $140.7 billion in 2008. In 2013, the asset-backed security market totaled $393.6 billion, of which $174.1 billion is the new issuance amount of registered asset-backed securities.

TABLE 6—ISSUANCE AMOUNT, NUMBER OF OFFERINGS, AND NUMBER OF UNIQUE ISSUERS FOR NON-AGENCY ASSET-BACKED SECURITIES

Year	Issuance amount ($ bln)				Number of offerings				Number of unique issuers			
	Regist'd	144A	Private	Total	Regist'd	144A	Private	Total	Regist'd	144A	Private	Total
2002	617.13	122.07	2.00	741.20	1,074	491	31	1,596	143	226	17	327
2003	790.47	149.20	0.17	939.85	1,271	589	3	1,863	139	223	3	309
2004	1,024.16	186.53	0.85	1,211.53	1,370	670	2	2,042	131	218	2	298
2005	1,450.33	322.64	3.70	1,776.68	1,594	907	3	2,504	134	300	2	376
2006	1,446.07	623.38	0.50	2,069.95	1,508	1,551	1	3,060	116	406	1	460
2007	1,048.81	518.59	0.55	1,567.95	1,088	1,102	1	2,191	111	342	1	396
2008	140.70	130.80	0.00	271.49	163	240	0	403	51	96	0	128

[77] This information is derived from data compiled by the Federal Reserve and published in quarterly Z.1 releases, which are available at *http://www.federalreserve.gov/releases/Z1/default.htm*. Statistics include private mortgage pools, consumer credit, business loans, student loans, consumer leases, and trade credit securitization.

[78] In this section of the release, the issuer of the asset-back security means the person that primarily organizes and initiates the offering of the asset-backed security, often referred to as the *sponsor*.

TABLE 6—ISSUANCE AMOUNT, NUMBER OF OFFERINGS, AND NUMBER OF UNIQUE ISSUERS FOR NON-AGENCY ASSET-BACKED SECURITIES—Continued

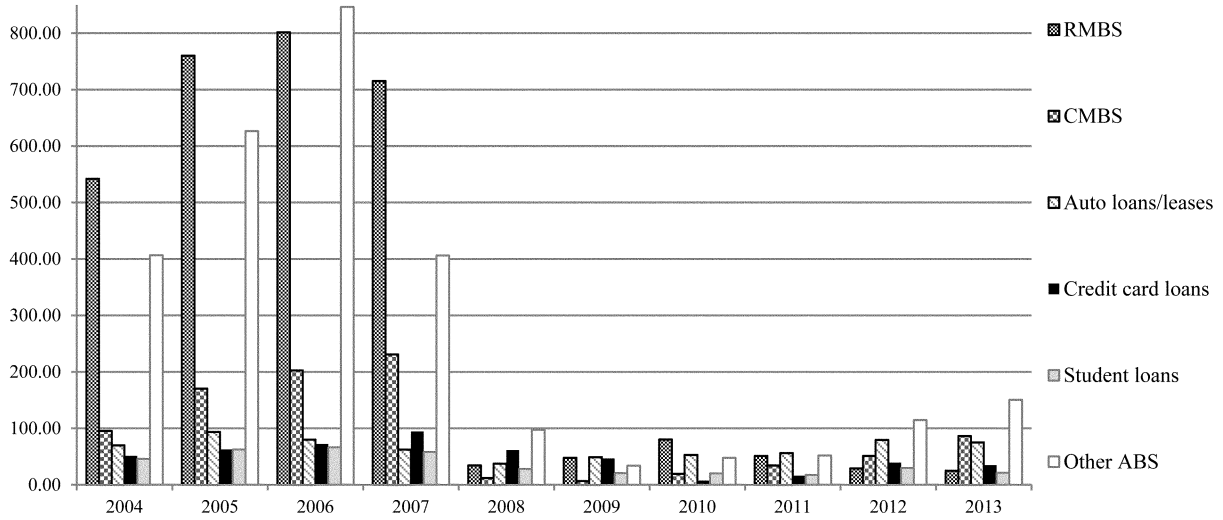
Year	Issuance amount ($ bln)				Number of offerings				Number of unique issuers			
	Regist'd	144A	Private	Total	Regist'd	144A	Private	Total	Regist'd	144A	Private	Total
2009	85.45	120.14	0.00	205.58	80	266	0	346	30	81	0	97
2010	51.01	163.30	14.01	228.32	65	401	4	470	29	145	1	160
2011	74.94	139.06	13.58	227.59	86	291	15	392	39	163	6	179
2012	157.15	186.53	0.00	343.68	157	465	0	622	51	242	0	270
2013	174.06	219.47	0.08	393.61	182	532	1	715	61	294	1	336

Note: Statistics are calculated by DERA using the Asset-Backed Alert and Commercial Mortgage Alert databases. A single offering of asset-backed securities may consist of multiple tranches of securities. An NRSRO may rate one or multiple tranches of the securities issued in the offering. The offerings are categorized by offering year and offering type (Commission registered, Rule 144A, or traditional private offerings). Non-agency asset-backed securities include RMBS, CMBS, and other asset-backed securities. Non-agency RMBS include residential, Alt-A, subprime RMBS, high loan-to-value (''no-equity'') loans, and non-U.S. residential loans. Auto loan asset-backed securities include asset-backed securities backed by auto loans and auto leases, both prime and subprime, motorcycle loans, recreational vehicle loans, and truck loans. The first set of columns show the total issuance amounts in billions of dollars. The second set of columns show the total number of asset-backed security offerings. The third set of columns show the number of unique issuers of asset-backed securities in each category. The number in the column ''Total'' may not be the sum of numbers in the columns ''Regist'd'', ''144A'' and ''Private'' because some issuers may initiate offerings in several categories. Only non-agency asset-backed security offerings sold in the United States and issuers of such offerings are counted.

Issuers of asset-backed securities often include banks, mortgage companies, finance companies, investment banks, and other entities that originate or acquire and package financial assets for resale as asset-backed securities.[79] As reported in Table 6, in 2004 there were 298 unique issuers, while in 2013 there were 336 unique issuers, mostly involved in Rule 144A offerings.[80] The ten most active issuers were responsible for about 30% of the total issuance amounts at the end of 2013.[81]

As noted in Figure 1 below, an analysis of the segments of the asset-backed security market shows that all segments experienced significant downturns during the crisis but only a few of them have experienced a recovery in the aftermath. Figure 1 focuses on non-agency asset-backed security offerings and reports the issuance volume by main asset classes (RMBS, CMBS, auto loans/leases, credit card loans, student loans, and other asset-backed securities).

Figure 1 - Issuance volume (in billions of dollars) of asset-backed security offerings by main asset classes, 2004-2013



Note: The offerings are categorized by offering year and underlying asset type. A single offering of asset-backed securities may consist of multiple tranches of securities. An NRSRO may rate one or multiple tranches of the securities issued in the offering. Non-agency RMBS include residential, Alt-A, and subprime RMBS, and asset-backed securities backed by home equity loans and lines of credit. Only non-agency RMBS offerings sold in the United States are counted. Auto loan asset-backed securities include asset-backed securities backed by auto loans, both prime and subprime, motorcycle loans, truck loans, and recreational vehicle loans. Data is compiled from Asset-Backed Alert and Commercial Mortgage Alert databases.

As shown in Figure 1, new issuances of non-agency RMBS in 2004 totaled $542 billion, with registered offerings representing the majority of non-agency RMBS issued before the crisis. Non-agency RMBS issuance—which totaled $715 billion in 2007—dropped drastically to $35 billion in 2008. As of the end of 2013, the non-agency RMBS

[79] *See Asset-Backed Securities,* Securities Act No. 8518 (Dec. 22, 2004), 70 FR 1506 (Jan. 7, 2005).

[80] The number of issuers varies across segments of the asset-backed security market. For example, as of December of 2013 there were twenty-two and eighty-three issuers involved in RMBS and CMBS offerings, respectively.

[81] The market share attributed to the issuer of an asset-backed security is calculated by DERA staff using the Asset-Backed Alert and Commercial Mortgage Alert databases.

market remains weak and consists almost exclusively of unregistered RMBS offerings. In particular, new issuances of non-agency RMBS totaled $25 billion in 2013, which represents about 5% of the issuance level in 2004. CMBS experienced a similar drop in issuance levels, though it has rebounded to a level that is closer to the 2004 issuance level than RMBS. In particular, CMBS issuance rose from $96 billion in 2004 to $231 billion in 2007. It then dropped to $12 billion in 2008. It was $86 billion in 2013, which is about 90% of the issuance level in 2004. The consumer finance asset-backed security market also declined drastically in terms of number of offerings and issuance volume after the financial crisis. For example, $70 billion of securities backed by auto loans and leases were issued in 2004, but issuance decreased to $38 billion in 2008. The issuances of consumer finance asset-backed securities, especially those securities backed by auto loans and leases, and other asset-backed securities have steadily increased since 2008 to reach pre-crisis levels of about $75 billion in 2013.

Among the asset-backed security segments, the non-agency RMBS segment has experienced a significant decline in the number of issuers with twenty-two issuers arranging non-agency RMBS (and only one issuer arranging non-agency registered RMBS) as of the end of 2013, compared to fifty-eight issuers in 2004. In the RMBS market, issuers arranging non-agency RMBS encounter competitive pressure from government-sponsored enterprises that arrange RMBS that are guaranteed [82] and exempt from registration and reporting requirements.[83] As non-agency RMBS issuance has declined, issuance of agency RMBS has increased. Issuances of RMBS arranged by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association were $1.4 trillion in 2004 and grew to $1.9 trillion in 2013.[84]

Table 7 shows the number of unique underwriters of non-agency asset-backed securities. As of the end of 2013, it is a highly concentrated industry with ninety underwriters (if international securitizations are included in the data) and fifty underwriters (if international securitizations are excluded), with the top ten underwriters by volume underwriting about 70% of the securitizations.[85]

TABLE 7—NUMBER OF UNIQUE ASSET-BACKED SECURITY UNDERWRITERS

Year	Regist'd	144A	Private	Total excluding internat'l	Internat'l	Total including internat'l
2002	22	40	15	47	86	107
2003	29	41	3	47	87	109
2004	29	46	2	56	99	123
2005	29	45	3	50	101	118
2006	28	57	1	59	114	137
2007	27	59	1	61	109	132
2008	19	42	0	44	95	113
2009	14	26	0	28	58	72
2010	15	45	1	46	76	90
2011	18	44	5	45	62	79
2012	20	46	0	48	63	81
2013	22	47	0	50	72	90

Note: Statistics are calculated by DERA staff using the Asset-Backed Alert and Commercial Mortgage Alert databases. A single offering of asset-backed securities may consist of multiple tranches of securities. An NRSRO may rate one or multiple tranches of the securities issued in the offering. The number of unique underwriters of asset-backed securities is divided into categories by type of offering (registered, 144A, private, or international). The total number in the last column may not be the sum of numbers in the columns labeled "Public", "144A", "Private," and "Internat'l" because some underwriters may market offerings in several categories. Only non-agency asset-backed security offerings and underwriters of such deals are counted.

Finally, providers of third-party due diligence services with respect to asset-backed securities are significantly affected by the amendments and new rules being adopted today. The Commission has little information about these firms and the characteristics of the industry. The Commission estimates that there are approximately fifteen providers of third-party due diligence services.[86] Because there are very few publicly traded firms specializing in due diligence, little is known about these service providers in terms of loan review volume, market share, and revenue.[87]

Asset-backed security issuers and underwriters may use third-party due diligence services to identify issues with loans, to negotiate better prices on pools of loans they are considering for

[82] *See* N. Eric Weiss, *GSEs and the Government's Role in Housing Finance: Issues for the 113th Congress,* Congressional Research Service Report for Congress (2013).

[83] Mortgage-backed securities issued by government-sponsored enterprises and the Government National Mortgage Association have been and continue to be exempt from registration under the Securities Act and most provisions of the federal securities laws. For example, the mortgage-backed securities issued by the Government National Mortgage Association are exempt securities under section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)) and section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)). The chartering legislation for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation contain exemptions with respect to the mortgage-backed securities issued by these entities. *See* 12 U.S.C. 1723c; 12 U.S.C. 1455g.

[84] *See* Securities Industry Financial Market Association ("SIFMA"), *U.S. Mortgage-Related Issuance and Outstanding Data from 1996 to May 2014 (issuance), 2002 to 2014 Q1 (outstanding)* (June 3, 2014 update).

[85] The market share attributed to an asset-backed security underwriter is calculated by DERA staff using Asset-Backed Alert and Commercial Mortgage Alert databases.

[86] This number comes from combining the names of third-party due diligence firms cited by Vicki Beal, Senior Vice President of Clayton Holdings, in her testimony before the Financial Crisis Inquiry Commission, and the names of third-party due diligence firms that S&P reviews as a part of its U.S. RMBS rating process. *See* Testimony of Vicki Beal, Senior Vice President of Clayton Holdings before the Financial Crisis Inquiry Commission, (Sept. 23, 2010), *available at http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0923-Beal.pdf* ("Clayton Testimony"). S&P's updated list of third-party due diligence firms reviewed for U.S. RMBS is available at *https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1246530&SctArtId=208825&from=CM&nsl_code=LIME.* The Commission does not know whether the estimate of fifteen providers of third-party due diligence services captures all of the primary participants in this business but believes that, based on available information, this is a reasonable estimate for purposes of this economic analysis.

[87] *See* Clayton Testimony, p. 1 (describing the market for due diligence services as "highly fragmented, highly competitive and rapidly changing").

purchase, and to negotiate expanded representations and warranties in purchase and sale agreements from sellers.[88] The reviews of third-party due diligence providers are performed on an adverse or random sample of loans consistent with the guidelines of clients. Compensation is likely not contingent on due diligence findings or the ultimate performance of the loans reviewed. Instead, third-party due diligence providers may be paid a standard service fee for each loan reviewed.[89]

c. Industry Practices

The Commission staff conducts annual examinations of each NRSRO and publishes a report summarizing the essential findings of the examinations, as required by section 15E(p)(3) of the Exchange Act.[90] The staff's 2013 report noted improvements, relative to prior examinations, among the NRSROs in five general areas that are related to the amendments and new rules being adopted today: Enhanced documentation, disclosure, and board of director oversight of criteria and methodologies; investment in software or computer systems for electronic recordkeeping and monitoring employee securities trading; increased prominence of the role of the designated compliance officer within NRSROs; implementation or enhancement of internal controls over the rating process (for example, use of audits and other testing to verify compliance with federal securities laws, and employee training on compliance matters); and adherence to internal policies and procedures.[91] The report also discussed certain weaknesses or concerns in a number of review areas: Adherence to policies, procedures, and methodologies; [92] management of conflicts of interest; [93] implementation of ethics policies; [94] internal supervisory controls; [95] governance; [96] the activities of the designated compliance officer; [97] the processing of complaints; [98] and the policies governing post-employment activities of former staff of the NRSRO.[99] These essential findings were related to several areas of NRSRO operations and were not limited to activities relating to rating asset-backed securities.

3. Broad Economic Considerations

In this section, the Commission describes the primary economic impacts that may derive from the amendments and new rules being adopted today, relative to the baseline discussed above. A detailed analysis of the particular economic effects—including the costs and benefits and the impact on efficiency, competition, and capital formation—that may result from the amendments and rules is presented in the focused economic analyses in section II of this release.[100]

Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.[101] Further, section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.[102] The Commission's analysis of the economic effects, including the likely costs and benefits and the likely impact on efficiency, competition, and capital formation of the amendments and new rules, include those attributable to the rulemaking that the Commission is mandated to undertake in accordance with the Dodd-Frank Act and those attributable to the exercise of the Commission's discretionary authority.

In the proposing release, the Commission solicited comments on all aspects of the costs and benefits associated with the proposed rules. In addition to comments on the economic effects of specific provisions, which will be discussed in section II of this release, the Commission received comments on the overall economic effects of the proposed amendments and new rules. Generally, commenters expressed concerns that the potential cumulative burden and costs associated with the proposed amendments and new rules could be so onerous that they would have negative effects on competition by imposing an excessive burden on smaller NRSROs and raising barriers to entry for credit rating agencies that seek to register as NRSROs.[103] In particular, one commenter suggested that ''fostering competition among rating agencies was a primary goal of both the Rating Agency Act of 2006 and the Dodd-Frank Act'' but that ''the proposed rules will be so costly to implement that additional credit rating agencies are unlikely to register as NRSROs and the existing pool of registrants may contract.'' [104]

As discussed in section II of this release, the Commission has considered these comments and has modified the amendments and new rules being adopted today from the proposals in a number of ways that are designed to reduce the cumulative burden and costs associated with complying with the new requirements. Nonetheless, the Commission recognizes—as reflected in the economic analysis—that the amendments and rules establish a substantial package of new requirements applicable to NRSROs and that complying with these requirements will entail significant costs to NRSROs.[105] The amendments and rules also impose burdens on issuers and underwriters of asset-backed securities and providers of third-party due diligence services with respect to asset-backed securities. As discussed throughout the economic analysis, the Commission believes that

[88] *See id.* at 2.

[89] *See id.* at 3.

[90] Section 923(a)(8) of the Dodd-Frank Act struck the existing text in paragraph (p) of section 15E of the Exchange Act, which related to the date of applicability of the Rating Agency Act of 2006, and added new text. *See* Public Law 111–203, 932(a)(8). Section 15E(p)(3) of the Exchange Act requires, among other things, the Commission staff to conduct an examination of each NRSRO at least annually. *See* 15 U.S.C. 78o–7(p)(3). Annual inspection reports for 2011, 2012, and 2013 are available at *http://www.sec.gov/divisions/marketreg/ratingagency.htm.*

[91] *See* Commission staff, *2013 Summary Report of Commission Staff's Examinations of Each Nationally Recognized Statistical Rating Organization* (Dec. 2013) (''2013 Annual Staff Inspection Report''), pp. 7–9.

[92] *See* 2013 Annual Staff Inspection Report, pp. 9–11.

[93] *Id.* at 11–13.

[94] *Id.* at 13–14.

[95] *Id.* at 14–19.

[96] *Id.* at 19–20.

[97] *Id.* at 20–21.

[98] *Id.* at 21–22.

[99] *Id.* at 22–23.

[100] *See* sections II.A.4., II.B.4., II.C.3., II.D.2., II.E.4., II.F.3., II.G.6., II.H.4., II.I.3., II.J.3., II.K.2., II.L.2., and II.M.5. of this release.

[101] *See* 15 U.S.C. 78c(f).

[102] *See* 15 U.S.C. 78w(a)(2); *see also* Current Guidance on Economic Analysis in SEC Rulemakings (available at: *http://insider.sec.gov/divisions_offices/hqo/dera/rsfi-guidance-econ_analysis-rulemaking.pdf*)

[103] *See A.M. Best Letter; DBRS Letter; EJR Letter; Kroll Letter; Morningstar Letter; S&P Letter; TradeMetrics Letter.*

[104] *See DBRS Letter.* This commenter also stated that a ''contradiction lies in the fact that, while directing the Commission to impose costly and onerous new obligations on rating agencies who choose to register as NRSROs, the Dodd-Frank Act also directs the Commission to remove all references to credit ratings from the federal securities regulations.'' *See DBRS Letter. See also* Public Law 111–203, 939A.

[105] Some NRSROs may be subject to rules in foreign jurisdictions under which certain of their policies and procedures or other practices are affected by requirements of these foreign jurisdictions that may be similar to some of the requirements imposed by the amendments and new rules. While the requirements of foreign jurisdictions are not analyzed here in detail, they may impact the incremental costs and benefits of the amendments and new rules.

the new requirements should result in substantial benefits and should not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In particular, the amendments and new rules being adopted today are designed to implement Title IX, Subtitle C of the Dodd-Frank Act, which, in turn, was designed to address the causes of certain market failures (that is, the principal-agent problem,[106] including conflicts of interest, and asymmetric information) that may impair the integrity and transparency of NRSRO credit ratings and the procedures and methodologies NRSROs use to determine credit ratings. Some of the amendments and new rules are primarily designed to enhance the integrity of how NRSROs determine credit ratings by improving internal governance of NRSROs, managing potential principal-agent problems and conflicts of interest in the credit rating process, and promoting adherence to the procedures and methodologies for determining credit ratings and compliance with laws and regulations.[107] For example, provisions in the amendments and new rules require an NRSRO, among other things, to: (1) Assess and report on the effectiveness of internal controls; (2) address conflicts of interest relating to sales and marketing activities and employment of former analysts; (3) have policies and procedures relating to their procedures and methodologies for determining credit ratings; (4) have standards of training, experience and competence for their credit analysts; and (5) have policies and procedures to promote the consistent use of credit rating symbols.[108]

Other provisions in the amendments and new rules being adopted today are designed mainly to enhance the transparency of NRSRO credit ratings by increasing disclosure and reducing information asymmetries that may adversely affect users of credit ratings. This should facilitate external scrutiny of NRSRO activities. More specifically, provisions in the amendments and new rules require an NRSRO, among other things, to disclose: (1) Standardized performance statistics; (2) increased information about credit rating histories; (3) information about material changes and significant errors in the procedures and methodologies used to determine credit ratings; and (4) information about a specific rating action.[109] The main objective of these requirements is to improve the information provided to users of credit ratings, including investors. The enhanced disclosure may reduce information asymmetries between the NRSRO and the users of its credit ratings, enabling the users to make more informed investment and credit related decisions and allowing them to compare the performance of credit ratings by different NRSROs. Additionally, there are requirements in the amendments and new rules that are designed to reduce information asymmetries among issuers and underwriters of asset-backed securities, NRSROs rating asset-backed securities, and the users of credit ratings for asset-backed securities.[110] These requirements may benefit NRSROs and users of credit ratings, including investors in these securities.

a. Amendments and Rules Enhancing NRSRO Governance and Integrity of Credit Ratings

The requirements in the amendments and new rules being adopted today that are primarily designed to enhance an NRSRO's internal governance should have economic benefits, relative to the existing baseline, in terms of promoting the integrity of how NRSROs determine and monitor credit ratings. In particular, there are new requirements applicable to NRSROs that assign responsibilities to an NRSRO's management and board of directors, which should promote accountability and facilitate internal oversight over the processes governing the determination of credit ratings and the implementation of the procedures and methodologies an NRSRO uses to determine credit ratings. For example, an NRSRO is required to file an annual report containing an assessment by management of the effectiveness during the fiscal year of the internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.[111] Similarly, an NRSRO is required to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or a body performing a function similar to that of a board of directors.[112] The board's oversight may prevent situations in which an NRSRO seeks to implement a procedure or methodology to determine credit ratings that is designed to inappropriately issue favorable credit ratings for existing and prospective clients in order to retain or gain market share.[113]

There are new requirements applicable to NRSROs pursuant to which they must avoid certain conflicts of interest and have policies and procedures to take certain actions to address credit ratings that are influenced by a conflict of interest.[114] These requirements may facilitate the alignment of incentives at both the NRSRO and individual NRSRO employee level to ultimately promote the production of unbiased credit ratings. At the NRSRO level, for example, sales and marketing considerations may influence the NRSRO's production of credit ratings. Consequently, there is a new requirement that prohibits an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[115] This absolute prohibition should result in internal policies, procedures, and organizational solutions that isolate the analytical function from sales and marketing considerations within the NRSRO. To the extent that the absolute prohibition prevents credit analysts that participate in the determination of

[106] A principal–agent problem occurs when one person (the ''agent'') is able to act in the person's own best interest rather than in the interest of another person (the ''principal''). The problem arises when the parties have different interests and the agent has more information than the principal so that the principal cannot ensure that the agent is always acting in the principal's best interests, especially where activities that are useful to the principal are costly to the agent and where monitoring of the agent's activities is costly to the principal. For example, a principal-agent problem may arise if an NRSRO produces credit ratings that, as a result of conflicts of interest, are not informative to the users of credit ratings.

[107] These requirements are discussed below in sections II.A., II.B., II.C., II.D., II.F., II.I., II.J., and II.K. of this release.

[108] These requirements are discussed below in sections II.A., II.B., II.C., II.F., II.I., and II.J. of this release.

[109] These requirements are discussed below in sections II.E., II.F., II.G., and II.L. of this release.

[110] These requirements are discussed below in sections II.E., II.G., and II.H of this release.

[111] This requirement is discussed below in section II.A.3. of this release.

[112] This requirement is discussed below in section II.F.1. of this release.

[113] *See* Griffin and Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?*

[114] These requirements are discussed below in sections II.B. and II.C. of this release.

[115] This requirement is discussed below in section II.B.1. of this release.

credit ratings from being influenced by sales and marketing considerations, this should curb potential conflicts of interest related to ''rating catering'' practices that have been suggested by anecdotal evidence [116] and academic literature.[117] Isolating the production of credit ratings and the development of procedures and methodologies for determining credit ratings from sales and marketing considerations should promote the integrity and quality of credit ratings to the benefit of their users.

At the individual level, an analyst's incentives may be distorted by the prospect of future employment at an issuer or underwriter, which could influence the analyst in determining a credit rating for that issuer or underwriter. Consequently, there is a new requirement that an NRSRO must have policies and procedures that address instances in which this conflict of interest influenced a credit rating that are reasonably designed to ensure that the NRSRO promptly determines whether the current credit rating must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings and to promptly publish a revised credit rating, an affirmation of the credit rating, or potentially place the credit rating on watch or review and in each case include certain disclosures about the existence of the conflict.[118] This provision is designed to require the NRSRO to promptly address a conflicted credit rating, and it will likely limit the potential risk that users of credit ratings may make investment decisions using biased or inaccurate information. The disclosures also should provide information to investors and other users of credit ratings that they can use to scrutinize an NRSRO, thereby promoting accountability to the market for failing to appropriately manage this conflict of interest.

In terms of accountability, the Commission is finalizing a rule amendment pursuant to which an NRSRO could have its registration suspended or revoked for violating a rule governing conflicts of interest.[119] In addition, the Commission is amending Form NRSRO to provide notice to an NRSRO or a credit rating agency applying for registration as an NRSRO that an NRSRO is subject to applicable fines, penalties, and other sanctions under the Exchange Act.[120] This may serve as a reminder to the NRSRO or applicant of the potential consequences of failing to comply with federal laws and regulations. Taken together, these accountability measures may have incremental effects on the integrity of an NRSRO's activities and credit ratings by promoting compliance with the Commission's rules.

There are new requirements applicable to NRSROs pursuant to which they must establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure that: (1) The procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO; and (2) material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, that the NRSRO uses to determine credit ratings are applied consistently to all current and future credit ratings to which the changed procedures or methodologies apply and, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to current credit ratings to which the changed procedures or methodologies apply within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[121] To the extent that these policies and procedures are effectively implemented and enforced, their application may enhance the integrity of how NRSROs determine credit ratings.

There are new requirements applicable to NRSROs pursuant to which they must establish, maintain, enforce, and document standards of training, experience, and competence for the individuals they employ to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings in the classes of credit ratings for which the NRSRO is registered. At a minimum, these standards must include: (1) A requirement for periodic testing of the individuals employed by the NRSRO to participate in the determination of credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings; and (2) a requirement that at least one individual with an appropriate level of experience in performing credit analysis, but not less than three years, participates in the determination of a credit rating.[122] These requirements may increase the level of competence and experience of the credit analysts employed by the NRSRO to participate in the production of credit ratings with possible positive effects on the integrity and quality of credit ratings.[123]

There are new requirements applicable to NRSROs pursuant to which they must have reasonably designed policies and procedures relating to: (1) Assessing the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments in accordance with the terms of the security or money market instrument; (2) clearly defining each symbol, number, or score in the rating scale used by the NRSRO and including the definitions in Exhibit 1 to Form NRSRO; and (3) applying any symbol,

[116] *See* Coffee Testimony I, pp. 2–3.

[117] *See* John M. Griffin, Jordan Nickerson, Dragon Yongjun Tang, *Rating Shopping or Catering? An Examination of the Response to Competitive Pressure for CDO Credit Ratings,* Rev. Fin. St. 2270–2310 (2013). The authors draw a distinction between rating shopping and rating catering. ''Rating shopping'' refers to a situation in which issuers solicit ratings from multiple credit rating agencies and then hire the credit rating agencies that will issue the most favorable credit ratings (Skreta and Veldkamp, 2009). Even though rating agencies adhere to their rating procedures and methodologies and issue unbiased ratings, credit rating inflation is a natural consequence of the rating shopping process and is not driven by the rating agencies. ''Rating catering'' refers to a situation in which issuers solicit credit ratings from multiple credit rating agencies and the credit rating agencies may not strictly adhere to their procedures and methodologies for determining credit ratings in order to issue more favorable credit ratings. The authors argue that under pressure from investment banks, the credit rating agency with a more stringent procedure or methodology for determining credit ratings stretches the procedure or methodology to match more lenient competitors (Bolton, Freixas, and Shapiro, 2012).

[118] This requirement is discussed below in section II.C.1. of this release.

[119] This requirement is discussed below in section II.B.3. of this release.

[120] This requirement is discussed below in section II.D.1. of this release.

[121] This requirement is discussed below in section II.F.1. of this release.

[122] *See* section II.I.1. of this release (providing a more detailed discussion of the requirements of this paragraph).

[123] *See* Cesare Fracassi, Stefan Petry, and Geoffrey Tate, *Are Credit Ratings Subjective? The Role of Credit Analysts in Determining Ratings* (2014), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2230915.* The authors find that the identity of the credit analysts covering a firm significantly affects the firm's credit rating, comparing credit ratings for the same firm at the same time across credit rating agencies. Analyst effects account for 30% of the variation within credit ratings. In addition, the quality of credit ratings varies with observable analyst characteristics.

number, or score in the rating scale used by the NRSRO in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[124] Compliance with these policies and procedures may increase the likelihood that NRSROs apply rating symbols, numbers, or scores consistently across classes of credit ratings to the benefit of the users of credit ratings and obligors and issuers that are subject to credit ratings.

Finally, there are new requirements applicable to NRSROs pursuant to which they must retain records of certain internal controls, policies, procedures and standards they are required to document.[125] These record retention requirements should facilitate Commission oversight of NRSROs to the benefit of users of credit ratings. Similarly, the Exchange Act requires an annual report of the NRSRO's designated compliance officer to be filed on a confidential basis with the Commission.[126] The new requirement should facilitate Commission oversight as well.

There will be costs associated with the amendments and new rules being adopted today related to governance of NRSROs.[127] These costs will be primarily incurred by NRSROs.[128] Initial and ongoing direct costs, including compliance costs, may vary among the NRSROs depending on the size and complexity of their business activities (for example, number of credit ratings outstanding, number of analysts, or number of classes of credit ratings). Among other costs, NRSROs also may incur training costs in order to make their personnel aware of the changes in internal controls, policies, and procedures required by the amendments and new rules. These costs are difficult to quantify because they depend significantly on how the required changes differ from the internal policies and procedures currently in place within each NRSRO. In addition, they depend on factors such as the NRSRO's size and business complexity. For example, an NRSRO may need to train its credit analysts and sales and marketing staff in the updated policies and procedures related to the sales and marketing conflict requirements. Among other factors, this cost will likely vary significantly with the degree of the existing separation between the functions of analytical staff and sales and marketing personnel.[129]

Keeping all other factors constant, the costs associated with establishing, maintaining, enforcing, and documenting internal policies and procedures may be higher for structured finance products because the inherent conflict of interest that credit rating agencies face in rating these products is more acute than it is with respect to rating other types of securities.[130] In addition, keeping all other factors constant, NRSROs operating under a business model that combines the issuer-pay and subscriber-pay models may face greater direct costs, given that the two models may entail different internal policies and procedures to prevent different sources of potential conflicts of interest. A component of these costs may also be fixed, which may have a disproportionate impact on smaller NRSROs that may find it more difficult to bear the costs. If NRSROs are not able to readily pass the overall additional costs to clients, there may be adverse effects, particularly on smaller NRSROs.

As a result of the amendments and new rules being adopted today, the number of credit rating agencies registered with the Commission as NRSROs may decline if current registrants believe that the cost of being registered and being subject to these new requirements outweighs the benefit of registration. The barriers to entry for credit rating agencies to register as NRSROs may rise, discouraging credit rating agencies from registering as NRSROs. Further, historically, successful new entrants have established themselves by first specializing in a particular industry, creating a track record in a particular rating class, and building the necessary reputational capital to achieve marketplace acceptance of their credit ratings.[131] Compliance costs may reduce the incentive for an NRSRO to expand its rating business into new classes of credit ratings, with adverse effects on competition in certain market segments. Also, if compliance costs significantly erode profit margins for NRSROs, the barriers to exit from being registered as an NRSRO in certain or all classes of credit ratings may lower. The risk for deregistration may likely be higher for smaller NRSROs. As mentioned earlier, these costs also should depend on the complexity of operations within the NRSRO. Further, given that the conflict of interest in rating structured finance products is more acute, the competitive effects could be greater within the markets for rating these products. These potential consequences could reduce competition among NRSROs.

An amendment being adopted today provides a mechanism for a small NRSRO to seek an exemption from the sales and marketing prohibition.[132] The exemption based on size may decrease the burden on small NRSROs. However, this amendment could create adverse effects on competition as exempted NRSROs may be able to draw business through rating catering. In particular, exempted NRSROs may be able to more readily produce conflicted and inflated ratings [133] or generate a greater stream of revenue from selling rating and ancillary services than non-exempted NRSROs. Reputation, which is an important disciplinary mechanism in this industry, may mitigate this risk to a certain extent.[134]

A number of credit rating agencies located in the United States have not registered as NRSROs.[135] As U.S. regulatory agencies continue to remove references to NRSRO credit ratings from the regulations they administer, market

[124] These requirements are discussed below in section II.J. of this release.

[125] These requirements are discussed below in sections II.A.2., II.C.2., II.F.2., II.I.2., and II.J.2. of this release.

[126] This requirement is discussed below in section II.K. of this release.

[127] A detailed analysis of the economic costs, including compliance costs that can potentially result from each amendment and/or rule is presented in the focused economic analyses in section II of this release. *See* sections II.A.4., II.B.4., II.C.3., II.D.2., II.E.4., II.F.3., II.G.6., II.H.4., II.I.3., II.J.3., II.K.2., II.L.2., and II.M.5. of this release.

[128] NRSROs may be able to pass some of the incremental costs to their clients.

[129] This requirement is discussed below in section II.B.4. of this release.

[130] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63844. (''In the case of structured finance products, the Commission believes this 'issuer/underwriter-pay' conflict is particularly acute because certain arrangers of structured finance products repeatedly bring ratings business to the NRSROs. As sources of frequent, repeated deal-based revenue, some arrangers have the potential to exert greater undue influence on an NRSRO than, for example, a corporate issuer that may bring far less ratings business to the NRSRO.'') (footnotes omitted).

[131] *See* Commission, *Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets* (Jan. 2003), p. 24.

[132] This provision is discussed below in section II.B.3. of this release.

[133] *See* Griffin, Nickerson, and Tang, *Rating Shopping or Catering? An Examination of the Response to Competitive Pressure for CDO Credit Ratings.*

[134] *See* Jerome Mathis, James McAndrews, and Jean-Charles Rochet, *Rating the Raters: Are Reputation Concerns Powerful Enough to Discipline Rating Agencies?,* J. of Monetary Economics 657–674 (July 2009).

[135] *See, e.g.,* James H. Gellert, Chairman and CEO, Rapid Ratings International, Inc., *Testimony Concerning: Oversight of the Credit Rating Agencies Post Dodd-Frank* (July 27, 2011) (testimony before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations), *available at http://www.rapidratings.com/images/custom/gellert_testimony_to_house_cfs_oversight_and_investigations_july_27_2011_final_w_bio.pdf.*

participants subject to these regulations may choose to use unregistered credit rating agencies thereby diminishing the incentive to register as an NRSRO.[136] On the other hand, users of credit ratings may choose to use NRSROs over unregistered credit rating agencies because of the NRSRO registration and oversight program, which is being enhanced by the amendments and new rules being adopted today.

To the extent that these amendments and new rules improve the quality of credit-related information, they may have effects related to allocative efficiency and capital formation. As a result of these amendments and new rules, users of credit ratings could make more efficient investment decisions based on higher-quality information. Market efficiency also may improve if credit ratings become more informative and the additional information is reflected in asset prices. To the extent that the amendments and rules will be effective in enhancing the integrity and quality of NRSRO credit ratings, users of these credit ratings may benefit from an enhanced confidence in the quality of the creditworthiness assessments reflected in the credit ratings, which may have positive effects on the willingness of investors to participate in the securities markets and thereby enhance capital formation, as capital efficiently flows to more productive uses. The benefits in terms of efficiency and capital formation arising from the rules enhancing governance and the integrity of credit ratings are likely to be greater for asset-backed securities, where the inherent conflict of interest in the issuer-pay model is more acute, and, as a result of the amendments and new rules, investors may become less reluctant to invest in asset-backed securities.

b. Amendments and Rules Enhancing Disclosure and Transparency of Credit Ratings

The requirements in the amendments and new rules being adopted today that are primarily designed to enhance disclosure should have economic benefits, relative to the baseline that existed before the amendments and rules were adopted, in terms of promoting the transparency of credit ratings and NRSRO activities and, therefore, NRSRO accountability. This should benefit users of credit ratings, including investors. The amendments and rules also should enhance disclosure requirements with respect to asset-backed securities for the benefit of users of credit ratings, including investors in these securities.

The amendments significantly enhance the existing requirements for NRSROs to produce and disclose performance statistics to make the disclosures more comparable across NRSROs and easier for users of credit ratings and others to understand.[137] Similarly, the existing requirements for NRSROs to disclose rating histories are being enhanced to make the histories more complete in terms of the scope of credit ratings that must be included in the histories and more robust in terms of the information that must be disclosed with each rating action.[138] To the extent that the new disclosures facilitate the evaluation of the performance of an NRSRO's credit ratings and the comparison of rating performance across all NRSROs—including direct comparisons of the rating history of the same obligor or instrument across two or more NRSROs—the rules may benefit users of credit ratings, including investors. In particular, the enhanced disclosure may allow them to better assess the reliability of credit ratings from different NRSROs and, in the case of issuer-paid credit ratings or subscriber-paid credit ratings, make more informed decisions regarding whether to hire, or subscribe to the credit ratings of, a particular NRSRO.

There are new requirements applicable to NRSROs pursuant to which they must publish on their Internet Web sites: (1) Material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current credit ratings; and (2) notice of the existence of a significant error identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change to current credit ratings.[139] These requirements may benefit users of NRSRO credit ratings in terms of their ability to evaluate the procedures and methodologies used by an NRSRO to determine credit ratings. In this way, they also may promote the NRSROs' accountability to the market and the issuance of quality credit ratings.

There are new requirements applicable to NRSROs pursuant to which they must publish two items when taking a rating action: (1) A form containing certain quantitative and qualitative information about the credit rating that is the result or subject of the rating action; and (2) any certification of a third-party due diligence provider relating to the credit rating.[140] The required disclosures may be used by investors and other users of credit ratings to better understand credit ratings issued by NRSROs. Specifically, the forms and certifications will provide incremental information about how a credit rating was produced (for example, disclosure about assumptions, limitations, information relied on, version of the procedure or methodology used, potential conflicts of interest) and the information content of the credit rating. The information disclosed in the form, including information about the limitations of the credit rating and information regarding due diligence, may discourage undue reliance on credit ratings by investors and other users of credit ratings in making investment and other credit-based decisions.

There is a new requirement applicable to issuers and underwriters of asset-backed securities pursuant to which they must disclose the findings and conclusions of any third-party due diligence report they obtain.[141] The rule applies to both registered and unregistered offerings of asset-backed securities. Additionally, there is a new requirement applicable to providers of third-party due diligence services with respect to asset-backed securities pursuant to which they must provide a written certification to any NRSRO that is producing a credit rating with respect to the asset-backed security.[142] The certification must disclose information about the due diligence performed, including a summary of the findings and conclusions of the third party, and identification of any relevant NRSRO due diligence criteria that the third party intended to meet in performing the due diligence.

As discussed above, the amendments and new rules are intended to reduce asymmetric information in the asset-backed security market. NRSROs producing credit ratings for asset-backed securities may benefit from receiving the information in the certification. The certification also will be signed by an individual who is duly authorized by the third-party due diligence provider to

[136] *See* Public Law 111–203, 939A.

[137] These amendments are discussed below in section II.E.1. of this release.

[138] These amendments are discussed below in section II.E.3. of this release.

[139] These amendments are discussed below in section II.F.1. of this release.

[140] These amendments are discussed below in section II.G. of this release.

[141] These amendments are discussed below in section II.H.1. of this release.

[142] These amendments are discussed below in sections II.H.2. and II.H.3. of this release.

make such a certification, promoting confidence in the accuracy of the information disclosed. Importantly, issuers and underwriters can no longer select what part of this information to provide to NRSROs, reducing the possibility of less favorable information being withheld from NRSROs and reducing the risk that the credit ratings will be based on imperfect or incomplete information (to the extent the NRSROs use information about due diligence in producing their credit ratings). Further, making this information available to all NRSROs (rather than just the NRSROs hired to rate the asset-backed security) could promote the issuance of more credit ratings for a given asset-backed security, including credit ratings that provide a more diverse range of views on the creditworthiness of the security. Users of credit ratings, including investors and other participants in the asset-backed securities markets, may benefit both directly and indirectly from the disclosures made by issuers, underwriters, and providers of third-party due diligence services. To the extent that findings and conclusions of all third-party due diligence reports were not previously disclosed to these persons, the amendments and new rules should enhance information available to the public.

Finally, there are new requirements pursuant to which NRSROs must use the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system to electronically submit Form NRSRO and required exhibits to the form to the Commission.[143] Having all information available in an electronic format in EDGAR will provide a centralized location and should make the information and the history of that information more easily accessible, comparable, and searchable to users of credit ratings, including investors.

There will be costs associated with the amendments and new rules being adopted today that are related to enhanced disclosure and transparency.[144] These costs will be primarily incurred by NRSROs,[145] issuers and underwriters of asset-backed securities, and third-party due diligence providers. Initial and ongoing direct costs, including compliance costs, may vary among the affected parties depending on their size and the complexity of their business activities (for example, number of credit ratings outstanding, number of analysts, number of classes of credit ratings, number of years issuing credit ratings, and number of historical credit ratings). Keeping all other factors constant, NRSROs operating according to a subscriber-pay model may face greater losses in revenue from the sale of access to historical ratings data, as more of this data becomes publicly available, since they are likely to be more dependent on this source of revenue than NRSROs operating according to the issuer-pay model. A component of these costs may also be fixed, affecting more significantly smaller NRSROs that may find it more difficult to bear the costs. If NRSROs are not able to readily pass the overall additional costs to clients, there may be adverse effects, especially on smaller NRSROs.

Similar to the amendments and new rules relating to governance, the amendments and new rules relating to disclosure and transparency could reduce the number of credit rating agencies registered with the Commission as NRSROs to the extent that current registrants believe the cost of being registered and subject to these new requirements outweighs the benefit of registration. In addition, the barriers to entry for credit rating agencies to register as NRSROs may rise, especially for smaller credit rating agencies. NRSROs may have a reduced incentive to register for a new class of credit ratings with adverse effects on competition in certain market segments. Barriers to exit from registration as an NRSRO may lower due to the possible erosion of profit margins, though an NRSRO's decision to deregister from certain or all classes of credit ratings may depend on whether users of credit ratings will favor NRSROs because of the NRSRO registration and oversight program, which is being enhanced by the amendments and new rules being adopted today. The risk for deregistration will likely be higher for smaller NRSROs, given the fixed component of some compliance costs and the greater difficulty to pass the increase in costs to their clients.

Also, the amendments and new rules may impact competition among third-party due diligence providers. Although the Commission knows little about the characteristics of the market for the services they provide, the certification requirement may increase the liability risk for these providers, particularly for those who do not already bear expert liability under Rule 193.[146] If third-party due diligence providers are not able to charge more for performing the asset review to account for the heightened risk of liability, some providers may exit the market or some entities that otherwise would have entered the market may decide against doing so.

The amendments and new rules also may have positive effects on competition, efficiency and capital formation. The enhanced standardization of the information content may facilitate comparing performance statistics and rating histories across NRSROs. Clients of NRSROs (for example, issuers, subscribers, and others) may use the performance statistics to inform their hiring or subscribing decisions, increasingly promoting competition among NRSROs on the basis of the quality of their credit ratings and the procedures and methodologies used to determine credit ratings. To the extent that the adopted rules facilitate the external monitoring and comparative analysis of NRSROs, they may allow users of credit ratings to develop more refined views of NRSRO performance and thereby indirectly increase accountability and encourage integrity in the production of credit ratings. This, in turn, may facilitate the ability of NRSROs to establish and maintain reputations for issuing quality credit ratings to remain competitive. More comparable performance data may also help relatively smaller and newer NRSROs, including subscriber-paid NRSROs, to attract attention to their rating performance, enhancing their ability to develop a reputation for producing quality credit ratings. This may allow them to better compete with more established competitors. Also, the ability of non-hired NRSROs to obtain the information disclosed in the third-party due diligence certification may provide them with an advantage in producing informative unsolicited credit ratings, relative to unregistered

[143] *See* section II.L. of this release (providing a more detailed discussion of the amendments).

[144] A detailed analysis of the economic costs, including compliance costs that can potentially result from each rule is presented in the focused economic analyses in section II of this release. *See* sections II.A.4., II.B.4., II.C.3., II.D.2., II.E.4., II.F.3., II.G.6., II.H.4., II.I.3., II.J.3., II.K.2., II.L.2., and II.M.5. of this release.

[145] NRSROs may be able to pass some of the incremental costs to their clients.

[146] *See* 17 CFR 230.193; 17 CFR 229.1111. Under Rule 193 and Item 1111 of Regulation AB, an issuer of a registered asset-backed security is required to perform a review of the assets underlying the asset-backed security and disclose the nature of the review. In meeting this requirement, an issuer may engage a third party to perform the required review of the underlying assets. If the third party's findings and conclusions are to be attributed to it, the third-party must consent to being named in the issuer's registration statement as an ''expert,'' thus subjecting the third party to so-called ''expert liability'' under the Securities Act. If third-party diligence providers are not subject to legal liability as experts, the issuer itself remains legally accountable for the accuracy of the disclosures it makes to investors.

credit rating agencies that cannot obtain this information.

The new disclosure requirements in the form and certifications that accompany a rating action may reduce information asymmetries about how a credit rating was determined by providing additional information about the rating process, such as assumptions, limitations, version of the procedures or methodologies used, and, in the case of an asset-backed security, a description of the findings and conclusions of a third-party due diligence provider, if such services were employed. To the extent that the required disclosure does not diminish the content and timeliness of the information conveyed with the rating actions, the enhanced information may increase the ability of users of credit ratings to accurately interpret the information, potentially resulting in more efficient investment decisions and higher overall market efficiency to the benefit of those investors that use credit ratings. This, in turn, may increase investors' participation in the securities markets with positive effects on capital formation. Because of the higher degree of information asymmetry in the asset-backed security market, the benefits in efficiency and capital formation resulting from the enhanced disclosure and transparency of credit ratings are likely to be greater for these securities, with the result that investors may become more willing to participate in this market.

II. Final Rules and Rule Amendments

As discussed in detail below, the Commission is adopting new rules and amendments to existing rules to implement Title IX, Subtitle C of the Dodd-Frank Act and to enhance the NRSRO registration and oversight program administered by the Commission. In designing rules to implement Title IX, Subtitle C of the Dodd-Frank Act, the Commission has taken into account section 15E(c)(2) of the Exchange Act.[147] This section provides, in pertinent part, that neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[148] One way the Commission has sought to reconcile the rulemaking mandated by the Exchange Act, as amended by the Dodd-Frank Act, with the limitation in section 15E(c)(2) is to model rule text closely on statutory text.

A. Internal Control Structure

Section 932(a)(2)(B) of the Dodd-Frank Act added paragraph (3) to section 15E(c) of the Exchange Act.[149] Section 15E(c)(3)(A) requires an NRSRO to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings (''internal control structure''), taking into consideration such factors as the Commission may prescribe, by rule.[150] While section 15E(c)(3)(A) provides that the Commission ''may'' prescribe factors an NRSRO would need to take into consideration when establishing, maintaining, enforcing, and documenting the internal control structure, the requirement that an NRSRO ''establish, maintain, enforce, and document an effective internal control structure'' is self-executing.[151] Consequently, an NRSRO must adhere to this provision irrespective of whether the Commission prescribes factors pursuant to section 15E(c)(3)(A).

Section 15E(c)(3)(B) of the Exchange Act provides that the Commission ''shall prescribe'' rules requiring each NRSRO to submit an annual internal controls report to the Commission, which shall contain: (1) A description of the responsibility of the management of the NRSRO in establishing and maintaining an effective internal control structure; (2) an assessment of the effectiveness of the internal control structure; and (3) the attestation of the chief executive officer (''CEO''), or equivalent individual, of the NRSRO.[152]

In the proposing release, the Commission: (1) Deferred prescribing factors the NRSRO must take into consideration in establishing, maintaining, enforcing, and documenting an effective internal control structure; (2) proposed amending the NRSRO recordkeeping rule (Rule 17g–2) to require that the documentation of the internal control structure be subject to the rule's record retention requirements; and (3) proposed amending the NRSRO annual reporting rule (Rule 17g–3) to require an NRSRO to file an unaudited annual internal controls report with the Commission.[153]

1. Prescribing Factors

In the proposing release, the Commission stated that it was deferring prescribing factors an NRSRO must take into consideration when establishing, maintaining, enforcing, and documenting an effective internal control structure to provide the Commission with an opportunity—through the NRSRO examination process and the submission of annual reports by the NRSROs on the effectiveness of their internal control structures—to review how NRSROs have complied with the self-executing requirement in section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure.[154] However, the Commission sought comment on whether it would be appropriate as part of this rulemaking to prescribe factors and on potential factors the Commission could prescribe.[155] In particular, the Commission identified factors relating to: (1) The establishment of an internal control structure; (2) the maintenance of an internal control structure; and (3) the enforcement of an internal control structure.[156]

In terms of establishing an internal control structure, the Commission requested comment on the following factors:

- Controls reasonably designed to ensure that a newly developed methodology or proposed update to an in-use methodology for determining credit ratings is subject to an appropriate review process (for example, by persons who are independent from the persons that developed the methodology or methodology update) and to management approval prior to the new or updated methodology being employed by the NRSRO to determine credit ratings;[157]
- Controls reasonably designed to ensure that a newly developed methodology or update to an in-use methodology for determining credit ratings is disclosed to the public for consultation prior to the new or updated

[147] 15 U.S.C. 78o–7(c)(2).

[148] *See* 15 U.S.C. 78o–7(c)(2).

[149] *See* Public Law 111–203, 932(a)(2)(B); 15 U.S.C. 78o–7(c)(3)(A).

[150] *See* 15 U.S.C. 78o–7(c)(3)(A).

[151] *See id.*

[152] *See* 15 U.S.C. 78o–7(c)(3)(B)(i) through (iii).

[153] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33421–33425.

[154] *Id.* at 33421–33423.

[155] *Id.*

[156] *Id.* at 33422–33423.

[157] Section 15E(t)(3)(A) of the Exchange Act contains a self-executing provision requiring that the board of directors of the NRSRO shall ''oversee'' the ''establishment, maintenance, and enforcement of policies and procedures for determining credit ratings.'' *See* 15 U.S.C. 78o–7(t)(3)(A). At the same time, section 15E(r) of the Exchange Act requires the Commission to adopt rules ''to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models'' that are approved by the board of the NRSRO. *See* 15 U.S.C. 78o–7(r)(1)(A).

methodology being employed by the NRSRO to determine credit ratings, that the NRSRO makes comments received as part of the consultation publicly available, and that the NRSRO considers the comments before implementing the methodology;

• Controls reasonably designed to ensure that in-use methodologies for determining credit ratings are periodically reviewed (for example, by persons who are independent from the persons who developed and/or use the methodology) in order to analyze whether the methodology should be updated;

• Controls reasonably designed to ensure that market participants have an opportunity to provide comment on whether in-use methodologies for determining credit ratings should be updated, that the NRSRO makes any such comments received publicly available, and that the NRSRO considers the comments;

• Controls reasonably designed to ensure that newly developed or updated quantitative models proposed to be incorporated into a credit rating methodology are evaluated and validated prior to being put into use;

• Controls reasonably designed to ensure that quantitative models incorporated into in-use credit rating methodologies are periodically reviewed and back-tested;

• Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of a class of obligors, securities, or money market instruments the NRSRO has not previously rated to determine whether the NRSRO has sufficient competency, access to necessary information, and resources to rate the type of obligor, security, or money market instrument;

• Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of an ''exotic'' or ''bespoke'' type of obligor, security, or money market instrument to review the feasibility of determining a credit rating;

• Controls reasonably designed to ensure that measures (for example, statistics) are used to evaluate the performance of credit ratings as part of the review of in-use methodologies for determining credit ratings to analyze whether the methodologies should be updated or the work of the analysts employing the methodologies should be reviewed;

• Controls reasonably designed to ensure that, with respect to determining credit ratings, the work and conclusions of the lead credit analyst developing an initial credit rating or conducting surveillance on an existing credit rating is reviewed by other analysts, supervisors, or senior managers before a rating action is formally taken (for example, having the work reviewed through a rating committee process);

• Controls reasonably designed to ensure that a credit analyst documents the steps taken in developing an initial credit rating or conducting surveillance on an existing credit rating with sufficient detail to permit an after-the-fact review or internal audit of the rating file to analyze whether the analyst adhered to the NRSRO's procedures and methodologies for determining credit ratings; and

• Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or internal audits of rating files to analyze whether analysts adhere to the NRSRO's procedures and methodologies for determining credit ratings.[158]

In terms of maintaining an internal control structure, the Commission requested comment on the following factors:

• Controls reasonably designed to ensure that the NRSRO conducts periodic reviews of whether it has devoted sufficient resources to implement and operate the documented internal control structure as designed;

• Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or ongoing monitoring to evaluate the effectiveness of the internal control structure and whether it should be updated; and

• Controls designed to ensure that any identified deficiencies in the internal control structure are assessed and addressed on a timely basis.[159]

In terms of enforcing an internal control structure, the Commission requested comment on the following factors:

• Controls designed to ensure that additional training is provided or discipline taken with respect to employees who fail to adhere to requirements imposed by the internal control structure; and

• Controls designed to ensure that a process is in place for employees to report failures to adhere to the internal control structure.[160]

In terms of documenting the internal control structure, the Commission asked for comment on whether there should be a factor relating to the level of written detail about the internal control structure that should be documented.[161]

A number of commenters addressed whether the Commission should prescribe factors as part of this rulemaking and, if so, the type of factors the Commission should prescribe.[162] NRSROs urged the Commission to defer rulemaking and stated that the Commission should not prescribe factors.[163] For example, one NRSRO stated that the Commission should defer rulemaking until it has the opportunity to determine through the examination process and its review of the NRSROs' annual reports the ''best practices utilized'' by NRSROs to comply with the self-executing requirement in section 15E(c)(3)(A) and that the Commission's ''examination feedback regarding best practices related to internal controls will be an important element for the adequate design and monitoring of internal controls.'' [164] Another NRSRO stated that it ''strongly agrees'' with the Commission's proposal to defer rulemaking but that, if the Commission proceeds with rulemaking, it should ''exercise caution'' because attempting to create a ''one-size fits all'' rule in ''such a short timeframe could result in the creation of an anti-competitive environment and the attendant unintended consequences.'' [165] A third NRSRO stated that ''NRSROs should have the flexibility to implement whatever control structure suits their size and particular business operations.'' [166]

In contrast, several other commenters stated that the Commission should not defer rulemaking.[167] For example, one commenter stated that the Commission ''already has significant information about the weak internal controls at the NRSROs and has already identified a number of factors critical to an effective internal control system'' and that ''[p]ostponing the issuance of any standards will result in the NRSROs developing different internal control

[158] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33422.

[159] *Id.*

[160] *Id.* at 33422–33423.

[161] *Id.*

[162] *See AFSCME Letter; A.M. Best Letter; Better Markets Letter; CFA/AFR Letter; CFA II Letter; COPERA Letter; DBRS Letter; Kroll Letter; Levin Letter; Morningstar Letter; S&P Letter; TradeMetrics Letter.*

[163] *See A.M. Best Letter; DBRS Letter; Kroll Letter; Morningstar Letter; S&P Letter.*

[164] *See Morningstar Letter.*

[165] *See A.M. Best Letter* (''prescribing specific factors implies that all NRSROs are the same, which they are not. NRSROs vary in size, ownership, business plans, and management. 'Specific factors' would undoubtedly be designed to apply to the largest NRSROs—this scenario would create a disproportionate impact on smaller NRSROs, whose internal control structure would be best served by designing and implementing policies and procedures that apply the law to the specific characteristics of the NRSRO.'').

[166] *See DBRS Letter.*

[167] *See AFR II Letter; AFSCME Letter; Better Markets Letter; CFA/AFR Letter; COPERA Letter; Levin Letter.*

structures, making oversight and the implementation of minimum standards more difficult, time consuming, and expensive down the line.'' [168] Another commenter stated that the proposed approach ''will be ineffective in reforming credit rating agency practices and will leave the Commission with little if any ability to hold ratings agencies accountable if they adopt weak and ineffective controls.'' [169] These commenters and others recommended that the Commission prescribe factors,[170] and one of the commenters recommended that the Commission re-propose the rule to prescribe factors.[171]

One commenter discussed factors that the commenter believed should be included in ''a set of mandatory minimum standards for an effective internal control system for credit ratings.'' [172] Another commenter stated that ''the criteria on which the Commission seeks comment are precisely the sort of controls that ought to be in place if the system is operating effectively.'' [173] A third commenter agreed that the rule should ''incorporate all of these factors [as described in the proposing release].'' [174] Two commenters pointed to the internal control framework developed by the Committee of Sponsoring Organizations of the Treadway Commission in 1992 as a model.[175] Two commenters stated that the rule should require that the documentation of the internal control structure include specific elements, such as how the board of directors conducted its oversight of the internal control structure.[176]

The Commission believes it is critically important to investors and other users of credit ratings that, as required by section 15E(c)(3)(A) of the Exchange Act, NRSROs establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their policies, procedures, and methodologies for determining credit ratings.[177] The Commission agrees that the requirements established by the NRSROs to address the internal control structure should ''provide the companies' management the ability to effectively administer their internal compliance measures, and instill confidence in their investors and the public that the companies in fact are achieving the objectives of their internal control rules and, in so doing, promoting ratings that are high-quality, objective, independent, reliable, and free from influence by any conflicts of interest.'' [178] This is one of the reasons that the Commission previously has expressed concerns about—and has taken action to address—the integrity of policies, procedures, and methodologies for determining credit ratings used by certain NRSROs in light of the role these NRSROs played in determining credit ratings for securities collateralized by or linked to subprime residential mortgages.[179]

Moreover, the Commission staff conducts annual examinations of each NRSRO and publishes a report summarizing the essential findings of the examinations, as required by section 15E(p)(3) of the Exchange Act.[180] The annual report attributes the essential findings, as applicable, to the ''smaller'' NRSROs or ''larger'' NRSROs, and describes for the public the nature and extent of the deficiencies cited. The Commission staff, as part of the annual examination of each NRSRO, reviews whether the internal control structure of the NRSRO is effective as required by section 15E(c)(3)(A) of the Exchange Act.[181]

For example, in the annual report published in December 2013, the Commission staff noted that all NRSROs had ''added or improved internal controls over the rating process'' since the examinations began in 2010 and generally improved adherence to their rating policies and procedures, which ''appear[ed] to be attributable, in part, to improvements in the internal control structure at NRSROs.'' [182] However, in several instances the staff found that an NRSRO did not follow its policies and procedures and the staff recommended that the NRSRO improve its internal controls to ensure compliance with the policies and procedures.[183] In particular, the Commission staff cited section 15E(c)(3)(A) of the Exchange Act in its report and stated that many NRSROs relied on a testing or internal audit program as an internal supervisory control.[184] The staff then described certain weaknesses it found in those controls, and recommended that those NRSROs improve and better document their testing and audit programs.[185]

Deficiencies in the internal control structure found by the examination staff are brought to the attention of the NRSRO, and the staff monitors whether and how those deficiencies are addressed. If warranted, the examination staff also can refer an NRSRO to the enforcement staff for potential violations of section 15E(c)(3)(A).

Given the importance of the NRSROs' internal control structures, the Commission believes that an NRSRO should be required to consider the factors identified in the proposing release when establishing, maintaining, enforcing, and documenting an effective internal control structure. The exercise of considering these factors will provide the NRSROs with an opportunity to critically evaluate the effectiveness of their existing internal control structures and new registrants a reference point for designing or modifying existing internal control structures to comply with the statutory requirement. This should improve the overall effectiveness of the internal control structures of the NRSROs.

Consequently, the Commission is adding paragraph (d) to new Rule 17g–8 to provide that an NRSRO must consider certain factors when establishing, maintaining, enforcing, or documenting an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings pursuant to section 15E(c)(3)(A) of the Act.[186] The factors identified in this paragraph are

[168] *See Levin Letter.*

[169] *See CFA/AFR Letter. See also CFA II Letter.*

[170] *See AFGI Letter; AFSCME Letter; Better Markets Letter; CFA/AFR Letter; COPERA Letter; Harrington Letter; Levin Letter; TradeMetrics Letter.*

[171] *See CFA II Letter*

[172] *See Levin Letter.*

[173] *See CFA/AFR Letter.*

[174] *See Better Markets Letter.*

[175] *See CFA/AFR Letter; AFSCME Letter.*

[176] *See AFSCME Letter* (stating that the NRSRO should be required to document: the control environment; risk assessment; control activities; and information and communication within the NRSRO); *CFA/AFR Letter* (stating that the NRSRO should be required to document: The design of the system of internal controls; the evidence obtained and conclusions reached during testing of the effectiveness of the internal controls; material weaknesses identified and how they were remediated; how the board of directors conducted its oversight; significant matters that arose in the design, operation, or monitoring of internal controls and how they were resolved; and the basis for reports to the Commission on the effectiveness of the internal control structure).

[177] *See* 15 U.S.C. 78o–7(c)(3)(A).

[178] *See* CFA II Letter.

[179] *See, e.g., Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 73 FR 36212; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63832; 2008 Staff Inspection Report.

[180] *See* 15 U.S.C. 78o–7(p)(3).

[181] *See* 15 U.S.C. 78o–7(c)(3)(A). *See also* 15 U.S.C. 78o–7(p)(3)(B) (requiring the Commission to review, among other things, whether the NRSRO conducts business in accordance with the policies, procedures, and rating methodologies of the NRSRO, the internal supervisory controls of the NRSRO, and the governance of the NRSRO).

[182] *See* 2013 Annual Staff Inspection Report, p. 8.

[183] *See, e.g.,* 2013 Annual Staff Inspection Report, p. 10 (discussing Commission staff finding that an NRSRO did not consistently follow its policies and procedures for rating criteria development).

[184] *See* 2013 Annual Staff Inspection Report, p. 18.

[185] *See id.*

[186] *See* paragraph (d) of Rule 17g–8.

the same factors the Commission identified in the proposing release.[187] Paragraph (d)(1) identifies the factors relating to establishing an effective internal control structure, paragraph (d)(2) identifies the factors relating to maintaining an effective internal control structure, and paragraph (d)(3) identifies the factors relating to enforcing an effective internal control structure.[188]

In considering a given factor, an NRSRO should determine whether it would be appropriate for the firm's internal control structure. Moreover, paragraphs (d)(1), (d)(2), and (d)(3) contain a ''catchall'' provision that provides that the NRSRO must consider any other controls necessary to establish, maintain, or enforce an effective internal control structure taking into consideration the nature of the business of the NRSRO, including its size, activities, organizational structure, and business model. The Commission is including the catchall provisions because the factors identified in paragraph (d) of Rule 17g–8 may not be comprehensive or sufficient for the circumstances of a particular NRSRO. An NRSRO should not treat them as a checklist or ''safe harbor'' that allows the firm to conclude that it has established, maintained, enforced, and documented an effective internal control structure.

Paragraph (d)(4) of Rule 17g–8 addresses the documentation of the internal control structure.[189] In the proposing release, the Commission did not identify a factor relating to this provision of the statute.[190] Consequently, paragraph (d)(4) does not identify a specific factor.[191] Instead, the paragraph provides—consistent with the catchall provisions in paragraphs (d)(1) through (d)(3)—that an NRSRO must take into consideration any controls necessary to document an effective internal control structure taking into consideration the nature of the business of the nationally recognized statistical rating organization, including its size, activities, organizational structure, and business model.[192]

Finally, in adopting the final rule, the Commission has taken into account comments from NRSROs that it should not prescribe factors or ''exercise caution'' in doing so because ''NRSROs should have the flexibility to implement whatever control structure suits their size and particular business operations'' [193] and attempting to create a ''one-size fits all'' rule in ''could result in the creation of an anti-competitive environment and the attendant unintended consequences.'' [194] In particular, the Commission notes that, while the Commission is prescribing factors an NRSRO must consider, it is not mandating that a specific factor be implemented. Consequently, while NRSROs must consider the factors identified by the Commission, they can tailor their internal control structures to their particular circumstances.

2. Amendment to Rule 17g–2

Section 15E(c)(3)(A) of the Exchange Act contains a self-executing provision that requires an NRSRO, among other things, to document its internal control structure.[195] However, the statute does not prescribe how an NRSRO must maintain this record. For example, the statute does not prescribe how long the record must be retained or the manner in which it must be maintained. Consequently, the Commission proposed adding paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO must document pursuant to 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[196] As a result, the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g–2 would apply to the record documenting the internal control structure.[197]

Two commenters expressed support for the proposal,[198] whereas three other commenters raised concerns which are discussed below.[199] The Commission is adding paragraph (b)(12) to Rule 17g–2 as proposed.[200] Retention of the record will provide a means for the Commission to monitor the NRSROs' compliance with 15E(c)(3)(A) of the Exchange Act.

In addition, the Commission is amending paragraph (c) of Rule 17g–2. Prior to today's amendments, this paragraph provided that the records required to be retained under paragraphs (a) and (b) of Rule 17g–2 must be retained for three years after the date the record is made or received. The modification clarifies that the records documenting the internal control structure, the policies and procedures discussed in sections II.C., II.F., and II.J. of this release, and the standards discussed in section II.I. of this release must all be retained until three years after the record is replaced with an updated record (that is, when a control, policy, procedure, or standard documented in one of these records is replaced with a new control, policy, procedure, or standard).[201]

The reason for this clarifying amendment is that the text of paragraph (c) of Rule 17g–2 prior to today's amendment was intended to address records that generally contain historical information. For example, the rule requires the retention of records reflecting entries to and balances in all general ledger accounts, records indicating the identity of any credit analyst(s) that participated in determining a credit rating, credit analysis reports, credit assessment reports, and private credit rating reports.[202] The intent of the three-year record retention requirement is to preserve these records documenting historical information for three years after the fact in order to allow Commission examiners the opportunity to review the past activities of the NRSRO as reflected in these records. It also provides the NRSRO with records that can be used in connection with internal or third-party audits and for tracking past activities.

The Commission intended the three-year record retention provision in paragraph (c) of Rule 17g–2 as applied to the documentation of the internal control structure, the policies and

[187] *See id. See also Nationally Recognized Statistical Rating Organizations,* 76 FR at 33422–33423.

[188] *See* paragraphs (d)(1) through (3) of Rule 17g–8.

[189] *See* paragraph (d)(4) of Rule 17g–8.

[190] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33421–33423.

[191] *See* paragraph (d)(4) of Rule 17g–8.

[192] *Id.*

[193] *See DBRS Letter.*

[194] *See A.M. Best Letter* (''prescribing specific factors implies that all NRSROs are the same, which they are not. NRSROs vary in size, ownership, business plans, and management. 'Specific factors' would undoubtedly be designed to apply to the largest NRSROs—this scenario would create a disproportionate impact on smaller NRSROs, whose internal control structure would be best served by designing and implementing policies and procedures that apply the law to the specific characteristics of the NRSRO.'').

[195] *See* 15 U.S.C. 78o–7(c)(3)(A).

[196] *See* proposed paragraph (b)(12) of Rule 17g–2; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33423, 33539.

[197] *See* 17 CFR 240.17g–2(c) through (f).

[198] *See DBRS Letter; S&P Letter.*

[199] *See AFSCME Letter; A.M.Best Letter; Lambert Letter.*

[200] *See* paragraph (b)(12) of Rule 17g–2. Section 17(a)(1) of the Exchange Act requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[201] *See* paragraph (c) of Rule 17g–2 (providing that the records required to be retained pursuant to paragraphs (a) and (b) of the rule must be retained for three years after the date the record is made or received, except that a record identified in paragraph (a)(9), (b)(12), (b)(13), (b)(14), or (b)(15) of the rule must be retained until three years after the date the record is replaced with an updated record).

[202] *See, e.g.,* 17 CFR 240.17g–2(a)(1), (a)(2)(i), and (b)(3).

procedures, and the standards to also preserve historical information for three years after the fact to facilitate Commission examinations and NRSRO internal or third party audits of past activities. However, the record reflects current rather than historical information until there is an update of the internal control structure, policies and procedures, or standards documented in the record (that is, the record reflects the internal controls, policies and procedures, or standards, as applicable, that govern the NRSRO's conduct now and in the future). Consequently, because paragraph (c) of Rule 17g–2—prior to today's amendments—required a record ''to be retained for three years after the date the record is made or received,'' this provision as applied to the documentation of the internal control structure, policies and procedures, and standards would be ambiguous as to whether the record must be retained for three years after the information reflected in the record is no longer current.

For example, section 15E(c)(3)(A) of the Exchange Act requires an NRSRO to document its internal control structure.[203] This means that at all times the NRSRO must document the internal control structure that is in effect and, consequently, if a given version of an internal control structure is in effect for more than three years, the NRSRO must continue to maintain the record documenting the internal control structure even though three years have elapsed since the record was made. The clarifying text being added to paragraph (c) of Rule 17g–2 addresses an ambiguity in the rule text. This ambiguity could be read to establish a three-year retention period that is largely meaningless and is inconsistent with the Commission's intent that these records be retained for three years after the information in the record is no longer current.[204] Specifically, without the clarifying amendment, paragraph (c) of Rule 17g–2 could be read to provide that the three-year retention period begins to run at the time the internal control structure was first documented. Under this reading, the rule would be redundant because it would prescribe a retention period that is already addressed by the self-executing requirement in section 15E(c)(3)(A) of the Exchange Act (that an NRSRO must document its internal control structure). In other words, the statutory requirement to document the internal control structure acts as a retention requirement for as long as the current version of the internal control structure is in effect. Further, under this reading of the rule, if an internal control structure was in effect for three or more years, an NRSRO could discard the record documenting the previous internal control structure as soon as it is replaced with an updated record documenting the revised internal control structure (as it would have retained the previous record of the internal control structure for three or more years). This could prevent the Commission from reviewing whether the NRSRO adhered to its previous internal control structure, as examinations generally review past activities. The appropriate and intended retention period is until three years after the internal control structure is updated. As a result, the documentation recording the current internal control structure and the documentation recording any prior versions of the internal control structure that were updated within three years will be available to Commission examiners. This will create an audit trail between prior versions of the internal control structure and the existing internal control structure. For these reasons, the Commission is amending paragraph (c) of Rule 17g–2 to make clear that the records documenting the internal control structure, the policies and procedures, and the standards must be retained until three years after the date the record is replaced with an updated record.[205]

One commenter stated that a three-year retention period is ''insufficient,'' since ''the effects of a credit rating decision may not arise until after that retention period expires.'' [206] The Commission believes the three year retention period is sufficient. First, as noted above, an NRSRO must maintain a record documenting its existing internal control structure for as long as the internal control structure is in effect and for an additional three years after the record is replaced with an updated record documenting the internal control structure. Second, the Commission staff performs an annual examination of each NRSRO. Consequently, the record documenting an internal control structure that is no longer in effect will be available for several exam cycles.

Another commenter suggested requiring that documentation be made available to the Commission ''regardless of where the credit rating is produced.'' [207] The Commission notes that under the rules, regardless of where a credit rating is produced, an NRSRO must document its internal control structure and produce to Commission staff the records documenting both its current internal control structure and any prior versions of the internal control structure that are within the three-year retention period.[208]

A third commenter stated that the requirement to document internal controls is burdensome, particularly for smaller NRSROs, and argued that documenting policies and procedures ''naturally coincide with the establishment of a properly functioning internal controls structure,'' which the NRSRO should be allowed to establish on its own, and the commenter urged the Commission to exclude ''extensive or overly-inclusive documentation requirements'' should it adopt new paragraph (b)(12) of Rule 17g–2.[209] In response, the Commission notes that section 15E(c)(3)(A)—not Rule 17g–2—requires an NRSRO to document its internal control structure.[210] The amendment to Rule 17g–2 establishes retention requirements for this documentation.

3. Amendments to Rule 17g–3

Section 15E(c)(3)(B) of the Exchange Act provides that the Commission shall prescribe rules requiring an NRSRO to submit an annual internal controls report to the Commission, which must contain: (1) A description of the responsibility of management in establishing and maintaining an effective internal control structure; (2) an assessment of the effectiveness of the internal control structure; and (3) the attestation of the CEO or equivalent individual.[211]

The Commission proposed amending Rule 17g–3 to implement the rulemaking mandated by section 15E(c)(3)(B) of the Exchange Act.[212]

[203] *See* 15 U.S.C. 78o–7(c)(3)(A).

[204] *See* paragraph (c) of Rule 17g–2 (providing that the records must be retained until three years after the date the record is replaced with an updated record).

[205] *See* sections II.C.2., II.F.2., II.I.2., and II.J.2. (discussion the amendments to Rule 17g–2 to establish record retention requirements for the records documenting policies and procedures or standards).

[206] *See Lambert Letter.* This commenter also suggested that the final amendments mandate record retention requirements of seven years, ''similar to section 802 of the Sarbanes-Oxley Act.''

[207] *See AFSCME Letter.*

[208] *See* 15 U.S.C. 78o–7(c)(3)(A). *See also* paragraph (d) of Rule 17g–2, which requires, among other things, that an NRSRO maintain each record identified in paragraphs (a) and (b) in a manner that makes the original record or copy easily accessible to the principal office of the NRSRO. 17 CFR 240.17g–2(d).

[209] *See A.M. Best Letter.*

[210] *See* 15 U.S.C. 78o–7(c)(3)(A).

[211] *See* 15 U.S.C. 78o–7(c)(3)(B)(i) through (iii).

[212] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33423–33425; 15 U.S.C.

Rule 17g–3 requires an NRSRO to furnish annual reports to the Commission.[213] In particular, before today's amendments, paragraph (a) of Rule 17g–3 required an NRSRO to furnish five or, in some cases, six separate reports within ninety days after the end of the NRSRO's fiscal year and identified the reports that must be furnished.[214] The first report containing the NRSRO's financial statements must be audited; the remaining reports on revenues and other matters may be unaudited.[215] Before today's amendments, paragraph (b) of Rule 17g–3 provided that the NRSRO must attach to the reports a signed statement by a duly authorized person that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information contained in the reports.[216]

The proposed amendments would add paragraph (a)(7) to Rule 17g–3 to require an NRSRO to file an additional report—which would be unaudited—with its annual submission of reports pursuant to Rule 17g–3.[217] The proposed rule text describing the report that would need to be filed closely mirrored the statutory text.[218] In particular, proposed paragraph (a)(7) would have required that the internal controls report contain: (1) A description of the responsibility of management in establishing and maintaining an effective internal control structure; and (2) an assessment by management of the effectiveness of the internal control structure.[219]

Section 15E(c)(3)(B)(iii) of the Exchange Act provides that the annual internal controls report must contain an attestation of the NRSRO's CEO or equivalent individual.[220] Accordingly, the Commission proposed amending paragraph (b) of Rule 17g–3 to require that the NRSRO attach to the report a signed statement by the CEO or, if the firm does not have a CEO, an individual performing similar functions.[221]

The Commission is adding paragraphs (a)(7) and (b)(2) to Rule 17g–3 with modifications from the proposal in response to comments.[222] As discussed below, the modifications to the text of paragraph (a)(7) are designed to provide more guidance to NRSROs on the information that must be included in the report compared to the proposed rule text, which—as noted above—closely mirrored the statutory text.

Paragraph (a)(7)—as proposed and adopted—requires an NRSRO to include in the report a description of the responsibility of management in establishing and maintaining an effective internal control structure.[223] This rule text largely mirrors the statutory text.[224] A number of commenters addressed the level of management that should have primary responsibility for establishing and maintaining an effective internal control structure and for assessing its effectiveness.[225] An NRSRO stated that the CEO (or equivalent) and other management, supervisory, and compliance personnel affiliated with the NRSRO should be responsible for designing the structure, and that the board of directors should oversee the structure.[226] Two other commenters stated that the board of directors should oversee the structure.[227] An NRSRO stated that the wording in the proposed rule was reasonable, but that the Commission should refrain from specifying which level of management should be responsible for establishing and maintaining the system and that this determination ''is best left to each NRSRO based upon its business needs and organization.'' [228] Similarly, another NRSRO stated that management and board oversight of the internal control structure will vary greatly between each NRSRO and, therefore, such determinations should be left to each NRSRO.[229] On the other hand, a commenter suggested that management should have no part in the establishment or maintenance of an internal control structure, and that a committee of analysts should assess the effectiveness of the NRSRO's internal control structure.[230]

In response to these comments, the Commission notes that section 15E(t)(3)(C) of the Exchange Act prescribes a self-executing requirement that the board of directors of the NRSRO shall ''oversee'' the ''effectiveness of the internal control system with respect to the policies and procedures for determining credit ratings. '' [231] Moreover, as discussed above, the self-executing provision in section 15E(c)(3)(A) requires an NRSRO to establish, maintain, enforce, and document an effective internal control structure.[232] Further, section 15E(c)(3)(B) of the Exchange Act refers, in pertinent part, to ''a description of the responsibility of the management of the [NRSRO] in establishing and maintaining an effective internal control

78o–7(c)(3)(B)(i) through (iii). In addition, as a technical amendment, the Commission proposed to amend the title of Rule 17g–3 to replace the words ''financial reports'' with the words ''financial and other reports.'' *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33424, n.25. The Commission stated that the report identified in paragraph (a)(6) of Rule 17g–3, the proposed internal control report that would be required under paragraph (a)(7), and the compliance report that would be required under paragraph (a)(8) (which is discussed below in section II.K. of this release) are not financial in nature. *Id.* The Commission also proposed adding the word ''filed'' in the title of Rule 17g–3 to conform to amendments the Dodd-Frank Act made to section 15E of the Exchange Act. *See* Public Law 111–203, 932(a).

[213] *See* 17 CFR 240.17g–3.

[214] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33423.

[215] *See id.*

[216] *See id.*

[217] *See* paragraph (a)(7) of Rule 17g–3, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. As discussed below, while the report will not be audited, it will be reviewed by Commission examination staff.

[218] *Compare* paragraph (a)(7) of Rule 17g–3, as proposed, *with* 15 U.S.C. 78o–7(c)(3)(B)(i) through (ii).

[219] *See* paragraph (a)(7) of Rule 17g–3, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539.

[220] *See* 15 U.S.C. 78o–7(c)(3)(B)(iii).

[221] *See* paragraph (b) of Rule 17g–3, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. In particular, the Commission proposed re-organizing paragraph (b) of Rule 17g–3 into paragraphs (b)(1) and (b)(2). As proposed, paragraph (b)(1) would contain the current requirement that the NRSRO must attach to each of the annual reports required pursuant to paragraphs (a)(1) through (6) a signed statement by a duly authorized person associated with the NRSRO stating that the person has responsibility for the financial reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information required to be contained in the reports. As proposed, paragraph (b)(2) of Rule 17g–3 would require that the NRSRO attach to the report filed pursuant to paragraph (a)(7) a signed statement by the CEO of the NRSRO or, if the NRSRO does not have a CEO, an individual performing similar functions, stating that the CEO or individual has responsibility for the report and, to the best knowledge of the CEO or other individual, the report fairly presents, in all material respects, a description of the responsibility of management in establishing and maintaining an effective internal control structure and an assessment of the effectiveness of the internal control structure.

[222] *See* paragraph (a)(7) of Rule 17g–3. The amendments to Rule 17g–3 also replace the phrase ''financial reports'' with the phrase ''financial and other reports'' and replace the phrase ''to be furnished'' with the phrase ''to be filed or furnished.'' These amendments are being adopted as proposed.

[223] *See* paragraph (a)(7)(i)(A) of Rule 17g–3.

[224] *Compare* paragraph (a)(7)(i)(A) of Rule 17g–3, with 15 U.S.C. 78o–7(c)(3)(B)(i).

[225] *See AFSCME Letter; CFA/AFR Letter; Harrington Letter; Kroll Letter; Morningstar Letter; S&P Letter.*

[226] *See Morningstar Letter.*

[227] *See AFSCME Letter; CFA/AFR Letter.*

[228] *See S&P Letter.*

[229] *See Kroll Letter.*

[230] *See Harrington Letter* (suggesting the formation of a ''Committee Assessment Function'' that would be ''devoted solely to evaluating the committee performance over the course of a year of all members regardless of title'' and would ''bypass management entirely and report directly to a board member tasked with sole responsibility for this function'').

[231] *See* 15 U.S.C. 78o–7(t)(3)(A).

[232] *See* 15 U.S.C. 78o–7(c)(3)(A).

structure.'' [233] Moreover, this section of the statute also provides that the annual internal controls report—which must include an assessment of the effectiveness of the internal control structure—must contain an attestation of the NRSRO's CEO or equivalent individual.[234] Consequently, a reasonable interpretation of these statutory provisions is that they allocate responsibility to the NRSRO's board to ''oversee'' the effectiveness of the internal control structure and responsibility to the NRSRO's management to establish, maintain, enforce, and document the internal control structure and to report annually on its effectiveness. This interpretation also is consistent with the Commission's understanding of how the responsibilities of a firm's board and management generally are allocated.

While it is the responsibility of management to establish, maintain, enforce, and document the internal control structure, in carrying out this responsibility management could, as a matter of good practice, consider the extent to which other persons within the NRSRO should be involved.[235] For example, management could seek input from persons within the NRSRO that carry out the day-to-day functions related to governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings. This could include input from persons responsible for determining credit ratings, developing rating methodologies, and reviewing and monitoring the NRSRO's compliance with its policies, procedures, and methodologies. In addition, establishing a mechanism for persons within the NRSRO to report, on a confidential basis if they choose, directly to the board of directors any material weaknesses in the NRSRO's internal control structure could be a useful check on management's annual assessment of the effectiveness of the internal control structure and could assist the board in its responsibility to oversee the effectiveness of the internal control structure. Finally, an NRSRO could consider developing procedures to identify and address internal conflicts of interest that potentially could prevent an independent, impartial, and unbiased assessment of the effectiveness of the internal control structure. This could promote more accurate reporting by the NRSRO on the internal control structure.

In addition to the description of the responsibility of management in establishing and maintaining an effective internal control structure, the proposal required that the internal controls report include ''an assessment by management of the effectiveness of the internal control structure.'' [236] As discussed in more detail below, several commenters stated that the Commission should strengthen the reporting requirement in the rule relating to the assessment of the effectiveness of the internal control structure.[237]

The Commission is persuaded that the proposal should be modified to provide more clarity on the information that must be reported in the internal controls report. In particular, paragraph (a)(7) of Rule 17g–3, as adopted, requires that the internal controls report include (in addition to a description of the responsibility of management in establishing and maintaining an effective internal control structure): (1) A description of each material weakness in the internal control structure identified during the fiscal year, if any, and a description, if applicable, of how each identified material weakness was addressed; and (2) a statement as to whether the internal control structure was effective as of the end of the fiscal year.[238] Consequently, the final amendment provides more specificity as to the information that must be included in the internal controls report in terms of assessing the effectiveness of the NRSRO's internal control structure.[239]

Further, in response to comments that the rule should specify that the assessment covers the entire year, the Commission has made several modifications to the proposal.[240] Specifically, the prefatory text of paragraph (a)(7)(i) of Rule 17g–3, as amended, provides that the internal controls report must contain an assessment by management of the effectiveness *during the fiscal year* of the internal control structure.[241] The amendment further requires that the report must include a description of each material weakness in the internal control structure identified *during the fiscal year,* if any, and a description, if applicable, of how each identified material weakness was addressed.[242] Consequently, the reporting relating to material weaknesses must cover the entire fiscal year. The amendment also requires that the internal controls report contain a statement as to whether the internal control structure was effective *as of the end of the fiscal year.*[243] Thus, this statement in the report relates to a point in time: The fiscal year end. However, the assessment of whether the internal control structure is effective as of the fiscal year end will depend on how the NRSRO addressed any material weaknesses identified during the fiscal year.[244]

Commenters also addressed how to assess the internal control structure. One commenter pointed to the internal control framework developed by the Committee of Sponsoring Organizations (''COSO'') of the Treadway Commission in 1992 as a model.[245] Another commenter stated that the Commission should establish a framework against which the internal controls of an NRSRO can be measured that would identify the objectives of the controls, set forth mandatory minimum components, and specify how a material weakness would be handled.[246] Some commenters suggested that the Commission clarify how an NRSRO should assess whether its internal

[233] *See* 15 U.S.C. 78o–7(c)(3)(B)(i).

[234] *See* 15 U.S.C. 78o–7(c)(3)(B)(ii) and (iii).

[235] *See Harrington Letter; Morningstar Letter.*

[236] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. This provision of the proposed amendment largely mirrored the statutory text. *See* 15 U.S.C. 78o–7(c)(3)(B)(ii).

[237] *See AFSCME Letter; CFA/AFR Letter.* These two commenters stated that the rule should require reporting on: (1) The period of time to which management's assessment relates, which should be the entire year; (2) the benchmark or framework used in assessing internal controls, as well as the definition of internal control used; (3) the statement that the board of directors is responsible for overseeing the system of internal controls; (4) if a material weakness was detected during the year, a description of that material weakness and whether it has been remediated (and how) as of the end of that year; and (5) non-compliance with applicable laws and regulations that have been identified, consistent with the Yellow Books standard of the General Accounting Office (''GAO'').

[238] *See* paragraph (a)(7)(i) of Rule 17g–3.

[239] *See* paragraphs (a)(7)(i)(B) and (C) of Rule 17g–3. As discussed above, the proposal would have required the report to include an ''assessment by management of the effectiveness of the internal control report.'' *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. This more general description of what must be contained in the internal controls report is being moved to the prefatory text of paragraph (a)(7)(i) of Rule 17g–3.

[240] *See AFSCME Letter; CFA/AFR Letter.*

[241] *See* paragraph (a)(7)(i) of Rule 17g–3 (emphasis added).

[242] *See* paragraph (a)(7)(i)(B) of Rule 17g–3 (emphasis added). The Commission expects the description to include the nature and the duration of the material weakness.

[243] *See* paragraph (a)(7)(i)(C) of Rule 17g–3 (emphasis added).

[244] As discussed below, paragraph (a)(7)(ii) of Rule 17g–3 provides that management is not permitted to conclude that the internal control structure was effective as of the end of the fiscal year if there were one or more material weaknesses in the internal control structure as of the end of the fiscal year.

[245] *See CFA/AFR Letter* (stating that the Commission should use the COSO framework as a basis for evaluating and inspecting the assessment of internal controls and the control structure on which management will report).

[246] *See Levin Letter.*

control structure is effective.[247] One of these commenters suggested the Commission lay out a basic definition of internal control and the objectives the internal controls are designed to achieve but did not provide a suggested definition.[248] An NRSRO suggested that the Commission clarify that ''an 'effective' internal control structure is one that is 'reasonably designed' to achieve its purposes.'' [249] In contrast, another NRSRO stated that the proposed reporting requirement is ''sufficiently explicit'' and that ''additional guidance is not needed.''[250] This commenter added that each NRSRO operates in its own unique way and that prescribing more detailed rules ''may not be appropriate for every NRSRO in every situation.''[251]

The Commission agrees that providing more clarity as to when management of the NRSRO is not permitted to conclude that its internal control structure is effective would strengthen the requirement and provide greater certainty to NRSROs in terms of how to assess the effectiveness of the internal control structure.[252] The Commission therefore is modifying the proposal to add a provision specifying when the NRSRO is not permitted to conclude that its internal control structure is effective.[253] In particular, the final amendment provides that management of the NRSRO is not permitted to conclude that the internal control structure of the NRSRO was effective as of the end of the fiscal year if there were one or more material weaknesses in the internal control structure as of the end of the fiscal year.[254]

Commenters suggested several definitions of the term *material weakness.* For example, one commenter suggested that *material weakness* be defined as a ''serious deficiency that would prevent or in fact did prevent the internal controls from achieving their objective.'' [255] Another commenter described a *material weakness* as ''a serious deficiency in an internal control that would prevent it from achieving its objective.'' [256] Similarly, a third commenter stated that a definition of *material weakness* should be one ''which clearly sets out what would be a serious deficiency in internal controls that would prevent the internal controls from achieving their objective.'' [257] An NRSRO requested that the Commission provide guidance as to what constitutes a material weakness and suggested that a *material weakness* be defined as a ''deficiency, or combination of deficiencies, in internal controls where it is more likely than not that the integrity of the rating process will be compromised by the failure to follow the NRSRO's policies, procedures, and methodologies.'' [258] This commenter also stated that it believed that one of the objectives of the internal control structure is to ''provide reasonable assurance regarding the prevention or timely detection of actions that could have a material effect on the integrity of credit ratings.'' [259] On the other hand, another NRSRO stated that the Commission should allow NRSROs to define *material weakness* and other terms.[260]

The Commission is persuaded that including a description of a material weakness in paragraph (a)(7) of Rule 17g–3 will strengthen the reporting requirement and provide greater certainty to NRSROs in terms of how to assess the effectiveness of the internal control structure. Consequently, the paragraph, as adopted, includes a description of when a material weakness exists.[261] This description is based, in part, on suggestions by commenters and on recent amendments to the broker-dealer reporting rule.[262] The description of *material weakness* in the rule incorporates the concept of a deficiency in the internal control structure of the NRSRO.[263] Consequently, paragraph (a)(7) of Rule 17g–3 also includes a description of when a deficiency in the internal control structure exists.[264] Under the requirements of the paragraph, the first step is to determine whether there are deficiencies in the internal control structure. If so, the second step is to determine whether a material weakness exists in light of the identified deficiencies.

The description in paragraph (a)(7) of Rule 17g–3 of when a deficiency exists is based on the control objectives set forth in section 15E(c)(3)(A) of the Exchange Act.[265] This self-executing provision specifies that the internal control structure must effectively govern the implementation of and adherence to the NRSRO's policies, procedures, and methodologies for determining credit ratings. In other words, the controls must be designed to achieve the following objectives: (1) That the NRSRO implements policies, procedures, and methodologies for determining credit ratings in accordance with its policies and procedures; and (2) that the NRSRO determines credit ratings in accordance with its policies, procedures, and methodologies for determining credit ratings. Given these control objectives, the paragraph provides that a deficiency in the internal control structure exists when the design or operation of a control does not allow management or employees of the NRSRO, in the normal course of performing their assigned functions, to prevent or detect a failure of the NRSRO to: (1) Implement a policy, procedure, or methodology for determining credit ratings in accordance with its policies and procedures; or (2) adhere to an implemented policy, procedure, or methodology for determining credit ratings.[266]

The existence of a deficiency in the internal control structure, however, does not necessarily mean that a material weakness exists. Even a well-designed internal control structure cannot guarantee that a deficiency will never occur. Therefore, paragraph (a)(7) of Rule 17g–3 provides that a material weakness exists if a deficiency, or a combination of deficiencies, in the design or operation of the internal control structure creates a reasonable possibility that a failure identified in the description of deficiency (that is, a failure of the NRSRO to implement a policy, procedure, or methodology for

[247] *See CFA/AFR Letter; DBRS Letter.*

[248] *See CFA/AFR Letter.*

[249] *See DBRS Letter.*

[250] *See S&P Letter.*

[251] *Id.*

[252] *See, e.g., CFA/AFR Letter; DBRS Letter.* The Commission provided such guidance when it recently adopted a new reporting requirement for broker-dealers pursuant to which certain types of broker-dealers must file a compliance report that contains, among other statements, a statement as to whether the broker-dealer's internal control over compliance with certain rules was effective. *See Broker-Dealer Reports,* Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910, 51916–51920 (Aug. 21, 2013). *See also* 17 CFR 240.17a-5(d)(3). The reporting requirement contains provisions prescribing when a broker-dealer is not permitted to conclude that its internal control over compliance with these rules was effective.

[253] *See* paragraph (a)(7)(ii) of Rule 17g–3.

[254] *Id.*

[255] *See CFA/AFR Letter.*

[256] *See Levin Letter.*

[257] *See COPERA Letter.*

[258] *See Morningstar Letter* (also stating that, ''[t]o the extent the CEO's report requires a discussion of internal control deficiencies, this discussion should be limited to material deficiencies that prevent management from concluding its internal structure is effective, which is consistent with the Commission's requirement for reports related to internal controls over financial reporting.'').

[259] *See Morningstar Letter.*

[260] *See S&P Letter.*

[261] *See* paragraph (a)(7)(iv) of Rule 17g–3.

[262] *See Broker-Dealer Reports,* 78 FR at 51916–51920; 17 CFR 240.17a-5(d)(3).

[263] *See* paragraph (a)(7)(iv) of Rule 17g–3.

[264] *See* paragraph (a)(7)(iii) of Rule 17g–3.

[265] *See* 15 U.S.C. 78–o7(c)(3)(A) (requiring that the internal control structure govern the ''implementation of and adherence to [the NRSRO's] policies, procedures, and methodologies for determining credit ratings'').

[266] *See* paragraph (a)(7)(iii) of Rule 17g–3.

determining credit ratings in accordance with its policies and procedures or to adhere to a policy, procedure, or methodology for determining credit ratings) that is material will not be prevented or detected on a timely basis.[267]

In the proposing release, the Commission asked whether the internal controls report should be made public.[268] One commenter stated that the internal controls report should be made publicly available.[269] The commenter stated that making the report public would enable users of credit ratings ''to evaluate the effectiveness of [the] rating agency's internal control structure and consider what impact, if any, it may have on the quality of the credit ratings the NRSRO produces.'' [270] On the other hand, three commenters—all NRSROs—stated that the report should be kept confidential (as are the other reports submitted to the Commission under Rule 17g–3).[271] One NRSRO stated that publicizing the reports could make them less informative and more defensive in nature, limiting their effectiveness.[272] A second NRSRO stated that ''[m]anagement reports to the board (including an annual report, which would also be filed with the Commission) are likely to be key elements of the board's ability to oversee the effectiveness of the internal control structure'' and ''[s]ince board oversight will be promoted by open and free dialogue with management, the Commission should not impede such communication when imposing requirements that make some or all parts of such management reports publicly available.'' [273] A third NRSRO stated that the reports may contain proprietary or confidential information pertaining to the activities of the NRSRO.[274]

The Commission is adopting the amendment as proposed and, therefore, is not requiring that the internal controls report be made public. The final amendment is intended to assist the Commission in examining and monitoring the effectiveness of the internal control structures of NRSROs and how the structures evolve and improve over time.[275] Making the reports public—as suggested by one commenter—could cause NRSROs to make them less detailed and candid.[276] In appropriate cases, if an NRSRO fails to establish, maintain, enforce, and document an effective internal control structure, the Commission could institute enforcement proceedings, at which point the allegations related to the internal control structure would be a matter of public record.

One commenter suggested the report be subjected to a third-party audit attesting to the report's reliability.[277] As stated above, the final amendment does not require that the internal controls report be made public. Consequently, the report is not a public document that will be relied upon by investors and other users of credit ratings. Rather, it is a non-public report that will be used by Commission examiners as part of their monitoring of NRSROs' compliance with the requirement in section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure. The Commission has taken these factors into consideration in balancing the benefits of having the internal controls report audited by a third party and the costs of such a requirement. The Commission examines each of the ten NRSROs currently registered with the Commission annually. At this time, the Commission believes that the annual examinations by the Commission staff will provide a sufficient means for reviewing the accuracy of the internal controls reports filed by the NRSROs.

In order to implement section 15E(c)(3)(B)(iii) of the Exchange Act, the Commission is adopting the amendment to paragraph (b) of Rule 17g–3 with modifications to correspond to the modifications to paragraph (a)(7) discussed above.[278] Specifically, as proposed, paragraph (b)(2) of Rule 17g–3 would require that the NRSRO attach to the internal controls report filed pursuant to paragraph (a)(7) a signed statement by the CEO of the NRSRO or, if the NRSRO does not have a CEO, an individual performing similar functions, stating, in pertinent part, that the report fairly presents, in all material respects, a description of the responsibility of management in establishing and maintaining an effective internal control structure and an assessment of the effectiveness of the internal control structure.[279] As discussed above, under the final amendments, paragraph (a)(7) of Rule 17g–3 provides that the report must contain a description of each material weakness in the internal control structure identified during the fiscal year, if any, and a description, if applicable, of how each material weakness was addressed, and an assessment by management of the effectiveness of the internal control structure as of the end of the fiscal year.[280] Consequently, under the final amendments, paragraph (b)(2) of Rule 17g–3 provides that the CEO or individual performing similar functions must state, in pertinent part, that the internal controls report fairly presents, in all material respects: An assessment by management of the effectiveness of the internal control structure during the fiscal year that includes a description of the responsibility of management in establishing and maintaining an effective internal control structure; a description of each material weakness in the internal control structure identified during the fiscal year, if any; a description, if applicable, of how each identified material weakness was addressed; and an assessment by management of the effectiveness of the internal control structure as of the end of the fiscal year.[281]

4. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments relating to reporting on internal control structures.[282] The baseline that existed before today's amendments was one in which NRSROs must establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their methodologies for determining credit ratings.[283] In

[267] *See* paragraph (a)(7)(iv) of Rule 17g–3.

[268] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33425.

[269] *See CII Letter.*

[270] *Id.*

[271] *See DBRS Letter; Kroll Letter; S&P Letter.*

[272] *See DBRS Letter* (also arguing that nothing in the Dodd-Frank Act suggests the intent of Congress was to make the reports public and that there is no precedent under federal securities laws to force a private company to publicize information of this kind, and that users of credit ratings already have access to much information on NRSROs on which to make informed use of ratings, including how they formulate credit opinions and the historical performance of those opinions).

[273] *See Kroll Letter.*

[274] *See S&P Letter.*

[275] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33513.

[276] *See DBRS Letter.*

[277] *See Levin Letter.*

[278] *See* paragraph (b)(2) of Rule 17g–3. *See also* 15 U.S.C. 78o–7(c)(3)(B)(iii) (providing, in pertinent part, that the Commission shall prescribe rules requiring each NRSRO to submit to the Commission an internal controls report, which shall contain the attestation of the CEO, or equivalent individual, of the NRSRO).

[279] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539.

[280] *See* paragraph (a)(7)(i) of Rule 17g–3.

[281] *See* paragraph (b)(2) of Rule 17g–3.

[282] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[283] *See* 15 U.S.C. 78o–7(c)(3)(A).

addition, section 15E(t)(3)(C) of the Exchange Act requires the board of directors of the NRSRO to ''oversee'' the ''effectiveness of the internal control system with respect to policies and procedures for determining credit ratings.'' [284] However, before today's amendments, there were no requirements addressing: (1) The factors an NRSRO must consider when establishing, maintaining, enforcing, and documenting an internal control structure; and (2) the retention of the records documenting the NRSRO's internal control structure. In addition, there were no requirements to file an annual internal controls report with the Commission attested to by the NRSRO's CEO or equivalent individual describing the responsibility of the management of the NRSRO in establishing and maintaining an effective internal control structure and containing an assessment of the effectiveness of the internal control structure.

Relative to the baseline, paragraph (d) of Rule 17g–8 requiring an NRSRO to consider certain factors when establishing, maintaining, enforcing, and documenting an internal control should result in benefits. As noted above, the exercise of considering these factors will provide the NRSROs with an opportunity to critically evaluate the effectiveness of their existing internal control structures and new registrants a reference point for designing or modifying existing internal control structures to comply with the statutory requirement to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their methodologies for determining credit ratings.[285] This should improve the overall effectiveness of the internal control structures of the NRSROs.

Relative to this baseline, the amendments to Rule 17g–2 requiring an NRSRO to retain a record documenting its internal control structure should result in benefits. Recordkeeping rules such as Rule 17g–2 are integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[286] Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission's staff in monitoring, through its examination program, whether an NRSRO is complying with applicable securities laws, including the provisions of section 15E of the Exchange Act and the rules adopted under section 15E. The amendments to Rule 17g–2 are designed to assist the Commission staff in monitoring an NRSRO's compliance with the requirement in section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to its policies, procedures, and methodologies for determining credit ratings.

Relative to the baseline, the amendments to Rule 17g–3 requiring NRSROs to file an internal controls report with the Commission should result in benefits. First, the annual report will facilitate the Commission's oversight of NRSROs by assisting the Commission in monitoring an NRSRO's compliance with the requirement in section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings. Compliance with the requirement to file the internal controls report may enhance the integrity of credit ratings by increasing the likelihood that NRSROs will adhere to their procedures and methodologies for determining credit ratings.

Second, the requirement that an NRSRO describe in the report any material weaknesses identified during the fiscal year and how any identified material weakness was addressed may incentivize an NRSRO to more closely monitor and make appropriate improvements to its internal control structure, which could improve the integrity and quality of its credit ratings. The requirements also could provide accountability for effective governance by the NRSRO's board and management, which also may improve the integrity of credit ratings.

Third, the requirement that the CEO or a person performing similar functions attest to the report should help to ensure that the report fairly presents the assessment by management of the effectiveness of the internal control structure. It also should promote greater focus within an NRSRO on establishing, maintaining, enforcing, and documenting an effective internal control structure, given the involvement of senior level management in attesting to the reported information. Further, because the person attesting to the report must represent that the person has responsibility for the report, there will be senior level accountability for the accuracy and completeness of the report, which also should promote greater focus within an NRSRO on establishing, maintaining, enforcing, and documenting an effective internal control structure.

Paragraph (d) of Rule 17g–8 and the amendments to Rules 17g–3 and 17g–2 should promote the objective of ensuring that NRSROs comply with section 15E(c)(3)(A) of the Exchange Act (that is, establish, maintain, enforce, and document an effective internal control structure).[287] This should mitigate the risk that an NRSRO may use a rating methodology that has not been implemented in accordance with its policies and procedures or that it issues a credit rating that was not determined in accordance with its policies, procedures, and methodologies for determining credit ratings. Again, the integrity and quality of credit ratings could increase as a result.

With respect to prescribing factors, commenters stated, in response to a question in the proposing release, that the Commission should not prescribe factors for an internal control structure because this would place a heavy burden on small NRSROs.[288] The Commission believes the manner in which it has prescribed factors will address these concerns and, relative to the baseline, paragraph (d) of Rule 17g–8 should not result in costs. NRSROs already are required to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their methodologies for determining credit ratings.[289] In doing so, an NRSRO already must consider the types of controls that would be necessary to meet this statutory requirement. Paragraph (d) of Rule 17g–8 provides reference points for engaging in this exercise and may facilitate and focus the process. Moreover, while the Commission is prescribing factors an NRSRO must consider, it is not mandating that a specific factor be implemented. Consequently, while NRSROs must consider the factors identified by the Commission, they can tailor and scale their internal control structures to their size and business activities.

Relative to the baseline, the amendments to Rule 17g–2 prescribing retention requirements for the documentation of the internal control structure will result in costs to NRSROs. NRSROs already have recordkeeping systems in place to comply with the recordkeeping requirements in Rule

[284] *See* 15 U.S.C. 78o–7(t)(3)(C).

[285] *See* 15 U.S.C. 78o–7(c)(3)(A).

[286] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582.

[287] *See* 15 U.S.C. 78o–7(c)(3)(A).

[288] *See A.M. Best Letter; Kroll Letter.*

[289] *See* 15 U.S.C. 78o–7(c)(3)(A).

17g–2 before today's amendments. Therefore, the recordkeeping costs of this rule will be incremental to the costs associated with these existing requirements. Specifically, the incremental costs will consist largely of updating their record retention policies and procedures and retaining and producing the additional record. Based on analysis for purposes of the Paperwork Reduction Act (''PRA''),[290] the Commission estimates that paragraph (b)(12) of Rule 17g–2 and the amendment to paragraph (c) of Rule 17g–2 will result in total industry-wide one-time costs to NRSROs of approximately $12,000 and total industry-wide annual costs to NRSROs of approximately $3,000.[291]

Relative to the baseline, the amendments to Rule 17g–3 requiring that NRSROs file an annual internal controls report with the Commission will result in costs to NRSROs. An NRSRO will likely incur costs to engage outside counsel to analyze the requirements for the report and to assist in drafting and reviewing the report. These legal costs are expected to be greater for the filing of the first report and are expected to depend on the size and complexity of the operations of the NRSRO. NRSROs also will need to establish and maintain internal processes to gather and retain evidentiary information to support the report. However, NRSROs already have processes and controls for preparing and submitting the annual reports required by Rule 17g–3 before today's amendments. Therefore, the reporting costs of this rule will be incremental to the costs associated with these existing requirements. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (a)(7) of Rule 17g–3 and the amendment to paragraph (b) of Rule 17g–3 will result in total industry-wide one-time costs to NRSROs of approximately $400,000 and total industry-wide annual costs to NRSROs of approximately $667,000.[292]

The amendments to Rule 17g–2 and Rule 17g–3 may result in other costs. For example, these requirements may affect the timeliness of credit ratings if they result in an NRSRO implementing internal controls that increase the time required to produce a credit rating. For example, an NRSRO may choose to implement controls which require the work of a lead credit analyst to be reviewed by other analysts. As a result, users of credit ratings may incur costs associated with having credit ratings that are less timely.

Paragraph (d) of Rule 17g–8 and the amendments to Rule 17g–3 and Rule 17g–2 could have a number of effects related to efficiency, competition, and capital formation.[293] As stated above, these amendments could improve the integrity and quality of credit ratings. Consequently, users of credit ratings could make more efficient investment decisions based on this higher-quality information. Market efficiency could also improve if this information is reflected in asset prices. Consequently, capital formation could improve as capital may flow to more efficient uses with the benefit of this enhanced information. Alternatively, the timeliness of credit-related information may be diminished as discussed above. In this case, users of credit ratings may have access to less timely credit-related information which could decrease the efficiency of their investment decisions and the efficiency of markets as it could delay the updating of asset prices to reflect available information. The amendments to Rule 17g–3 and Rule 17g–2 also will impose costs, some of which may have a component that is fixed in magnitude across NRSROs and does not vary with the size of the NRSRO. Therefore, the operating costs per rating of smaller NRSROs may increase relative to that of larger NRSROs, which could create adverse effects on competition. As a result of these amendments, the barriers to entry for credit rating agencies to register as NRSROs might be higher for credit rating agencies, while some NRSROs, particularly smaller firms, may decide to withdraw from registration as an NRSRO.

There are a number of reasonable alternatives to the amendments. First, the Commission could have deferred prescribing factors to be taken into consideration when establishing, maintaining, enforcing, and documenting an effective internal control structure. As explained above, the exercise of considering these factors will provide the NRSROs with an opportunity to critically evaluate the effectiveness of their existing internal control structures and new registrants a reference point for designing or modifying existing internal control structures to comply with the statutory requirement to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their methodologies for determining credit ratings.[294] This should improve the overall effectiveness of the internal control structures of the NRSROs. Moreover, the ''catchall'' provisions in the rule will mitigate the risk that an NRSRO treats the factors as a checklist or ''safe harbor.'' Moreover, as discussed above, the Commission does not believe that prescribing factors will result in additional costs to NRSROs.

Second, the Commission could require that the annual internal controls report be made public, as suggested by one commenter.[295] This alternative could improve the quality of credit ratings by providing additional information to issuers, subscribers, investors, and other users of credit ratings to assess the quality of an NRSRO's internal control structure and, thereby, promote the NRSROs' accountability to the market and the issuance of quality credit ratings by the NRSRO. However, as stated above, publicly disclosing the internal controls reports could cause NRSROs to be less detailed and candid. This could diminish the utility of the reports as a means for the Commission to monitor compliance with the requirements of section 15E(c)(3)(A) of the Exchange Act and for the boards of the NRSROs to meet their obligations under section 15E(t)(3)(C) of the Exchange Act to ''oversee'' the ''effectiveness of the internal control system with respect to the policies and procedures for determining credit ratings.''

Third, the Commission could require that the internal controls report be audited by a third party, as suggested by a commenter.[296] As stated above, the final amendment does not require that the internal controls report be made public. Consequently, the report is not a public document that will be relied upon by investors and other users of credit ratings. Rather, it is a non-public report that will be used by Commission examiners. The Commission has taken these factors into consideration in balancing the benefits of having the internal controls report audited by a third party and the costs of such a requirement. The Commission examines each of the ten NRSROs currently

[290] 44 U.S.C. 3501 *et seq.*

[291] *See* section V.A. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[292] *See* section V.A. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.4. of this release.

[293] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[294] *See* 15 U.S.C. 78o–7(c)(3)(A).

[295] *See CII Letter.*

[296] *See Levin Letter.*

registered with the Commission annually. At this time, the Commission believes that the annual examinations by the Commission staff will provide a sufficient means for reviewing the accuracy of the internal controls reports filed by the NRSROs.

B. Sales and Marketing Conflict of Interest

Section 932(a)(4) of the Dodd-Frank Act added paragraph (3) to section 15E(h) of the Exchange Act.[297] Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO.[298] Section 15E(h)(3)(B)(i) of the Exchange Act requires that the Commission's rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of credit ratings and sales and marketing activities is not appropriate.[299] Section 15E(h)(3)(B)(ii) of the Exchange Act requires that the Commission's rules shall provide for the suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that: (1) The NRSRO has committed a violation of a rule issued under section 15E(h) of the Exchange Act; and (2) the violation affected a rating.[300]

The Commission proposed to implement sections 15E(h)(3)(A), 15E(h)(3)(B)(i), and 15E(h)(3)(B)(ii) of the Exchange Act by amending the NRSRO conflict of interest rule (Rule 17g–5).[301] The proposal would amend Rule 17g–5 by: (1) Identifying a new prohibited conflict in paragraph (c) of the rule relating to sales and marketing activities; (2) adding paragraph (f) to the rule to set forth the finding the Commission would need to make in order to grant a small NRSRO an exemption from the prohibition; and (3) adding paragraph (g) to the rule to set forth the standard for suspending or revoking an NRSRO's registration for violating a rule adopted under section 15E(h) of the Exchange Act.[302]

1. New Prohibited Conflict

Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO.[303] The Commission proposed to implement this provision by identifying a new conflict of interest in paragraph (c) of Rule 17g–5.[304] Paragraph (c) prohibits an NRSRO and a person within an NRSRO from having a conflict of interest identified in the paragraph under all circumstances (an ''absolute prohibition'').[305] As proposed, paragraph (c)(8) of Rule 17g–5 would identify an additional absolute prohibition: Issuing or maintaining a credit rating where a person within the NRSRO who participates in sales or marketing of a product or service of the NRSRO or a product or service of a person associated with the NRSRO also participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative or quantitative models.[306] In effect, this would prohibit persons who participate in sales and marketing activities from participating in determining or monitoring credit ratings or developing or approving rating procedures or methodologies.

Several commenters suggested that the requirements in the proposed amendment should be stronger.[307] Commenters raised concerns that the amendment as proposed would not prohibit managers from seeking to inappropriately influence credit analysts and the personnel who develop and approve rating procedures and methodologies.[308] For example, one commenter stated that the proposal could ''be strengthened by barring NRSRO management from taking negative actions against analysts due to client complaints seeking better ratings, more lenient treatment of their products, or relief from providing information about a product being rated'' and that such actions ''inevitably lead to inaccurate and inflated ratings.'' [309] A second commenter stated that the requirement needs to apply ''more broadly to any action by any rating agency employee that has the intent or effect of allowing sales and marketing considerations, including concern over building market share, to inappropriately influence the rating process or undermine ratings accuracy.'' [310] The commenter stated that this was necessary to address practices such as ''basing analysts' performance evaluations or compensation on their success in building market share, allowing investment bankers to influence the selection of analysts involved in rating their deals, and delaying revisions to rating models because of concerns about their impact on market share.'' [311] A third commenter stated that motivations by management to increase profits and market share can lead to top-down policies and practices that emphasize higher credit ratings over improved accuracy and reliability.[312]

Other commenters suggested that the proposed requirement be less restrictive.[313] These commenters recommended, among other things, that the proposed amendment require procedures to manage the conflict,[314] or apply only when sales and marketing considerations ''influenced'' the production of the credit rating.[315]

[297] *See* Public Law 111–203, 932(a)(4); 15 U.S.C. 78o–7(h)(3).

[298] 15 U.S.C. 78o–7(h)(3)(A).

[299] 15 U.S.C. 78o–7(h)(3)(B)(i).

[300] 15 U.S.C. 78o–7(h)(3)(B)(ii).

[301] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33425–33429. *See also* 17 CFR 240.17g–5. The Commission adopted and subsequently amended Rule 17g–5 pursuant, in part, to authority in section 15E(h)(2) of the Exchange Act (15 U.S.C. 78o–7(h)(2)). *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33595–33599 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469 (Feb. 9, 2009); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63842–63850 (Dec. 4, 2009).

[302] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33425–33429.

[303] 15 U.S.C. 78o–7(h)(3)(A).

[304] *See* paragraph (c)(8) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33426.

[305] *See* 17 CFR 240.17g–5(c)(1) through (7). These absolute prohibitions are distinguished from the types of conflicts identified in paragraph (b) of Rule 17g–5, which are prohibited *unless* the NRSRO has taken the steps to address them as set forth in paragraph (a) of Rule 17g–5. *See* 17 CFR 240.17g–5(a) and (b). *See also* 17 CFR 240.17g–5(d) (defining the term *person within an NRSRO* to mean an NRSRO, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the NRSRO or its credit rating affiliates (or any person occupying a similar status or performing similar functions)).

[306] *See* paragraph (c)(8) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[307] *See AFR II Letter; AFSCME Letter; Better Markets Letter; CFA/AFR Letter; Levin Letter. See also CFA II Letter* (stating that the rule should be re-proposed).

[308] *See, e.g., AFR II Letter; CFA II Letter; Levin Letter.*

[309] *See Levin Letter.*

[310] *See CFA/AFR Letter.*

[311] *See CFA/AFR Letter.*

[312] *See CFA II Letter.*

[313] *A.M. Best Letter; S&P Letter; TradeMetrics Letter.*

[314] *See S&P Letter; TradeMetrics Letter.*

[315] *See A.M. Best Letter.* This commenter suggested that if the Commission modified the proposed amendment to require ''influence,'' the Commission could, among other things, require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to prevent sales and marketing considerations of an NRSRO from influencing the production of credit ratings and specify that those procedures contain language providing that any

Continued

After considering these comments, the Commission is revising the rule text to incorporate into the rule language that is both consistent with the statutory language and with the requirement in paragraph (a)(1)(iii) of Rule 17g–7 [316] (discussed in section II.G.4. of the release), which would address sources of influence with respect to sales and marketing considerations in addition to persons involved in sales and marketing activities. Accordingly, the final amendment modifies the proposal to provide that an NRSRO is prohibited from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[317]

Under the first prong of the final amendment, an NRSRO is prohibited from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO.[318] As with the proposal, this prong of the absolute prohibition is designed to address situations in which, for example, individuals within the NRSRO who engage in activities to sell products and services (both ratings-related and non-ratings-related) of the NRSRO or its affiliates could seek to influence a specific credit rating to favor an existing or prospective client or the development of a credit rating procedure or methodology to favor a class of existing or prospective clients. In practice, the Commission believes the amendment will require an NRSRO to prohibit personnel that have any role in the determination of credit ratings or the development or modification of rating procedures or methodologies from having any role in sales and marketing activities. It also will require an NRSRO to prohibit personnel that have any role in sales and marketing activities from having any role in the determination of credit ratings or the development or modification of rating procedures or methodologies. Consequently, these functions will need to be separate.

Commenters suggested that the proposed requirement be less restrictive.[319] These commenters recommended, among other things, that the proposed amendment require procedures to manage the conflict,[320] or apply only when sales and marketing considerations ''influenced'' the production of the credit rating.[321] In response, the Commission notes that section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to *prevent* the sales and marketing considerations of an NRSRO from influencing the production of ratings by the NRSRO.[322] Moreover, section 15E(h)(3)(B)(i) of the Exchange Act requires that the Commission's rules under section 15E(h)(3)(A) shall provide for exceptions for small NRSROs with respect to which the Commission determines that the *separation* of the production of credit ratings and sales and marketing activities is not appropriate.[323] The Commission therefore believes that it is a reasonable interpretation of the statute to adopt a rule that requires the separation of the two functions. As stated above, in practice, the final amendment will require an NRSRO to prohibit the personnel that have any role in sales and marketing activities from having any role in the determination of credit ratings or the development or modification of rating procedures and methodologies. In addition, this approach establishes a particularly strong measure to address the sales and marketing conflict because, as discussed above, the final amendment establishes an absolute prohibition. Moreover, depending on the facts and circumstances, it would also violate the first prong of the rule as amended for an individual who participates in sales and marketing activities to seek to influence the determination of a credit rating or the rating procedures and methodologies used to determine a credit rating, even if the individual's conduct did not influence the credit rating or rating procedures or methodologies.

Further, Commission staff found as part of the examination of the activities of the three largest NRSROs in rating RMBS and CDOs linked to subprime mortgages that it appeared ''employees responsible for obtaining ratings business would notify other employees, including those responsible for criteria development, about business concerns they had related to the criteria.'' [324] As the Commission stated in the proposing release, the absolute prohibition was designed to insulate individuals within the NRSRO responsible for the analytic function from such sales and marketing concerns and pressures.[325]

The Commission shares the concerns raised by commenters about the potential inappropriate influence that managers may have over employees involved in the determination of credit ratings or the development or modification of rating procedures and methodologies.[326] In response, the Commission notes that a manager who participates in sales and marketing activities and who seeks to influence a credit rating or the rating procedures and methodologies used to determine the credit rating would be ''participating'' in determining or monitoring the credit rating or in developing or approving the rating procedures or methodologies used to determine the credit rating under paragraph (a)(8) of Rule 17g–5, as adopted.[327] Consequently, depending

communications between sales and marketing personnel and ratings personnel are subject to the broader recordkeeping requirements of Rule 17g–2.

[316] As discussed below in section II.G.4. of this release, paragraph (a)(1)(iii) of Rule 17g–7 provides that an NRSRO must attach to the form to accompany certain credit rating actions a signed statement by a person within the NRSRO stating that the person has responsibility for the rating action and, to the best knowledge of the person: (1) no part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument. Sales and marketing are subparts of ''business activities'' and including it in paragraph (c)(8) of Rule 17g–5 is a relevant conforming change.

[317] *Id.*

[318] *See* paragraph (c)(8)(i) of Rule 17g–5.

[319] *A.M. Best Letter; S&P Letter; TradeMetrics Letter.*

[320] *See S&P Letter; TradeMetrics Letter.*

[321] *See A.M. Best Letter.*

[322] *See* 15 U.S.C. 78o–7(h)(3)(A) (emphasis added).

[323] *See* 15 U.S.C. 78o–7(h)(3)(B)(i) (emphasis added).

[324] *See Summary Report of Issues Identified in the Commission Staff's Examination of Select Credit Rating Agencies,* pp. 25–26. Commenters pointed to other sources to argue that the proposal should be stronger. *See, e.g., CFA/AFR Letter; CFA II Letter.*

[325] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33426.

[326] *See, e.g.,* CFA II Letter.

[327] One commenter suggested that management ''would not likely fall under the Commission's definition of 'participants' in either sales or marketing activities.'' *See CFA II Letter.* In response, the Commission notes that, as discussed above, a person within an NRSRO—including a manager—would participate in sales and marketing activities if, for example: the individual contacted a company that was about to issue debt and solicited the business of rating the issuance or met with company officials for business development purposes (for example, to ''pitch'' the NRSRO's services); the individual contacted an institutional investor and offered subscriptions to the NRSRO's credit ratings or credit analyses; or the individual

on the facts and circumstances, the rule as amended would be violated if it was established that an NRSRO issued or maintained a credit rating in a case in which managers involved in sales and marketing activities pressured or otherwise offered incentives to analysts working on the credit rating to take commercial concerns into account in determining the credit rating. Similarly, depending on the facts and circumstances, it would violate the rule as amended for an NRSRO to issue or maintain a credit rating that managers involved in sales and marketing activities sought to influence by pressuring or offering incentives to personnel who developed or approved the rating procedures or methodologies used to determine the credit rating to take commercial concerns into account in developing or approving the procedures or methodologies. Moreover, depending on the facts and circumstances, because the rule is an absolute prohibition, this conduct would violate the rule, even if a manager did not successfully influence any credit rating or the rating procedures or methodologies used to determine the credit rating.

Commenters stated that the requirements of proposed paragraph (c)(8) of Rule 17g–5 are ambiguous and requested that the Commission clarify various aspects of the proposal.[328] Five commenters raised concerns as to what it means to participate in sales and marketing activities under the proposed rule.[329] Four of those commenters requested that the Commission provide additional guidance on this question.[330] On the other hand, an NRSRO suggested that the Commission should not provide additional guidance and should allow the NRSRO to define *participate*.[331] Similarly, five commenters (including NRSROs) requested the Commission clarify what constitutes a sales and marketing activity,[332] while an NRSRO suggested that the Commission not provide additional guidance and allow the NRSRO to determine what constitutes a sales and marketing activity.[333] One NRSRO stated that the rule should not contain definitions that ''compel large size'' by mandating, explicitly or implicitly, minimum numbers of employees or layers of management.[334]

In response to these comments requesting clarification of terms used in the amendment, the Commission notes that sales and marketing activities involve efforts by an NRSRO to sell or in any manner market its products and services to prospective customers.[335] Participating in sales and marketing activities would clearly include certain actions. For example, a person within an NRSRO would participate in a sales and marketing activity if: (1) The individual contacted a company that was about to issue debt and solicited the business of rating the issuance or met with company officials for business development purposes (for example, to ''pitch'' the NRSRO's services); (2) the individual contacted an institutional investor and offered subscriptions to the NRSRO's credit ratings or credit analyses; (3) the individual was contacted by an issuer about the cost of rating its issuance or by an institutional investor about the cost of a subscription to the NRSRO's credit ratings or analyses and the individual provided information about these costs.

The Commission recognizes that certain scenarios posed by commenters may not be as clear-cut as these examples in terms of whether the activities would be considered participating in sales and marketing activities; each scenario will have to be evaluated based on the particular facts and circumstances.[336] For example, if rating personnel engage in analytical discussions with persons outside the NRSRO, including with obligors and issuers who purchase credit rating services from the NRSRO or with investors and others who purchase subscriptions to the NRSRO's credit ratings, that would not constitute participating in a sales and marketing activity as long as the discussions do not involve commercial matters related to selling or marketing the NRSRO's services; however, if the discussions with ratings analysts involved such commercial matters, the analysts may be considered to be participating in sales and marketing activities.[337] Similarly, if an issuer agrees to have only one meeting with an NRSRO to discuss both analytical matters relating to, and fees for, obtaining credit ratings for the securities it issues, the NRSRO could bring a team of analysts and a team of sales and marketing personnel to the meeting.[338] If the sales and marketing team does not attend the portion of the meeting in which analytical matters are discussed, they would not have participated in the determination of a credit rating. Similarly, if the analytical team does not attend the portion of the meeting in which commercial matters are discussed, they would not have participated in a sales and marketing activity. Further, an analyst would not necessarily participate in a sales or marketing activity if the analyst gives a presentation at a conference attended by persons who could be prospective purchasers of the NRSRO's services.[339] For example, the analyst would generally not be considered to be participating in a sales or marketing activity if the presentation avoided marketing the services offered by the NRSRO and focused solely on topics involving credit analysis (for example, the analytical process used by the NRSRO to determine credit ratings, an analysis of the creditworthiness of one or more obligors or issuers, or a credit forecast for a particular industry sector).[340] Similarly, the analyst would not participate in a sales or marketing activity if the analyst gave this type of presentation in the context of an interview with a news outlet. In each case, the determination whether the analytical team is participating in sales and marketing activity would turn on the facts and circumstances.

As noted above, the first prong of the absolute prohibition requires an NRSRO to separate its analytical functions from its sales and marketing functions. While

was contacted by an issuer about the cost of rating its issuance or by an institutional investor about the cost of a subscription to the NRSRO's credit ratings or analyses and the individual provided information about these costs.

[328] *See A.M. Best Letter; COPERA Letter; DBRS Letter; Kroll Letter; Moody's Letter; TradeMetrics Letter.*

[329] *See DBRS Letter; Kroll Letter; Kroll II Letter; Moody's Letter; S&P Letter; TradeMetrics Letter.*

[330] *See DBRS Letter; Kroll Letter; Kroll II Letter; Moody's Letter; TradeMetrics Letter.*

[331] *See S&P Letter.*

[332] *See A.M. Best Letter; COPERA Letter; Kroll Letter; Moody's Letter; TradeMetrics Letter.* For example, commenters argued that that, without clarification of these terms, the scope of the amendment could be applied too broadly. *See A.M. Best Letter; Kroll Letter.*

[333] *See S&P Letter.*

[334] *See Kroll Letter.*

[335] The examples of what it means to *participate* in *sales and marketing* activities discussed in this section of the release are intended to assist NRSROs in understanding those terms as they are used in paragraph (c)(8) of Rule 17g–5.

[336] *See A.M. Best Letter; DBRS Letter; Moody's Letter.*

[337] *See Moody's Letter.*

[338] *See DBRS Letter.*

[339] *See A.M. Best Letter.*

[340] As discussed throughout this release, one of the objectives of the amendments and new rules being adopted today is to increase the transparency of the credit rating activities of NRSROs to promote competition among NRSROs on the basis of the quality of the credit ratings they produce and the procedures and methodologies they use to determine credit ratings. The persons within an NRSRO responsible for determining credit ratings and developing the procedures and methodologies used to determine credit ratings can promote this transparency, given their responsibilities and expertise. Consequently, the Commission does not intend the new absolute prohibition in paragraph (c)(8) of Rule 17g–5 to constrain them from helping market participants better understand the quality of an NRSRO's credit ratings and procedures and methodologies an NRSRO uses to determine credit ratings.

this is a strong measure to address the sales and marketing conflict, the Commission also believes that it is appropriate to revise the rule text to incorporate language about persons participating in production of a credit rating being ''influenced'' by sales and marketing considerations.[341] Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from *influencing* the production of credit ratings by the NRSRO.[342] Given the concerns raised by commenters, this statutory language, the language in section 15E(q)(2)(F) of the Exchange Act,[343] and Rule 17 g–7, the Commission is modifying the proposal to add a second prong to the absolute prohibition. Under the second prong, an NRSRO is prohibited from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also is influenced by sales or marketing considerations.[344] Thus, this prong of the absolute prohibition is consistent with the provision of Rule 17g–7 that specifically requires a statement that no part of the rating was ''influenced'' by business activities.

In connection with making the evaluation necessary for the second prong of the absolute prohibition, the Commission believes there are a number of possible channels of influence that should be considered, such as compensation arrangements that may incentivize analysts to produce inflated credit ratings to increase or retain the NRSRO's market share, performance evaluation systems that reward analysts who produce inflated credit ratings to increase or retain the NRSRO's market share, compliance personnel who unduly influence credit analysts to inflate credit ratings in response to complaints by clients, clients such as rated entities who pressure analysts to produce inflated credit ratings to retain their business, or managers who are not involved in sales and marketing activities but may seek to pressure analysts to produce inflated credit ratings to increase or retain the NRSRO's market share.

In addition, the Commission notes that the sales and marketing prohibition is being added to a comprehensive set of existing requirements that address NRSRO conflicts and, as discussed below, the Commission is adopting additional measures to address conflicts.[345] Consequently, the sales and marketing prohibition should not be viewed in isolation but rather as part of a set of requirements (both statutory and regulatory) pursuant to which NRSROs must disclose and manage conflicts of interest and, in some cases, avoid them altogether. For example, paragraph (b)(1) of Rule 17g–5 identifies the conflict of being paid by issuers or underwriters to determine credit ratings (the issuer-pay conflict), and under paragraph (a)(2) of Rule 17g–5 and section 15E(h)(1) of the Exchange Act, an NRSRO with this conflict must establish, maintain and enforce written policies and procedures reasonably designed to address and manage the conflict.[346] An NRSRO that permits a corporate culture in which managers seek to inappropriately influence analysts and the personnel who develop and approve rating procedures and methodologies could not be viewed as having or enforcing policies and procedures reasonably designed to address the issuer-pay conflict and, consequently, this type of conduct would violate section 15E(h)(1) of the Exchange Act and Rule 17g–5.

Further, as discussed below in section II.G.4. of this release, the Commission is adopting a requirement that an NRSRO must attach to the form to accompany certain credit rating actions a signed statement by a person within the NRSRO stating that the person has responsibility for the rating action and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument.[347] If any of these requirements are not satisfied, such person would not be able to truthfully make this attestation.

The Commission made another modification to the proposal in response to a comment suggesting that the text of the amendment be revised to reference the ''products or services of the NRSRO's affiliated entities'' in place of the proposed reference to a ''product or service of a person associated with the [NRSRO].''[348] A ''person associated'' with the NRSRO includes natural persons.[349] The commenter stated that, as proposed, the amendment could preclude a natural person from participating in the credit rating process ''if he or she operates a completely different business (such as a photography studio on the side).''[350] This would be an overly broad application of the amendment, as it is designed to prevent sales and marketing of products and services of the NRSRO or its affiliated companies from influencing the credit rating process. Consequently, the final amendment has been modified from the proposal to apply to products and services of the affiliates of the NRSRO (rather than persons associated with the NRSRO).[351] However, the Commission notes that outside businesses of employees can raise potential conflicts.[352] Consequently, pursuant to section 15E(h)(1) of the Exchange Act and Rule 17g–5, an NRSRO must have policies, procedures, and controls to address employees engaging in outside businesses if the NRSRO permits employees to operate outside businesses.[353]

Two commenters stated that paragraph (c)(8) of Rule 17g–5 may be redundant, given the existing absolute prohibition in paragraph (c)(6) of Rule 17g–5.[354] In response, the Commission

[341] *See AFR II Letter; AFSCME Letter; Better Markets Letter; CFA/AFR Letter; Levin Letter. See also CFA II Letter* (stating that the rule should be re-proposed).

[342] 15 U.S.C. 78o–7(h)(3)(A) (emphasis added). *See also* section 15E(q)(2)(F).

[343] Section 15(E)(q)(2)(F) provides that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was *influenced* by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument). ''Sales'' and ''marketing'' are a subparts of ''business activities.''

[344] *See* paragraph (c)(8)(ii) of Rule 17g–5.

[345] *See* 15 U.S.C. 78o–7(h); 17 CFR 240.17g–5.

[346] *See* 15 U.S.C. 78o–7(h); 17 CFR 240.17g–5.

[347] *See* paragraph (a)(1)(iii) of Rule 17g–7.

[348] *See DBRS Letter.*

[349] *See* 15 U.S.C. 78c(a)(63).

[350] *See DBRS Letter.*

[351] *See* paragraph (c)(8) of Rule 17g–5.

[352] For example, an analyst operating an outside business could seek to solicit business from persons employed by an obligor that the analyst rates or an issuer of securities the analyst rates.

[353] *See* 15 U.S.C. 78o–7(h)(1) (requiring each NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the NRSRO and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business); 17 CFR 240.17g–5 (prohibiting NRSROs from having conflicts of interest unless they disclose and manage the conflicts or, in some cases, absolutely prohibiting the conflict).

[354] *See DBRS Letter; Kroll Letter.* Under paragraph (c)(6) of Rule 17g–5, an NRSRO is prohibited from issuing or maintaining a credit rating where the fee paid for the rating was negotiated, discussed, or arranged by a person within the NRSRO who has responsibility for participating in determining credit ratings or for developing or approving

believes it is appropriate to retain paragraph (c)(6) because it complements paragraph (c)(8) of Rule 17g–5, as adopted. In particular, paragraph (c)(6) of Rule 17g–5 addresses the conflict that arises when persons within an NRSRO involved in determining credit ratings or developing or approving rating methodologies also negotiate, discuss, or arrange the fees paid for determining credit ratings.[355] Thus, it focuses on preventing persons within the NRSRO responsible for credit analysis from being influenced by business considerations (for example, issuing ratings favorable to a client with whom they negotiated a substantial fee). Paragraph (c)(8) of Rule 17g–5, as adopted, addresses the conflict that arises when persons within an NRSRO involved in sales and marketing activities also participate in determining credit ratings or developing or approving rating procedures and methodologies. Thus, it focuses on preventing the persons within the NRSRO responsible for generating business for the NRSRO from influencing the work of the persons responsible for credit analysis (for example, pressuring them to develop rating procedures and methodologies that favor the NRSRO's clients or prospective clients).

Finally, several commenters stated that the proposed amendment would negatively impact smaller NRSROs.[356] As discussed below, the final amendments to Rule 17g–5 provide a mechanism for small NRSROs to apply for an exemption from the absolute prohibition.[357] Under the final amendment, the Commission may grant an exemption if it finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[358]

For all of the reasons discussed above, the Commission is adopting the amendment with the modifications discussed above. Moreover, for those reasons, the Commission is not persuaded that it is necessary to re-propose the rule as suggested by one commenter.[359] However, the Commission may consider further rulemaking to address conflicts of interest inherent in the NRSRO industry as appropriate and as circumstances warrant.

2. Exemption for ''Small'' NRSROs

Section 15E(h)(3)(B)(i) of the Exchange Act requires that the Commission's rules under section 15E(h)(3)(A) shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of credit ratings and sales and marketing activities is not appropriate.[360] To implement this provision, the Commission proposed to amend Rule 17g–5 by adding paragraph (f).[361] As proposed, paragraph (f) would provide a mechanism for a small NRSRO to apply in writing for an exemption from the absolute prohibition that would be established by adding paragraph (c)(8) to Rule 17g–5.[362] In particular, the proposed amendment provided that upon written application by an NRSRO, the Commission may exempt, either conditionally or unconditionally or on specified terms and conditions, such NRSRO from the provisions of paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[363]

The Commission stated in the proposing release that in some cases the small size of an NRSRO could make a complete separation of the sales and marketing function from the credit rating analytical function inappropriate.[364] For example, the NRSRO may not have enough staff (or the resources to hire additional staff) to establish separate functions.[365] In this case, the Commission stated that it would entertain requests for relief, although it may impose conditions designed to preserve as much of the separation between these two functions as possible.[366]

The Commission is adding paragraph (f) to Rule 17g–5 substantially as proposed, but with a technical modification to the rule text in response to comments.[367] In particular, the final amendment provides that, upon written application by an NRSRO, the Commission may exempt, either unconditionally or on specified terms and conditions, such NRSRO from the provisions of paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[368]

Several commenters expressed support for the objective of the proposed amendment.[369] Supporters argued that it could be difficult for smaller NRSROs to maintain the strict separation of sales and marketing activities from the production of credit ratings, as would be required under paragraph (c)(8) of Rule 17g–5, as proposed.[370] In contrast, several commenters expressed concerns with the proposed amendment, generally arguing that the proposed amendment should be narrowed or eliminated altogether because the size of an NRSRO does not affect whether the potential conflict could influence a

procedures or methodologies used for determining credit ratings, including qualitative and quantitative models.

[355] *See Summary Report of Issues Identified in the Commission Staff's Examination of Select Credit Rating Agencies,* p. 25 (''there were indications that analysts were involved in fee discussions with employees of the rating agency's billing department'').

[356] *See A.M. Best Letter; Kroll Letter.*

[357] *See* paragraph (f) of Rule 17g–5.

[358] *Id.*

[359] *See CFA II Letter* (recommending that the Commission re-propose the rule).

[360] *See* 15 U.S.C. 78o–7(h)(3)(B)(i).

[361] *See* paragraph (f) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33426–33427.

[362] *See* paragraph (f) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540. Section 36 of the Exchange Act provides that the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 17 U.S.C. 78mm. Consequently, an NRSRO could request to be exempt from the sales and marketing prohibition pursuant to this more general authority in section 36. The Commission has established rules providing mechanisms for registrants—such as broker-dealers—to request an exemption from specific rule requirements. *See, e.g.,* 17 CFR 240.15c3–1(b)(3); 17 CFR 240.15c3–3(k)(3); 17 CFR 240.17a–5(m)(3). The proposed amendment was modeled after these provisions. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[363] *See* paragraph (f) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[364] *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33427.

[365] *Id.*

[366] *Id.*

[367] *See* paragraph (f) of Rule 17g–5. The Commission is modifying the proposal to remove redundant text, as suggested by a commenter. *See DBRS Letter.* The Commission originally proposed that ''[u]pon written application by a [NRSRO], the Commission may exempt, either conditionally or unconditionally or on specified terms and conditions, such [NRSRO] from the provisions of paragraph (c)(8) of [Rule 17g–5].'' The modification removes the phrase ''conditionally or'' as it is redundant of the phrase ''on specified terms and conditions.'' *See* paragraph (f) of Rule 17g–5.

[368] *See* paragraph (f) of Rule 17g–5.

[369] *See A.M. Best Letter; CFA/AFR Letter; DBRS Letter; Kroll Letter; Morningstar Letter; TradeMetrics Letter.*

[370] *See CFA/AFR Letter; TradeMetrics Letter.*

credit rating.[371] For example, one of these commenters stated that ''if a credit rating agency is too small to separate its rating process from its marketing process, it should not qualify as an NRSRO.''[372]

In response to concerns about providing for exemptions for small NRSROs, the Commission notes that section 15E(h)(3)(B)(i) of the Exchange Act provides that the Commission's rules issued under section 15E(h)(3)(A) *shall* provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of credit ratings and sales and marketing activities is not appropriate.[373] The final amendment implements this statutory requirement but in a manner that will require the Commission to make a specific finding before granting an exemption; namely, that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[374]

The Commission considered the concerns expressed by commenters about granting any relief to small NRSROs in considering whether to adopt a self-executing exemption, which was suggested by a commenter.[375] Under the final amendment, exemptions will be granted on a case-by-case basis, after analyzing the facts and circumstances the applying NRSRO presents in its request for relief and any other relevant facts and circumstances. Any exemptive relief granted can be tailored to the specific circumstances of the NRSRO and can include specific terms and conditions designed to mitigate the sales and marketing conflict and help ensure that any relief that may be provided to a small NRSRO does not undermine the overarching purpose of section of 15E(h)(3)(A) of the Exchange Act. The ability to tailor exemptive relief on a case-by-case basis will allow the Commission the flexibility to specify conditions that address the conflict in a way that takes into account the specific circumstances of the NRSRO requesting the relief (including its size, business model, and the steps it has taken to mitigate sales and marketing conflicts). For these reasons, the Commission does not believe it would be appropriate to establish a self-executing exemption.

Commenters addressed various aspects of potential exemption orders the Commission might grant under the proposed amendment. For example, several NRSROs commented on how the Commission should determine ''small'' for purposes of granting exemptions.[376] Two commenters stated that all NRSROs that are smaller than the three largest NRSROs should be considered small.[377] Three commenters suggested that annual revenue should be the metric for determining if an NRSRO is small.[378] Two commenters stated that the Commission should make the size determination on a case-by-case basis,[379] while one commenter suggested a self-executing exemption under which an NRSRO would be automatically exempt if its total revenue falls below a certain threshold.[380] On the other hand, one opponent of the proposal stated that revenue is not an appropriate measure for granting an exemption and suggested, if the Commission proceeds with an exemption, that it be based on other metrics.[381]

Commenters also addressed the duration of an exemption.[382] One supporter of granting exemptions under the proposal suggested that the Commission periodically re-evaluate whether the NRSRO continued to be small and provide it with a transition period in the event the Commission determines it is no longer small.[383] Another commenter, opposing the proposal, suggested that if the Commission does grant an exemption, it should be very limited, and that if the Commission later determines the NRSRO is not small, it should have only a short transition period.[384] This commenter added that an exempted NRSRO should have to publicly disclose the rules from which it is exempt.[385]

Several commenters addressed the conditions that should be part of an exemption order under the proposal.[386] Some stated that even if an NRSRO is exempt, the amendments to Rule 17g–5 should make clear that NRSROs remain subject to the overarching prohibition against allowing sales and marketing considerations to influence credit ratings.[387] Two commenters suggested that any exemption should be contingent upon the NRSRO adhering to certain requirements.[388] Another commenter suggested that any NRSRO that is granted an exemption under the proposal should be required to indicate on the homepage of its Web site that it is a recipient of the exemption.[389] One commenter that opposed the proposed exemption identified additional conditions the Commission should consider if it adopts the proposal.[390]

In making its finding for purposes of determining whether to grant an exemption, the Commission will evaluate the particular facts and circumstances of the application. In addition, the Commission may specify conditions designed to mitigate the sales and marketing conflict without imposing an absolute prohibition. Although the Commission is not modifying the exemption process from the proposal, suggestions by commenters may be helpful to the Commission in undertaking the analysis of whether a particular NRSRO should be considered ''small'' and in considering how to tailor the exemptive relief to mitigate the sales and marketing conflict.

3. Suspending or Revoking a Registration

Section 15E(h)(3)(B)(ii) of the Exchange Act provides that the Commission's rules under section 15E(h) of the Exchange Act shall provide for suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that the NRSRO has committed a violation of ''a rule issued under this

[371] *See AFSCME Letter; Barnard Letter; Better Markets Letter; Levin Letter; S&P Letter.*

[372] *See Levin Letter.*

[373] *See* 15 U.S.C. 78o–7(h)(3)(B)(i) (emphasis added).

[374] *See* paragraph (f) of Rule 17g–5.

[375] *See Kroll Letter.*

[376] *See A.M. Best Letter; DBRS Letter; Kroll Letter; Morningstar Letter; S&P Letter.*

[377] *See A.M. Best Letter; Morningstar Letter* (requesting that the Commission consider defining smaller NRSROs as it did in the proposing release for purposes of the Regulatory Flexibility Act).

[378] *See A.M. Best Letter* (suggesting a $250 million revenue threshold); *Kroll Letter* (suggesting a $100 million revenue threshold); *Morningstar Letter.*

[379] *See A.M. Best Letter; DBRS Letter.*

[380] *See Kroll Letter.*

[381] *See S&P Letter* (''Other metrics, such as the number of personnel, or number of ratings issued in a practice area, may provide a more meaningful metric for the granting of any exemption'').

[382] *See Morningstar Letter; S&P Letter.*

[383] *See Morningstar Letter.*

[384] *See S&P Letter.*

[385] *Id.*

[386] *See AFSCME Letter; Better Markets Letter; CFA/AFR Letter; Fitch Letter; S&P Letter.*

[387] *See Better Markets Letter; CFA/AFR Letter.*

[388] *See AFSCME Letter* (suggesting that the NRSRO should submit a detailed explanation of why it should be exempt and ''concrete evidence, not just assertions'' to support its claims that it cannot function under the requirement); *CFA/AFR Letter* (suggesting that the application should include a section on what steps the NRSRO is taking to ensure sales and marketing considerations do not influence rating decisions).

[389] *See Fitch Letter.*

[390] *See S&P Letter* (suggesting that the Commission should ''specify the terms of the activities permitted and require that the NRSRO have policies to address the potential conflict, that the policies be transparent, and that compliance of the policies be well documented.'').

subsection'' and the violation of the rule affected a credit rating.[391] While section 15E(h)(3)(A) relates only to the conflict arising from sales and marketing activities, section 15E(h)(3)(B)(ii)—by using the term ''subsection''—has a broader scope in that it refers to all rules issued under section 15E(h) of the Exchange Act. Consequently, the proposed amendment implementing section 15E(h)(3)(B)(ii) addressed violations of any rule adopted under section 15E(h). Section 15E(h)(3)(B)(ii) does not require that the violation of the rule under section 15E(h) be ''willful.''

Currently, the Commission can seek to suspend or revoke the registration of an NRSRO, in addition to other potential sanctions, under section 15E(d) of the Exchange Act.[392] In particular, section 15E(d) provides that the Commission shall, by order, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of an NRSRO if the Commission finds, ''on the record after notice and opportunity for a hearing,'' that such sanction is ''necessary for the protection of investors and in the public interest'' and the NRSRO, or a person associated with the NRSRO (whether prior to or subsequent to becoming so associated), has engaged in one or more of six categories of conduct specified in sections 15E(d)(1)(A) through (F) of the Exchange Act.[393] Section 15E(d)(1)(A) specifies the first category of conduct: That the NRSRO or an associated person has committed or omitted any act, or has been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Exchange Act; has been convicted of any offense identified in section 15(b)(4)(B) of the Exchange Act; or has been enjoined from any action, conduct, or practice identified in section 15(b)(4)(C) of the Exchange Act.[394] The acts enumerated in section 15(b)(4)(D) of the Exchange Act include that the person has willfully violated any provision of the Exchange Act or the rules or regulations under the Exchange Act.[395] Therefore, the Commission has the authority, if it makes the finding under section 15E(d)(1)(A), to suspend or revoke the registration of an NRSRO for a willful violation of Rule 17g–5, but does not have the authority to do so under section 15E(d)(1)(A) for violations of Rule 17g–5 that are not willful.[396]

In addition to proceedings under section 15E(d)(1) of the Exchange Act, the Commission can take action under section 15E(d)(2).[397] This section provides that the Commission may temporarily suspend or permanently revoke the registration of an NRSRO with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for a hearing, that the NRSRO does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.[398] Furthermore, section 21C of the Exchange Act provides the Commission with authority, among other things, to enter an order requiring, among other things, that a person cease and desist from continuing to violate, or future violations of, a provision of the Exchange Act or any rule or regulation thereunder.[399]

In the proposing release, the Commission stated its preliminary belief that a rule implementing section 15E(h)(3)(B)(ii) of the Exchange Act should work in conjunction with sections 15E(d) and 21C of the Exchange Act.[400] Consequently, the Commission proposed adding paragraph (g) to Rule 17g–5.[401] This paragraph provided that in a proceeding pursuant to section 15E(d) or section 21C of the Exchange Act, the Commission shall suspend or revoke the registration of an NRSRO if the Commission finds in such proceeding that the NRSRO has violated a rule issued under section 15E(h) of the Exchange Act, the violation affected a credit rating, and that suspension or revocation is necessary for the protection of investors and in the public interest.[402] This provision was proposed to be placed in Rule 17g–5, given that it is the predominant rule issued under section 15E(h) of the Exchange Act.[403]

The first two findings in the proposed amendment mirrored the text of section 15E(h)(3)(B)(ii) of the Exchange Act.[404] The final finding—that the suspension or revocation is necessary for the protection of investors and in the public interest—is a common finding that the Commission must make to take disciplinary action against a registered person or entity.[405] It is not, however, a finding that the Commission must make in a proceeding under section 21C.[406] Further, unlike section 15E(d) of the Exchange Act, the Commission can take action under section 21C for violations of the securities laws even if the violations are not willful.[407] Moreover, section 15E(h)(3)(B)(ii) of the Exchange Act does not prescribe the maximum amount of time for which an NRSRO could be suspended, whereas section 15E(d) provides that a suspension shall not exceed twelve

[391] *See* 15 U.S.C. 78o–7(h)(3)(B)(ii).

[392] *See* 15 U.S.C. 78o–7(d).

[393] *See* 15 U.S.C. 78o–7(d)(1)(A) through (F).

[394] *See* 15 U.S.C. 78o–7(d)(1)(A); *see also* 15 U.S.C. 78o(b)(4)(A), (B), (C), (D), (E), (G), and (H). Section 15E(d)(1)(B) specifies the second category of conduct: that the NRSRO or an associated person has been convicted during the ten-year period preceding the date on which an application for registration is filed with the Commission, or at any time thereafter, of: (1) Any crime that is punishable by imprisonment for one or more years, and that is not described in section 15(b)(4)(B); or (2) a substantially equivalent crime by a foreign court of competent jurisdiction. *See* 15 U.S.C. 78o–7(d)(1)(B). Section 15E(d)(1)(C) specifies the third category of conduct: That the NRSRO or an associated person is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO. *See* 15 U.S.C. 78o–7(d)(1)(C). Section 15E(d)(1)(D) specifies the fourth category of conduct: That the NRSRO or an associated person fails to file the annual certification required under section 15E(b)(2) of the Exchange Act. *See* 15 U.S.C. 78o–7(d)(1)(D). Section 15E(d)(1)(E) specifies the fifth category of conduct: That the NRSRO or an associated person fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity. *See* 15 U.S.C. 78o–7(d)(1)(E). Finally, section 15E(d)(1)(F) specifies the sixth category of conduct: That the NRSRO or an associated person has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a violation, if the individual is subject to the supervision of that person. *See* 15 U.S.C. 78o–7(d)(1)(F).

[395] *See* 15 U.S.C. 78o(b)(4)(D).

[396] *See* 15 U.S.C. 78o–7(d)(1)(A); 15 U.S.C. 78o(b)(4)(D).

[397] *See* 15 U.S.C. 78o–7(d)(2).

[398] *See* 15 U.S.C. 78o–7(d)(2)(A). Section 15E(d)(2)(B) provides that, in making any determination under section 15E(d)(2)(A), the Commission shall consider whether the NRSRO has failed over a sustained period of time, as determined by the Commission, to produce ratings that are accurate for that class or subclass of securities and such other factors as the Commission may determine. *See* 15 U.S.C. 78o–7(d)(2)(B).

[399] *See* 15 U.S.C. 78u–3.

[400] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33428. *See also* 15 U.S.C. 78o–7(d); 15 U.S.C. 78u–3.

[401] *See* paragraph (g) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33427–33428.

[402] *See* paragraph (g) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540. *See also* 15 U.S.C. 78o–7(d); 15 U.S.C. 78o–7(h); 15 U.S.C. 78u–3.

[403] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33428. *See also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33595–33599; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63842–63850.

[404] *See* paragraph (g) of Rule17g–5, as proposed; 15 U.S.C. 78o–7(h)(3)(B)(ii)(I) and (II).

[405] *See* paragraph (g) of Rule 17g–5, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540. For example, the Commission must make this finding to take action under section 15E(d) of the Exchange Act. *See* 15 U.S.C. 78o–7(d).

[406] *See* 15 U.S.C. 78u–3.

[407] *Compare* 15 U.S.C. 78o–7(d), *with* 15 U.S.C. 78u–3.

months.[408] Consequently, a proceeding pursuant to paragraph (g) of Rule 17g–5 brought under section 21C could result in a suspension that exceeds twelve months. Given that section 21C of the Exchange Act has a lower threshold for intent to establish a violation, and given the substantial consequences of suspending or revoking a registration, the Commission stated a preliminarily belief in the proposing release that the public interest finding would be an appropriate predicate to a suspension or revocation of an NRSRO's registration under section 21C of the Exchange Act.[409]

Two commenters addressed whether the Commission should adopt, pursuant to section 15E(h)(3)(B)(ii) of the Exchange Act, an independent and alternative process for suspending or revoking an NRSRO's registration beyond the processes set forth in sections 15E(d) and 21C of the Exchange Act.[410] Both commenters agreed with the Commission's proposal that the processes for suspension or revocation currently available under the Exchange Act are sufficient.[411] One commenter stated that section 15E(h)(3)(B)(iii) of the Exchange Act should work in conjunction with proceedings already available under sections 15E(d) and 21C of the Exchange Act.[412] Similarly, a second commenter stated that proceedings currently available under the Exchange Act are adequate and that no alternative process is necessary, but stated that if the Commission does implement a separate process, there should be certain prerequisites to its decision to suspend or revoke a registration.[413]

The Commission is persuaded that it is appropriate to adopt an amendment to Rule 17g–5 that incorporates the statutory provisions governing the suspension or revocation of an NRSRO's registration (rather than a stand-alone rule). Consequently, the Commission is incorporating the statutory provisions into paragraph (g) of Rule 17g–5, as proposed, but with modifications from the proposal.[414] Two commenters stated that the proposed rule should incorporate only section 15E(d) of the Exchange Act in response to the Commission's requests for comment on whether the amendment should incorporate section 15E(d) and section 21C.[415] One of these commenters added that the section 21C standard is ''too low and its consequences too high'' and is therefore inappropriate to use in considering suspension or revocation of an NRSRO's registration.[416] The other commenter stated that authority under section 15E(d) is ''adequate,'' making it unnecessary for the Commission to incorporate section 21C into the rule, and that not all of the provisions of section 21C are applicable to NRSROs.[417]

The Commission believes that it is not necessary to incorporate section 21C of the Exchange Act into the provision governing the suspension or revocation of an NRSRO's registration for violating a rule issued under section 15E(h) of the Exchange Act, but not for the reasons stated by the commenters. The Commission believes the rule can be modified in a way that achieves one objective of the proposal—providing for the suspension or revocation of the registration of an NRSRO for violations that are not willful—without incorporating section 21C. Instead, the rule can be modified from the proposal so that it includes a finding that the Commission must make in the context of a proceeding under section 15E(d)(1) of the Exchange Act that is in lieu of the findings specified in sections 15E(d)(1)(A) through (F) of the Exchange Act. As discussed above, the finding specified in section 15E(d)(1)(A) is that the NRSRO or an associated person committed or omitted any act, or has been subject to an order or finding, enumerated in section 15(b)(4)(D) of the Exchange Act, among other sections.[418] The acts enumerated in section 15(b)(4)(D) of the Exchange Act include that the person has willfully violated any provision of the Exchange Act or the rules or regulations under the Exchange Act.[419] Therefore, the Commission has the authority, if it makes a finding under section 15E(d)(1)(A) of the Exchange Act, to suspend or revoke the registration of an NRSRO for a violation of Rule 17g–5, but only if the violation is willful.[420] The alternative finding does not require a finding that the violation was willful, and the Commission can therefore suspend or revoke the registration of an NRSRO using this alternative without a finding of willfulness and without the need to institute the proceeding under section 21C.

For these reasons, the Commission is modifying the rule from the proposal to establish a finding that must be made in the context of a proceeding under section 15E(d)(1) of the Exchange Act that is in lieu of the findings specified in sections 15E(d)(1)(A) through (F).[421] In particular, paragraph (g) of Rule 17g–5, as adopted, provides that in a proceeding pursuant to section 15E(d)(1) of the Exchange Act, the Commission shall suspend or revoke the registration of an NRSRO if the Commission finds, in lieu of a finding required under sections 15E(d)(1)(A), (B), (C), (D), (E), or (F) of the Exchange Act, that the NRSRO has violated a rule issued under section 15E(h) of the Exchange Act (for example, Rule 17g–5) and that the violation affected a credit rating.[422]

The alternative finding includes the first two prongs of the proposed finding: (1) That the NRSRO has violated a rule issued under section 15E(h) of the Exchange Act; and (2) that the violation affected a credit rating. As discussed above and in the proposing release, these two prongs of the finding mirror the text of section 15E(h)(3)(B)(ii) of the Exchange Act.[423] In addition, the alternative finding must be made in the context of a proceeding under section 15E(d)(1). Consequently, the Commission must find, ''on the record after notice and opportunity for a hearing,'' that suspension or revocation is ''necessary for the protection of investors and in the public interest.''[424] In this way, the alternative finding also incorporates the public interest finding that was part of the proposed finding, which the Commission continues to

[408] *Compare* 15 U.S.C. 78o–7(h)(3)(B)(ii), *with* 15 U.S.C. 78o–7(d).

[409] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33428.

[410] *See Morningstar Letter; S&P Letter.*

[411] *See Morningstar Letter; S&P Letter.*

[412] *See Morningstar Letter.*

[413] *See S&P Letter.*

[414] The Commission is making one technical modification to the proposal by adding the word ''credit'' before the word ''rating.'' *See* paragraph (g) of Rule 17g–5.

[415] *See A.M. Best Letter; S&P Letter.*

[416] *See A.M. Best Letter* (stating that the process under section 21C is inappropriate because it has no requirement of a public interest finding and provides no suspension limits).

[417] *See S&P Letter* (stating that certain provisions of section 21C are applicable to brokers, dealers, and investment advisors, among others, but not to NRSROs).

[418] *See* 15 U.S.C. 78o–7(d)(1)(A). *See also* 15 U.S.C. 78o(b)(4)(A), (B), (C), (D), (E), (G), and (H).

[419] *See* 15 U.S.C. 78o(b)(4)(D).

[420] *See* 15 U.S.C. 78o–7(d)(1)(A); 15 U.S.C. 78o(b)(4)(D).

[421] The Commission does not intend the final amendment to affect in any manner the Commission's ability to suspend or revoke the registration of an NRSRO under section 15E(d)(1) of the Exchange Act based upon a finding specified under sections 15E(d)(1)(A), (B), (C), (D), (E), or (F).

[422] *See* paragraph (g) of Rule 17g–5.

[423] 15 U.S.C. 78o–7(h)(3)(B)(ii) (providing that the Commission's rules under section 15E(h) of the Exchange Act shall provide for suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that the NRSRO has committed a violation of ''a rule issued under this subsection'' and the violation of the rule affected a credit rating).

[424] 15 U.S. C. 78o–7(d).

believe is appropriate given the severity of the sanction of suspending or revoking an NRSRO's registration.[425]

The final amendment—because it incorporates section 15E(d) only—is different from the proposed amendment in that the Commission is limited to suspending a registration for a period not exceeding twelve months.[426] The Commission does not view this as a significant difference. To the extent the Commission believes a credit rating agency should stop operating as an NRSRO for a period longer than twelve months, the Commission can seek to revoke its registration.[427]

Finally, three commenters addressed the factual predicate necessary to support a finding that the violation affected a credit rating.[428] The commenters generally stated that a finding that a rule violation affected a credit rating is only part of the appropriate analysis and is not, by itself, enough to suspend or revoke an NRSRO's registration.[429] One commenter added that any suspension or revocation proceeding must ''take into account all relevant factors of the particular circumstance at issue.'' [430] The other two commenters recommended additional findings that should be considered in making a determination that a violation of a rule affected a credit rating.[431] In response, the Commission notes that to suspend or revoke an NRSRO's registration under section 15E(d)(1) of the Exchange Act the Commission must find, among other things, that doing so is necessary for the protection of investors and in the public interest.[432] This will entail consideration of the particular facts and circumstances of each case in crafting an appropriate remedy.

4. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the amendments relating to the sales and marketing conflict of interest.[433] The baseline that existed before today's amendments was one in which an NRSRO was not explicitly prohibited from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations. However, section 15E(h)(1) of the Exchange Act and Rule 17g–5, thereunder, require NRSROs to establish, maintain, and enforce written policies and procedures reasonably designed to address and manage any conflicts of interest that can arise from the business of the NRSRO.[434] In addition, paragraph (c)(6) of Rule 17g–5 prohibits an NRSRO from issuing or maintaining a credit rating where the fee paid for the rating was negotiated, discussed, or arranged by a person within the NRSRO who has responsibility for participating in determining credit ratings or for developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models. Rule 17g–6 prohibits an NRSRO from engaging in certain unfair, coercive, or abusive practices such as conditioning the issuance of a credit rating on the purchase of other services or products of the NRSRO.[435]

Relative to this baseline, paragraph (c)(8) of Rule 17g–5, as amended, should result in benefits. For example, the amendment should decrease the probability that undue influences on credit analysts based on sales and marketing considerations could impact the objectivity of an NRSRO's credit rating process.[436] Certain academic studies suggest that NRSROs may have engaged in ''ratings catering'' in which an NRSRO will deliberately inflate a

[425] A number of commenters addressed whether the Commission should be required to make a public interest finding to suspend or revoke an NRSRO's registration in a proceeding under proposed paragraph (g) of Rule 17g–5 pursuant to section 21C of the Exchange Act. *See AFSCME Letter; A.M. Best Letter; Better Markets Letter; FSR Letter; Morningstar Letter; S&P Letter.* Four commenters supported the requirement. *See A.M. Best Letter; FSR Letter; Morningstar Letter; S&P Letter.* One commenter that supported this aspect of the proposal stated that a public interest finding is necessary ''to consider whether, in fact, a violation had any impact on the public.'' *See A.M. Best Letter.* A second commenter added that a public interest finding is appropriate because a sanction of suspension or revocation is significant and that NRSROs play an important role in the financial markets. *See S&P Letter.* In contrast, two commenters opposed the proposed required public interest finding. *See AFSCME Letter; Better Markets Letter.* One of these commenters stated that the finding could make it more difficult for the Commission to sanction an NRSRO, and that it provides NRSROs with additional defenses to potential sanctions. *See Better Markets Letter.* The other commenter suggested that the standard be changed from ''necessary for the protection of investors and in the public interest'' to ''consistent with the public interest'' to give the Commission more flexibility in the enforcement remedy. *See AFSCME Letter.* Both commenters suggested the increased threshold in the proposal to suspend or revoke an NRSRO's registration was not the intent of Congress. *See AFSCME Letter; Better Markets Letter.* In response to these comments, the Commission believes—as indicated above—that the public interest finding is appropriate given the severity of the sanctions. In response to the commenter that suggested the standard be changed from ''necessary for the protection of investors and in the public interest'' to ''consistent with the public interest'' to give the Commission more flexibility in the enforcement remedy, the Commission notes that the standard ''necessary for the protection of investors and in the public interest'' is a standard used consistently throughout the Commission's rules and the Exchange Act. The Commission is not persuaded it is necessary to use a different standard in this instance. Consequently, because the finding required under the final amendment must be made in the context of a proceeding under section 15E(d) of the Exchange Act, the final amendment incorporates the public interest finding in that section.

[426] 15 U.S.C. 78o–7(d)(1).

[427] Commenters addressed whether the rule should limit the length of a suspension under section 21C of the Exchange Act. *See A.M. Best Letter; Morningstar Letter; S&P Letter.* Two commented that the ability to suspend the registration of an NRSRO for up to twelve months under section 15E(d) was sufficient and, therefore, a suspension proceeding under section 21C is unnecessary. *See A.M. Best Letter; S&P Letter.* One commenter stated that there should be a time limit for a suspension under section 21C and, while stating that the twelve month limit under section 15E(d) is sufficient, suggested an alternative approach based on the time horizon of the associated credit rating. *See Morningstar Letter* (suggesting, as an alternative, that the Commission ''could use a multiple of the intended time horizon associated with the rating'' as a maximum suspension). As discussed above, the finding required under the final amendment must be made in a proceeding under section 15E(d)(1), which limits suspensions to a period not to exceed twelve months. *See* 15 U.S.C. 78o–7(d)(1).

[428] *See A.M. Best Letter; Morningstar Letter; S&P Letter.*

[429] *See A.M. Best Letter; Morningstar Letter; S&P Letter.*

[430] *See A.M. Best Letter.*

[431] *See Morningstar Letter* (stating that the findings should be ''supported by Commission evidence that the undue influence . . . resulted in the NRSRO issuing a credit rating without conforming to its documented procedures and methodologies and that investors who relied on those ratings were harmed.''); *S&P Letter* (stating that the following factors should be a factual predicate to support the finding that the violation affected a rating: ''(i) there was an appropriate attempt to influence the rating decision; (ii) the NRSRO did not adhere in material respects to its applicable policies and procedures; and (iii) the rating decision was not honestly held by the rating committee analysts who voted for it at the time it was issued.'').

[432] *See* 15 U.S.C. 78o–7(d)(1).

[433] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[434] *See* 15 U.S.C. 78o–7(h)(1); 17 CFR 240.17g–5.

[435] *See* 17 CFR 240.17g–5(c)(6); 17 CFR 240.17g–6(a)(1).

[436] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33598–33599, 33613 (discussing objectives and benefits of paragraph (c) of Rule 17g–5 when it was adopted); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469, 6474–6475 (discussing objectives and benefits of paragraph (c) of Rule 17g–5 when it was amended).

credit rating in order to induce the purchase of the credit rating by the issuer, sponsor, or underwriter of the rated security.[437] Involving credit analysts in sales and marketing activities (which are designed to obtain business) could potentially influence them to inappropriately take business considerations into account when determining credit ratings. Such influence may also arise from other channels, such as compensation arrangements that may incentivize analysts to produce inflated credit ratings to increase or retain the NRSRO's market share, performance evaluation systems that reward analysts who produce inflated credit ratings to increase or retain the NRSRO's market share, clients such as rated entities who pressure analysts to produce inflated credit ratings to retain their business, or managers that are not involved in sales and marketing activities but may seek to pressure analysts to produce inflated credit ratings to increase or retain the NRSRO's market share. The two-pronged absolute prohibition is designed to insulate credit analysts from sales and marketing concerns and pressures that may arise through any channel. This could enhance the integrity and quality of credit ratings.

Relative to the baseline, paragraph (c)(8) of Rule 17g–5 will result in costs to NRSROs. For example, some NRSROs may incur costs for hiring additional personnel, given the need to separate the analytical and sales and marketing functions. Commenters did not provide data for this specific cost. However, some NRSROs may choose to reallocate responsibilities among existing staff in order to meet the requirement. This cost of hiring additional personnel will likely vary significantly with the size of the NRSRO and the degree of existing separation between analytical staff and sales and marketing personnel.[438] NRSROs may also incur costs to make other operational changes, such as changes to communication policies, to ensure that credit analysts are not influenced by sales or marketing considerations from other channels. These incremental costs may vary based on the current operational structure of NRSROs. It is also possible that NRSROs may incur costs related to changes in the compensation arrangements of credit analysts.[439]

An NRSRO also will incur costs for updating its written policies and procedures to address and manage conflicts of interest required under section 15E(h) of the Exchange Act and Rule 17g–5 and to file with the Commission an update of its registration on Form NRSRO to account for the updated policies and procedures. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (c)(8) of Rule 17g–5 will result in total industry-wide one-time costs to NRSROs of approximately $354,000.[440]

Relative to the baseline, paragraph (f) of Rule 17g–5 will result in costs to NRSROs to the extent they expend resources to draft and submit a written request for an exemption under paragraph (f) of Rule 17g–5. The Commission believes that an NRSRO would likely engage outside counsel to assist in drafting the request. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (f) of Rule 17g–5 will result in costs to NRSROs of approximately $62,000 per request.[441] However, if a small NRSRO is granted an exemption from the absolute prohibition, it could avoid having to hire additional personnel to undertake sales and marketing activities that were otherwise undertaken by individuals involved in the production of credit ratings.

Relative to the baseline, paragraph (g) of Rule 17g–5 should not result in additional costs to NRSROs. NRSROs already are subject to the remedy of suspension or revocation under section 15E(d) the Exchange Act.

The amendments to Rule 17g–5 also may result in other costs. For example, prohibiting persons within an NRSRO who participate in determining or monitoring the credit ratings, or developing or approving rating procedures or methodologies from participating in sales and marketing activities may diminish the effectiveness of an NRSRO's sales and marketing efforts. For example, the revenues of an NRSRO may decrease if existing sales and marketing staff lack the expertise to communicate technical information about the NRSRO's rating procedures and methodologies to clients and potential clients. However, as discussed above, the final amendment does not preclude credit analysts from having these discussions with clients as long as the analysts do not discuss commercial matters and are not influenced by, for example, any pressure imposed by clients to produce inflated credit ratings.

The amendments to Rule 17g–5 should have a number of effects related to efficiency, competition, and capital formation.[442] First, these amendments could improve the quality of credit-related information. As a result, users of credit ratings could make more efficient investment decisions based on this better-quality information. Market efficiency also could improve if this information is reflected in asset prices. Consequently, capital formation could improve as capital may flow to more efficient uses with the benefit of this enhanced information. These amendments also provide for an exemption based on size, which may decrease the burden of these requirements on small NRSROs. However, these amendments could still create adverse effects on competition as exempted NRSROs potentially may be more prone to engage in ''ratings catering'' and, thereby, obtain more business as a result.[443] More specifically, exempted NRSROs may be more likely to produce credit ratings that favor their clients as a result of allowing persons involved in sales and marketing activities to participate in analytical processes.

As explained above, commenters suggested a number of alternatives to

[437] *See* Griffin, Nickerson, and Tang, *Rating Shopping or Catering? An Examination of the Response to Competitive Pressure for CDO Ratings,* Bolton, Freixas, and Shapiro, *The Credit Ratings Game.*

[438] The Commission estimates the cost of hiring an additional credit analyst to be $55,600 on a one-time basis and $591,000 per year thereafter (2080 work hours per year × $284 for a fixed income research analyst (intermediate) = $591,000; 200 hours × $278 for a senior human resources representative = $55,600). The Commission estimates the cost of hiring an additional sales and marketing staff member to be $55,600 on a one-time basis and $528,000 per year thereafter (2080 work hours per year × $254 for a marketing manager = $528,000; 200 hours × $278 for a senior human resources representative = $55,600). The salary figures provided in this release are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[439] The cost of changes to operational and compensation arrangements have been reflected in the PRA burdens discussed in section IV.D.5. and section IV.D.6. of this release.

[440] *See* section V.B. of this release (discussing implementation and annual compliance considerations). The one-time costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.5. of this release.

[441] *See* section V.B. of this release (discussing implementation and annual compliance considerations). The cost per request is determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.5. of this release.

[442] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[443] As part of its 2012–2013 NRSRO examinations, Commission staff found that four smaller NRSROs did not have sufficient procedures and controls for separating business and analytical functions or for preventing rating analysts from being involved in fee discussions and from having access to rating fee information. *See* 2013 Annual Staff Inspection Report, pp. 11–12.

the proposed amendments to Rule 17g–5. Several commenters suggested that the amendments be less restrictive. One reasonable alternative suggested by commenters would be for the Commission not to adopt an absolute prohibition but rather to require an NRSRO to disclose and have procedures to manage the conflict.[444] This alternative might reduce costs for NRSROs related to, for example, hiring additional personnel. However, as explained above, the absolute prohibition was designed to insulate individuals within the NRSRO responsible for the analytic function from any sales and marketing concerns and pressures. Another less restrictive alternative would be, as proposed, to adopt only the first prong of the prohibition. This alternative may reduce the scope of policies and procedures that an NRSRO may need to revise to ensure compliance with the amendments. However, as discussed above, there are several potential channels through which sales and marketing considerations could influence credit analysts that would not be addressed by the first prong of the prohibition. Any less restrictive alternative may reduce the benefit of improved credit ratings quality if this alternative fails to mitigate conflicts of interest as effectively as the requirements of the final amendment.

One commenter suggested a self-executing exemption where an NRSRO would be automatically exempt if its total revenue falls below a certain threshold.[445] This alternative would eliminate the need and associated cost for certain NRSROs to apply to the Commission for exemptive relief. However, this alternative would eliminate the flexibility of the Commission to tailor exemptive relief. Under the final amendment, exemptions will be granted on a case-by-case basis, after analyzing the facts and circumstances concerning the NRSRO seeking the relief. Any exemptive relief granted can be tailored to the specific circumstances of the NRSRO requesting the relief and include specific terms and conditions designed to mitigate the sales and marketing conflict. The ability to tailor exemptive relief on a case-by-case basis will allow the Commission the flexibility to specify conditions that address the conflict in a way that takes into account the specific circumstances of the NRSRO requesting the relief (including its size and business model). For this reason, the Commission does not believe it would be appropriate to establish an automatic self-executing exemption.

Commenters also suggested that the rule not require that the Commission make a public interest finding to suspend or revoke an NRSRO's registration for violating a rule issued under section 15E(h) of the Exchange Act, as this would weaken the enforcement remedy.[446] This alternative might benefit users of credit ratings by improving the quality of credit ratings. In particular, NRSROs may have higher incentives to conform to these requirements as a result of a lower threshold for revoking or suspending their registration. However, this alternative may result in costs for NRSROs by subjecting them to more frequent suspensions and revocations, which could reduce the number of NRSROs producing credit ratings. In addition, as stated above, among other things, the Commission believes that the public interest finding is appropriate given the severity of the sanctions.

C. ''Look-Back'' Review

Section 932(a)(4) of the Dodd-Frank Act amended section 15E(h) of the Exchange Act to add a paragraph (4).[447] Section 15E(h)(4)(A) provides that an NRSRO must establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the NRSRO, or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the NRSRO, was employed by the NRSRO and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the NRSRO shall: (1) Conduct a review (a ''look-back review'') to determine whether any conflicts of interest of the employee influenced the credit rating[448]; and (2) take action to revise the credit rating, if appropriate, in accordance with such rules as the Commission shall prescribe.[449]

Section 15E(h)(4)(A) of the Exchange Act contains a self-executing provision requiring an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed to ensure that the NRSRO will conduct look-back reviews.[450] The Commission proposed paragraph (c) of new Rule 17g–8 and proposed adding paragraph (a)(9) to Rule 17g–2 to implement rulemaking required in section 15E(h)(4)(A)(ii) of the Exchange Act.[451] The Commission is adopting paragraph (c) of Rule 17g–8, with modifications, and adding paragraph (a)(9) to Rule 17g–2 as proposed.[452]

1. Paragraph (c) of New Rule 17g–8

As proposed, paragraph (c) of Rule 17g–8 provided that the policies and procedures an NRSRO establishes, maintains, and enforces pursuant to section 15E(h)(4)(A) of the Exchange Act must address instances in which a look-back review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument.[453]

Specifically, paragraph (c)(1) of Rule 17g–8, as proposed, provided that an NRSRO must have procedures reasonably designed to ensure that, upon the NRSRO's discovery that a former employee's conflict influenced a credit rating, it immediately publishes a rating action placing the applicable credit ratings of the obligor, security, or money market instrument on credit watch or review.[454] Proposed paragraph (c)(1) also provided that the policies and procedures must be reasonably designed to ensure the NRSRO includes the information required by proposed paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7 in the form to accompany a credit rating with the publication of the rating action placing the credit rating on credit watch.[455] Specifically, paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7, as proposed, would have required the NRSRO to provide in the form published with the rating action an

[444] *See S&P Letter; TradeMetrics Letter.*

[445] *See Kroll Letter.*

[446] *See AFSCME Letter; Better Markets Letter.*

[447] *See* Public Law 111–203, 932(a)(4); 15 U.S.C. 78o–7(h)(4).

[448] *See* 15 U.S.C. 78o–7(h)(4)(A)(i).

[449] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii).

[450] *See* 15 U.S.C. 78o–7(h)(4)(A)(i).

[451] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33429–33432.

[452] *See* paragraph (c) of Rule 17g–8, and paragraph (a)(9) of Rule 17g–2. In addition, Rule 17g–8 consolidates requirements that NRSROs have policies and procedures in a number of areas. As discussed in section II.F.1. of this release, paragraph (a) of Rule 17g–8 requires an NRSRO to establish policies and procedures with respect to credit rating procedures and methodologies. *See* paragraph (a) of Rule 17g–8. Further, as discussed in section II.J.1. of this release, paragraph (b) of Rule 17g–8 requires an NRSRO to establish policies and procedures with respect to the use of credit rating symbols, numbers, and scores. *See* paragraph (b) of Rule 17g–8.

[453] *See* paragraph (c) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[454] *See* paragraph (c)(1) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[455] *See* paragraph (c)(1) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest and the date and associated credit rating of each prior rating action the NRSRO currently has determined was influenced by the conflict.[456]

Paragraph (c)(2) of Rule 17g–8, as proposed, provided that the NRSRO must have procedures reasonably designed to ensure that it promptly determines whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings.[457] The proposed approach was intended to ensure that, as soon as possible, the assigned credit rating will become solely a product of the NRSRO's procedures and methodologies for determining credit ratings (that is, no longer influenced by the conflict).[458]

Paragraph (c)(3) of Rule 17g–8, as proposed, provided that the NRSRO must have procedures reasonably designed to ensure it promptly publishes a revised credit rating, if appropriate, or an affirmation of the credit rating, if appropriate, based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised.[459] Paragraph (c)(3), as proposed, also provided that the NRSRO's procedures must be reasonably designed to ensure that information required pursuant to paragraphs (a)(1)(ii)(J)(*3*)(*ii*) and (*iii*) of Rule 17g–7, as proposed, is included in the form to accompany the publication of a revised credit rating or a credit rating affirmation.[460] In the case of a revised credit rating, paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7, as proposed, would require the NRSRO to provide in the form an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, the date and associated credit rating of each prior rating action the NRSRO has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action.[461] Similarly, in the case of an affirmed credit rating, paragraph (a)(1)(ii)(J)(*3*)(*iii*) of Rule 17g–7, as proposed, would require the NRSRO to provide an explanation of why no rating action was taken to revise the credit rating notwithstanding the conflict, the date and associated credit rating of each prior rating action the NRSRO has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action.[462]

As discussed in more detail below, the Commission is adopting paragraph (c) of Rule 17g–8, with modifications from the proposal in response to comments.[463] The modifications eliminate the requirement to *immediately* place the credit rating on credit watch or review and make certain technical changes. The Commission is adopting paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7 with modifications from the proposal in response to comments.[464] The modifications eliminate the required disclosure that would have accompanied the placement of the credit rating on credit watch, revise the disclosure requirement with respect to estimating the impact of the conflict, and make certain technical changes.[465]

The Commission is adopting the prefatory language to paragraph (c) of Rule 17g–8 as proposed.[466] Consequently, the final rule provides, in pertinent part, that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO will take the steps discussed below.[467]

Two commenters stated that the Commission should define what it means for a conflict of interest to *influence* a credit rating.[468] One of these commenters stated that any definition should not require ''proof of subjective intent or motivation on the part of the NRSRO employee'' since it would be difficult to discern.[469] On the other hand, two NRSROs stated that the Commission should not provide a definition.[470] One stated that a finding of influence should only be required ''where the NRSRO determines that, absent the conflict, the NRSRO would have issued a different rating'' because this is the only ''influence'' that has ''practical consequences for the users of the affected credit rating.''[471] The other NRSRO stated that any definition should ''include situations where a primary analyst or voting member of a credit rating committee succeeded in persuading other committee members to agree to a ratings determination that was inconsistent with the NRSRO's ratings criteria, procedures and methodologies.''[472]

The Commission does not believe it is necessary at this time to define in the rule what it means to influence a credit rating because the provisions of the rule provide sufficient guidance in this respect. In particular, the rule provides that the NRSRO must determine whether a conflicted credit rating must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings.[473] Thus, the rule contains a standard that can be used for purposes of making the influence determination required by section 15E(h)(4)(A) of the Exchange Act: Namely, whether the credit rating is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings. As one commenter stated, a finding of influence should only be required ''where the NRSRO determines that, absent the conflict, the NRSRO would have issued a different rating.''[474] The Commission believes that this is an appropriate framework for assessing whether a conflict influenced a credit rating under

[456] *See* paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[457] *See* paragraph (c)(2) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[458] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33430.

[459] *See* paragraphs (c)(3)(i) and (ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[460] *See* paragraphs (c)(3)(i) and (ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543. *See also* paragraphs (a)(1)(ii)(J)(3)(ii) and (iii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[461] *See* paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[462] *See* paragraph (a)(1)(ii)(J)(*3*)(*iii*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[463] *See* paragraph (c) of Rule 17g–8.

[464] *See* paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7.

[465] As discussed below in section II.G.1. of this release, the form to accompany a rating action need not be published when a credit rating is put on watch or review.

[466] *See* prefatory paragraph (c) of Rule 17g–8.

[467] *See* paragraph (c) of Rule 17g–8.

[468] *See AFSCME Letter; Harrington Letter.*

[469] *See AFSCME Letter.*

[470] *See DBRS Letter; S&P Letter.*

[471] *See DBRS Letter.*

[472] *See S&P Letter.*

[473] *See* paragraph (c)(1) of Rule 17g–8.

[474] *See DBRS Letter.*

section 15E(h)(4)(A). Moreover, it is consistent with the standard to be used in paragraph (c) of Rule 17g–8, as adopted, for determining whether the credit rating must be revised.[475]

One commenter stated that the rule should require the NRSRO to review whether a conflict influenced the determination of its rating methodologies or procedures.[476] This suggestion is outside the scope of the proposal. However, section 15E(h)(1) of the Exchange Act requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such NRSRO and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.[477] Further, Rule 17g–5, among other things, prohibits an NRSRO from having conflicts of interest unless they are disclosed and managed through policies and procedures.[478] Thus, the statute and rule cover the conflict that arises when the prospective employment of an NRSRO's employee influenced a credit rating methodology (as opposed to a credit rating). For these reasons, an NRSRO would need to address the conflict pursuant to section 15E(h)(1) and Rule 17g–5 if it concluded in connection with a look-back review conducted pursuant to section 15E(h)(4)(A) of the Exchange Act that the prospect of future employment inappropriately influenced a credit rating procedure or methodology of the NRSRO.

One commenter stated that the Commission should specify minimum steps that the NRSRO must follow to determine if a former employee's conflict of interest influenced a credit rating because an ''NRSRO's initial review'' to determine whether a conflict influenced a rating is ''at least as important as the process for revising a rating.'' [479] One NRSRO stated that the NRSRO should review credit ratings ''upon a discovery that they may have been influenced by a conflict'' but that convening a new rating committee each time a potential conflict is discovered should not be required because it could impact the timeliness of ratings determinations.[480]

These comments address the self-executing provisions of section 15E(h)(4)(A)(i) of the Exchange Act.[481] The Commission did not propose rules to implement this part of the statute as the statute itself directly prescribes specific requirements for NRSROs.[482] However, the Commission notes that the statute requires the look-back review policies and procedures to be reasonably designed. Consequently, while the Commission is not prescribing by rule how an NRSRO must conduct a look-back review, an NRSRO must establish, maintain, and enforce policies and procedures that are reasonably designed to achieve the objectives set forth in the statute.

A number of commenters addressed proposed paragraph (c)(1) of Rule 17g–8, which would have required NRSROs to immediately publish a rating action placing applicable credit ratings on credit watch or review based on the discovery that a former employee's conflict influenced a credit rating.[483] Several commenters, including NRSROs, stated that the proposed requirements may cause volatility, confusion, or disruption in the market,[484] and one NRSRO stated that the placement of credit ratings on credit watch may force investment managers to sell securities, pursuant to investment guidelines.[485] Two NRSROs stated that the NRSRO should be allowed to determine whether and when to place a credit rating on credit watch, in accordance with its analytical criteria and procedures.[486] One of these NRSROs stated that mandating that the NRSRO place a credit rating on credit watch may impact the timeliness of credit rating determinations and may constitute regulating the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings in violation of section 15E(c)(2) of the Exchange Act.[487] Another NRSRO suggested that the Commission ''provide a timeframe for the NRSRO to revise and affirm the rating when a conflict arises'' before requiring it to place the credit rating on credit watch.[488] Several commenters stated that a credit rating should be placed on credit watch only after the NRSRO determines that a conflict of interest has influenced the credit rating.[489]

The Commission is persuaded that the proposed requirement to immediately place the credit rating on watch or review could lead to potential market disruption and confusion, possibly harming investors and issuers, at a time when it is not clear that the credit rating will be changed. However, the Commission also believes that investors and other users of an NRSRO's credit ratings should be notified that a prior credit rating was influenced by a conflict of interest within a reasonable period of time. As discussed below, an NRSRO must promptly determine whether the credit rating must be revised or affirmed and promptly revise or affirm the credit rating and include with the publication of the rating action revising or affirming the credit rating information about the existence of the conflict. In most cases, this process should provide investors and other users of the NRSRO's credit ratings with notice of the existence of the conflict in a timely manner.

However, if there is a delay in publishing the revised or affirmed credit rating, the Commission believes the NRSRO should provide notice of the existence of the conflict of interest through another means. Accordingly, paragraph (c) of Rule 17g–8, as adopted, has been modified to eliminate the requirement to immediately place credit ratings on credit watch or review based on the discovery of the conflict.[490] Instead, the rule provides that the NRSRO must place the credit rating on

[475] *See* paragraph (c)(1) of Rule 17g–8.

[476] *See CFA/AFR Letter.*

[477] *See* 15 U.S.C. 78o–7(h)(1).

[478] *See also* 17 CFR 240.17g–5.

[479] *See Better Markets Letter.*

[480] *See S&P Letter.*

[481] *See* 15 U.S.C. 78o–7(h)(4)(A)(i) (requiring an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the NRSRO or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the NRSRO, was employed by the NRSRO and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the NRSRO shall conduct a look-back review to determine whether any conflicts of interest of the employee influenced the credit rating).

[482] As discussed throughout this section, the Commission is implementing the part of the statute that addresses the steps to be taken if the look-back review determines that a conflict of interest of the employee influenced the credit rating. *See* 15 U.S.C. 78o–7(h)(4)(A)(ii) (providing that the NRSRO must take action to revise the credit rating, if appropriate, in accordance with such rules as the Commission shall prescribe).

[483] *See A.M. Best Letter; AFSCME Letter; DBRS Letter; FSR Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[484] *See A.M. Best Letter; DBRS Letter; FSR Letter; Morningstar Letter; S&P Letter.*

[485] *See S&P Letter.*

[486] *See DBRS Letter; S&P Letter.*

[487] *See S&P Letter.*

[488] *See Morningstar Letter.*

[489] *See A.M. Best Letter; AFSCME Letter; DBRS Letter; FSR Letter; Moody's Letter; S&P Letter.* The rule, as proposed, required the NRSRO to place the credit rating on watch only after the NRSRO determined based on a look-back review that the credit rating was influenced by the conflict of interest.

[490] The rule, as adopted, does not preclude an NRSRO from immediately placing credit ratings on credit watch or review based on the discovery of a conflict if such action is in accordance with the NRSRO's policies and procedures.

watch or review if the credit rating is not revised or affirmed in accordance with the rule within fifteen calendar days of the date of the discovery that the credit rating was influenced by a conflict of interest.[491] This is designed to provide notice to users of the NRSRO's credit ratings of the existence of the conflict in a case where the NRSRO delays publishing a revision or affirmation of the credit rating. However, by prescribing a deadline of fifteen calendar days, the Commission is not suggesting that an NRSRO can meet its obligation to promptly revise or affirm a credit rating by waiting fifteen calendar days. As discussed below, an NRSRO must promptly revise or affirm the credit rating. The question of whether an NRSRO has met this standard will depend on the facts and circumstances.

Consistent with modifications to Rule 17g–7 discussed below in section II.G.1. of this release, the Commission is eliminating the related disclosure requirement in proposed paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7 that would need to have been made when the credit rating is put on watch or review.[492] Instead, paragraph (c)(2)(ii) of Rule 17g–8 provides that, if an NRSRO is required to place the credit rating on watch or review because it did not revise or affirm the credit rating within fifteen calendar days, the NRSRO must include with the publication an explanation that the reason for the action is the discovery that the credit rating was influenced by a conflict of interest.

The Commission is adopting the requirement in proposed paragraph (c)(2) of Rule 17g–8 substantially as proposed, but is redesignating it as paragraph (c)(1) of Rule 17g–8.[493] As adopted, the final rule requires that the NRSRO's policies and procedures under section 15E(h)(4)(A) of the Exchange Act be reasonably designed to ensure that the NRSRO will promptly determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it is no longer influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings.[494]

In the proposing release, the Commission asked whether the rule should be more prescriptive in terms of how an NRSRO would be required to determine whether to revise a credit rating by, for example, requiring an NRSRO to apply a *de novo* review of the rated obligor, security, or money market instrument using its rating procedures and methodologies.[495] Three NRSROs stated that the Commission should not prescribe more requirements for how NRSROs must determine whether a rating must be revised.[496] Two of these NRSROs stated that doing so may constitute regulating the substance of the credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings in contravention of section 15E(c)(2) of the Exchange Act,[497] and one of these NRSROs stated that the NRSRO ''should retain the flexibility to conduct whatever analysis a particular situation calls for.'' [498] On the other hand, one commenter stated that the Commission should be ''more prescriptive in this area'' and ''require the NRSRO to apply *de novo* its procedures and methodologies'' to determine whether a credit rating must be revised.[499] Another commenter stated that it is ''essential'' to require the NRSRO to ''conduct a *de novo* analysis of the credit rating using its methodologies and procedures.'' [500] In implementing section 15E(h)(4)(A)(i) of the Exchange Act through Rules 17g–8 and 17g–7, the Commission has sought to strike an appropriate balance between adopting a measure designed to address the employment conflict with the prohibition in section 15E(c)(2) of the Exchange Act under which the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[501] To strike this balance, the Commission believes that the rule should provide flexibility for the NRSRO to make this determination by applying procedures and methodologies that it designs to ensure that the credit rating is no longer influenced by the conflict of interest. Such procedures and methodologies could but may not necessarily require a *de novo* review of the rated obligor or obligation.

Two NRSROs stated that a conflict of interest may impact a number of other credit ratings, which would need to be revised and published.[502] Accordingly, one of these NRSROs suggested that the words ''immediately'' and ''promptly'' in the proposed requirements be replaced with ''as soon as practicable'' given that certain procedures may have to be followed.[503] The other NRSRO suggested that paragraph (c)(2) of proposed Rule 17g–8 include a ''reasonableness standard'' for the term ''promptly.'' [504] A third NRSRO suggested that a ''reasonable amount of time'' be given to the NRSRO to ''investigate the conflict and determine whether the rating must be revised.'' [505]

In response, the Commission believes it is important that the NRSRO not delay completing the process that it will use to determine whether the credit rating must be revised to ensure that it is solely a product of the NRSRO's procedures and methodologies for determining credit ratings (that is, not influenced by the conflict of interest). The longer the determination takes the longer that investors and other users of credit ratings will remain unaware of the important fact that the credit rating was influenced by a conflict. Consequently, the final rule retains the requirement that the NRSRO must ''promptly determine'' whether a credit rating must be revised.[506] The Commission recognizes that the amount of time necessary to complete the determination will depend on facts and circumstances, including the number of credit ratings impacted, the degree to which the conflict influenced the credit ratings, and the complexity of the rating procedures and methodologies used to determine the credit ratings.[507] However, the Commission expects that in each instance, the NRSRO will complete the process promptly in order to satisfy the ''promptly determine'' requirement and that the process, in many cases, will be expedited by the fact that much of the work to determine the impact, if any, and, if necessary, revise the credit rating would already be accomplished at the time an NRSRO determines that the credit rating was in

[491] *See* paragraph (c)(2)(ii) of Rule 17g–8. *See also Morningstar Letter* (suggesting that the Commission ''provide a timeframe for the NRSRO to revise and affirm the rating when a conflict arises'' before requiring it to place the credit rating on credit watch).

[492] As discussed below in section II.G.1. of this release, the Commission is eliminating the requirement to publish the form containing the required information about the rating action when an NRSRO places a credit rating on watch or review.

[493] *See* paragraph (c)(1) of Rule 17g–8. The final rule modifies the proposal by re-designating paragraph (c)(2) as paragraph (c)(1) because the requirement to place a credit rating on credit watch, which would have been codified in paragraph (c)(1) under the proposal, is being eliminated.

[494] *See* paragraph (c)(1) of Rule 17g–8.

[495] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33432.

[496] *See DBRS Letter; Moody's Letter; S&P Letter.*

[497] *See Moody's Letter; S&P Letter.*

[498] *See DBRS Letter.*

[499] *See AFSCME Letter.*

[500] *See Better Markets Letter.*

[501] *See* 15 U.S.C. 78o–7(c)(2).

[502] *See Moody's Letter; S&P Letter.*

[503] *See Moody's Letter.*

[504] *See S&P Letter.*

[505] *See Morningstar Letter.*

[506] *See* paragraph (c)(1) of Rule 17g–8.

[507] *See Moody's Letter; Morningstar Letter; S&P Letter.*

fact influenced by a conflict. In such cases, the Commission would expect the revision or affirmation, as appropriate, to be issued promptly after the existence of the conflict was determined. The Commission notes that, as part of the annual examinations of each NRSRO, Commission staff reviews the policies of the NRSRO governing the post-employment activities of former staff of the NRSRO.

The Commission is adopting the requirements in proposed paragraph (c)(3) of Rule 17g–8 substantially as proposed, with technical modifications, and is redesignating it as paragraph (c)(2)(i) of Rule 17g–8.[508] As adopted, the final rule provides that the NRSRO must promptly publish, based on the determination of whether a current credit rating referred to in paragraph (c)(1) of Rule 17g–8 must be revised: (1) A revised credit rating, if appropriate, and include with the publication of the revised credit rating the information required by paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7; or (2) an affirmation of the credit rating, if appropriate, and include with the publication of the affirmation the information required by paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7.[509] As discussed below, the Commission also is adopting the corresponding disclosure requirements to accompany the publication of a revised credit rating and an affirmation of a credit rating in paragraphs (a)(1)(ii)(J)(*3*)(*i*) and (*ii*) of Rule 17g–7, respectively, with modifications in response to comments.

One commenter stated that the NRSRO should publish a revised credit rating or affirmation, as appropriate, ''as soon as practicable'' instead of ''promptly.'' [510] As discussed above, paragraph (c)(1) of Rule 17g–8, as adopted, requires the NRSRO to promptly determine whether a credit rating discovered through a look-back review to have been influenced by a conflict of interest must be revised so that it is no longer influenced by the conflict and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings. Having made the determination, paragraph (c)(2) of Rule 17g–8, as adopted, sets forth the next steps the NRSRO must take: Promptly publish a revised credit rating or an affirmation of the credit rating and provide users of the NRSRO's credit ratings information about the reasons for taking either action. These steps are an important component of the look-back review process. They are designed to ensure that the NRSRO promptly addresses any impact the conflict had on the credit rating and alerts the users of its credit ratings about the existence of the conflict and its resolution. As stated above, failing to act when a conflict has influenced a credit rating creates the risk that investors and other users of credit ratings will use a conflicted credit rating when making an investment or other credit-related decision. Thus, paragraph (c)(2) of Rule 17g–8, as adopted, retains the requirement that the NRSRO must act promptly.

Commenters addressed whether the NRSRO should be required to publish a rating affirmation,[511] including whether such a requirement would constitute regulating the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings in contravention of section 15E(c)(2) of the Exchange Act.[512] The Commission does not expect (and the final rule does not require) an NRSRO to revise a credit rating in every circumstance in which an earlier rating action was influenced by a conflict of interest. Section 15E(h)(4)(A)(ii) of the Exchange Act provides that the NRSRO's policies and procedures shall be reasonably designed to, among other things, ensure that the NRSRO takes action to revise the credit rating ''if appropriate.'' [513] It is possible, for example, that in the period since the NRSRO published the conflicted credit rating, events unrelated to the conflict occurred that, when taken into account by the NRSRO's procedures and methodologies for determining credit ratings, would produce a credit rating at the same notch in the rating scale of the NRSRO as the credit rating that was influenced by the conflict.[514] A requirement that the NRSRO nonetheless revise the credit rating could interfere with the NRSRO's procedures and methodologies for determining credit ratings in that it would force the NRSRO to change the credit rating assigned to the obligor, security, or money market instrument to a different notch in the rating scale than would be the case if the credit rating were solely a product of the NRSRO's procedures and methodologies. Consequently, a mandatory revision requirement could, in effect, require the NRSRO to publish a credit rating that was not consistent with those procedures and methodologies. Accordingly, the final rule permits the NRSRO to publish an affirmation of the credit rating as an alternative to revising the credit rating, if appropriate. As discussed below, the Commission is requiring that an NRSRO publish an affirmation if the credit rating is not going to be revised because this will be the mechanism for disclosing the fact that a conflict at one time influenced the credit rating.

Commenters suggested that if the credit rating is not going to be revised there should not be a requirement to publish an affirmation.[515] One commenter stated that such a requirement constitutes regulating the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings in contravention of section 15E(c)(2) of the Exchange Act.[516] The Commission is not persuaded that the rule should require only the publication of a revised credit rating. If the rule did not require publication of an affirmation, the users of the NRSRO's credit ratings would not learn of the existence of the conflict. One of the goals of the registration and oversight program for NRSROs is to increase the transparency of their activities so that users of credit ratings can understand how they operate and can compare NRSROs. Disclosing the

[508] *See* paragraph (c)(2)(i) of Rule 17g–8. The final rule modifies the proposal by re-designating paragraph (c)(3) as paragraph (c)(2)(i) because, as discussed above, the requirement in paragraph (c)(1) of Rule 17g–8, as proposed, is being eliminated. In addition, the final rule modifies the proposal by revising the text to specifically reference the credit rating ''in paragraph (c)(1)''.

[509] *See* paragraph (c)(2) of Rule 17g–8.

[510] *See Moody's Letter.*

[511] *See DBRS Letter; S&P Letter.*

[512] *See Moody's Letter. See also* 15 U.S.C. 78o–7(c)(2).

[513] 15 U.S.C. 78o–7(h)(4)(A)(ii).

[514] For example, assume that nine months ago an analyst upgraded the credit rating assigned to an issuer's securities from the BBB to AA. The analyst leaves the NRSRO to work for the issuer. The analyst's new employment triggers a look-back review of the rating action upgrading the credit rating from BBB to AA pursuant to section 15E(h)(4)(A)(i) of the Exchange Act. The look-back review determines the credit rating should not have been upgraded from BBB to AA at that point in time and the analyst's action in upgrading the credit rating was influenced by the prospect of employment with the issuer. The NRSRO performs a *de novo* review of the credit rating assigned to the issuer by applying its procedures and methodologies for determining credit ratings. This review—as required by the procedures and methodologies—takes into consideration favorable financial results the issuer reported three months ago. Consequently, the process of re-rating the issuer's securities determines that the current credit rating should remain AA.

[515] *See, e.g., DBRS Letter* (supporting the proposed requirement that NRSROs ''promptly publish'' a revised rating, but stating that an affirmation of a credit rating that was influenced by a conflict of interest should be published ''only where the NRSRO has determined . . . to place the existing rating on credit watch''); *S&P Letter* (''we also support elimination of proposed Rule 17g–8(c)(3), to the extent that it would require NRSROs to publish ratings affirmations or other actions following a CreditWatch action required by proposed Rule 17g–8(c)(1).'').

[516] *See Moody's Letter.*

existence of the conflict with the publication of the revised credit rating or affirmation of the credit rating will provide users of the NRSRO's credit ratings with information to assess the adequacy of the NRSRO's policies, procedures, and controls designed to manage conflicts of interest and, more generally, the integrity of the NRSRO's credit rating process. Moreover, the required disclosures could be useful to users of the NRSRO's credit ratings in considering the potential risk of using the NRSRO's credit ratings to make investment or other credit-based decisions. Furthermore, in light of the prohibition against regulating the substance of credit ratings and rating procedures and methodologies in section 15E(c)(2) of the Exchange Act, the final rule has been carefully tailored to avoid interfering with the NRSRO's analytical process.[517] It is the NRSRO that will determine—using its own procedures and methodologies—whether the credit rating should be revised or affirmed. For these reasons, the Commission is adopting the requirement to publish an affirmation of the credit rating if the credit rating does not need to be revised.

The Commission is adopting the disclosure requirements in proposed paragraphs (a)(1)(ii)(J)(*3*)(*ii*) and (*iii*) of Rule 17g–7 with modifications and is redesignating them as paragraphs (a)(1)(ii)(J)(*3*)(*i*) and (*ii*).[518] Commenters raised concerns about the proposed requirement to disclose an estimate of the impact of the conflict on each applicable prior credit rating.[519] One commenter stated that estimating the impact of a conflict on a credit rating may ''create inefficiencies.'' [520] A second NRSRO stated that it may be ''unduly burdensome,'' delaying publication of a corrective rating.[521] A third NRSRO stated that it would be ''practically impossible'' to estimate the impact of a conflict on a prior rating and that the Commission should not require disclosure of the reasons for revising or affirming a credit rating.[522]

The Commission is persuaded by commenters that precisely quantifying the impact of the conflict could be difficult and that a more narrative disclosure would be appropriate. Consequently, the final amendments to Rule 17g–7 require the NRSRO to provide a description of the impact the conflict had on the prior rating action or actions.[523] The Commission expects the description to be sufficient to provide investors and users of credit ratings with insight into the nature of the impact the conflict had on the credit rating. The Commission recognizes that this may entail a degree of judgment on the part of the NRSRO in terms of estimating the degree of the impact.

In addition, the text of paragraph (a)(1)(ii)(J)(*3*)(*iii*) of Rule 17g–7, as proposed, has been modified to reflect that the requirement to place the credit rating on watch and make a corresponding disclosure has been eliminated.[524] As proposed, this paragraph would govern the disclosure to be made with an affirmation of the credit rating. The disclosure requirement was intended to follow the initial disclosure that would have been made when the credit rating was placed on watch. The initial disclosure would have included an explanation that the credit rating was placed on watch because of the discovery that the credit rating was influenced by a conflict of interest. Because this disclosure will not be required, the disclosure that accompanies an affirmation of a credit rating will need to include an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest.[525] This will provide context for why the NRSRO is issuing the affirmation.[526]

One commenter stated that the rule should require disclosure about the nature of the conflict.[527] In response, the Commission notes that the rule requires the NRSRO to include with a revised credit rating an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest.[528] Similarly, the rule requires an NRSRO to include with an affirmation of a credit rating an explanation that the credit rating was influenced by a conflict of interest.[529] The Commission agrees with the commenter that the disclosure should provide some context for these explanations. Consequently, the Commission is modifying the rule text from the proposal to provide that the explanation of the conflict to be made with a revision of a credit rating or an affirmation of a credit rating must include a description of the nature of the conflict.[530] For example, the description could disclose that a former employee was unduly influenced by the prospect of working for the issuer of the rated security and, as a consequence, did not adhere to the NRSRO's rating methodology in order to make the credit rating more favorable to the issuer.

Finally, two commenters stated that information regarding a credit rating influenced by a conflict of interest should be provided to former subscribers.[531] As discussed above, the disclosures are required to be made in the form to accompany a rating action under paragraph (a) of Rule 17g–7, as amended.[532] This form—as discussed below in section II.G.1. of this release—must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating that is the result or subject of the rating action.[533] This provision thereby accommodates both the issuer-pay business model in which rating actions generally are made publicly available and the subscriber-pay business model in which rating actions generally are made available to current subscribers only.[534] Consequently, if the NRSRO makes its rating actions available only to current subscribers, former subscribers will not have access to the form and the

[517] *See* 15 U.S.C. 78o–7(c)(2).

[518] *See* paragraphs (a)(1)(ii)(J)(*3*)(*i*) and (*ii*) of Rule 17g–7. Because the disclosure requirement with respect to placing a conflicted credit rating on credit watch is being eliminated, the final amendments modify the proposed rule text by re-designating paragraph (a)(1)(ii)(J)(*3*)(*ii*) as paragraph (a)(1)(ii)(J)(*3*)(*i*), and re-designating paragraph (a)(1)(ii)(J)(*3*)(*iii*) as paragraph (a)(1)(ii)(J)(*3*)(*ii*). Further, because paragraph (c)(3) of Rule 17g–8, as proposed, is being re-designated as paragraph (c)(2), the final amendments modify the references in paragraphs (a)(1)(ii)(J)(*3*)(*ii*) and (*iii*) of Rule 17g–7, as proposed, to refer to paragraph (c)(2) of Rule 17g–8. The final amendments modify the proposed rule text to make other minor changes to improve readability.

[519] *See DBRS Letter; Moody's Letter; S&P Letter.*

[520] *See S&P Letter.*

[521] *See DBRS Letter.*

[522] *See Moody's Letter.*

[523] *See* paragraphs (a)(1)(ii)(J)(*3*)(i) and (*ii*) of Rule 17g–7.

[524] *Id.*

[525] *Id.*

[526] A similar modification is not necessary for the disclosure that must accompany a revised credit rating because, as proposed, that disclosure would have needed to include an explanation that the reason for the action is the discovery that the credit rating was influenced by a conflict of interest, thus providing the necessary context. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541. The final amendments retain this disclosure requirement. *See* paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7.

[527] *See Better Markets Letter.*

[528] *See* paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7.

[529] *See* paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7.

[530] *See* paragraphs (a)(1)(ii)(J)(*3*)(*i*) and (*ii*) of Rule 17g–7.

[531] *See AFSCME Letter; DBRS Letter.*

[532] *See* paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7.

[533] *See* paragraph (a) of Rule 17g–7.

[534] *See* 15 U.S.C 78c(a)(61) (defining a *credit rating agency,* in pertinent part, as any person engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or a reasonable fee).

disclosure it contains about the conflict of interest. In considering the comments about disclosing the information to former subscribers, the Commission balanced the interest in providing users of credit ratings with information about a given NRSRO's credit ratings with the interest in promulgating rules that accommodate and integrate with the two predominant NRSRO business models. For example, since the final amendments to Rule 17g–7 require the disclosure to be made in the same manner as the disclosure of the credit rating that is the result or subject of the rating action, a requirement that the disclosure must be made to former subscribers (who normally would not have access to a rating action that was published after their subscription expired) would necessarily require a different process for the disclosure. For example, the disclosure could be made through publication on the NRSRO's Web site, but this method of disclosure may not be effective if former subscribers no longer view the Web site. Alternatively, the NRSRO could send the disclosure to former subscribers, but this could be burdensome and present practical difficulties. Because former subscribers are no longer using the NRSRO's credit ratings, the Commission believes at this time that it is not necessary to add a requirement that an NRSRO operating under the subscriber-pay model must make this disclosure to former subscribers.

2. Amendment to Rule 17g–2

The Commission proposed adding paragraph (a)(9) to Rule 17g–2 to require NRSROs to make and retain a record documenting the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of proposed Rule 17g–8.[535] As a result, the policies and procedures would need to be documented and the record documenting them would be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[536] One NRSRO stated that it ''supports the Commission's proposal to include look-back policies and procedures as records that an NRSRO must retain under Rule 17g–2(a)(9).'' [537] The Commission is adding paragraph (a)(9) to Rule 17g–2 as proposed.[538] This will provide a means for the Commission to monitor the NRSROs' compliance with section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8. The record must be retained until three years after the date the record is replaced with an updated record in accordance with the amendment to paragraph (c) of Rule 17g–2 discussed above in section II.A.2. of this release.[539]

3. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the amendments and new rule with respect to look-back reviews.[540] The baseline that existed before today's amendments and new rule was one in which section 15E(h)(4)(A)(i) of the Exchange Act, added by the Dodd-Frank Act, required NRSROs to establish, maintain, and enforce policies and procedures reasonably designed to ensure that the NRSRO conducts look-back reviews in any case in which an employee of a person subject to a credit rating of the NRSRO or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the NRSRO, was employed by the NRSRO and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the one-year period preceding the date an action was taken with respect to the credit rating.[541] The Commission staff found during its 2013 examinations of NRSROs that all NRSROs had established written policies and procedures to address the look-back requirement.[542] However, the staff found that two larger and six smaller NRSROs did not consistently, in the staff's view, conduct adequate look-back searches or did not have adequate policies governing the searches.[543]

Section 15E(h)(4)(A)(ii) provides that an NRSRO must establish, maintain, and enforce policies and procedures reasonably designed to ensure that the NRSRO will take action to revise the credit rating if appropriate, in accordance with such rules as the Commission shall prescribe.[544] Before today's amendments and new rule, if the NRSRO found, after conducting the look-back review, that the credit rating was influenced by a conflict, the NRSRO would have needed to ensure that the credit rating was determined in accordance with the procedures and methodologies the NRSRO uses to determine credit ratings. However, the NRSRO was not required to ''promptly'' determine whether the current credit rating must be revised or ''promptly'' publish a revised credit rating or an affirmation of the credit rating, as appropriate. Further, there was no requirement that the NRSRO disclose information about the existence of the conflict with the publication of a revised credit rating, affirmation of the existing credit rating, or placement of the credit rating on watch or review if the credit rating is not revised or affirmed within fifteen calendar days of the discovery that the credit rating was influenced by a conflict. Finally, an NRSRO was not required to make and retain a record documenting the policies and procedures required under section 15E(h)(4)(A).

The baseline that existed before today's amendments and new rule was one in which, pursuant to paragraph (c)(4) of Rule 17g–5, an NRSRO is prohibited from issuing or maintaining a credit rating where a credit analyst who participated in determining the credit rating is an officer or director of the person that is subject to the credit rating.[545] Also, section 15E(h)(1) of the Exchange Act and Rule 17g–5 require NRSROs to establish, maintain, and enforce written policies and procedures reasonably designed to address and manage any conflicts of interest that can arise from the business of the NRSRO.[546]

In addition, section 15E(h)(5)(A) of the Exchange Act requires NRSROs to report to the Commission any case in which a person associated with the NRSRO within the previous five years obtains employment with a rated entity or the issuer, underwriter, or sponsor of a rated instrument for which the NRSRO issued a credit rating during the twelve-month period prior to the employment if the employee was a senior officer of the NRSRO or participated, or supervised an employee that participated, in determining credit

[535] *See* section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[536] *See* 17 CFR 240.17g–2(c) through (f).

[537] *See DBRS Letter.*

[538] *See* paragraph (a)(9) of Rule 17g–2.

[539] *See* paragraphs (a)(9) and (c) of Rule 17g–2.

[540] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[541] *See* 15 U.S.C. 78o–7(h)(4)(A)(i).

[542] *See* 2013 Annual Staff Inspection Report, p. 22. The 2013 examinations generally focused on NRSRO activities for the period October 1, 2011 through December 31, 2012.

[543] *See* 2013 Annual Staff Inspection Report, pp. 22–23.

[544] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii).

[545] *See* 17 CFR 240.17g–5(c)(4).

[546] *See* 15 U.S.C. 78o–7(h)(1).

ratings for the new employer.[547] Section 15E(h)(5)(B) requires that the Commission make the reports publicly available.[548] The Commission received 244 of these reports between January 24, 2006 and December 31, 2013.[549] One academic study examined these transition reports for three NRSROs (Fitch, Moody's, and S&P), which submitted 167 of these reports during that period.[550] The study suggests that the credit ratings assigned to the future employer by the NRSRO employing the transitioning employee were more likely to be upgraded and less likely to be downgraded than the ratings assigned to that future employer by other NRSROs in the year prior to the transition.[551]

Relative to this baseline, the amendments and new rule should result in benefits. They are designed to require the NRSRO to evaluate whether a credit rating has been influenced by a conflict of interest and, if so, promptly address the conflicted credit rating. This could limit the potential risk that users of credit ratings might make investment or other credit-based decisions using incomplete, biased, or inaccurate information. As stated above, the disclosures also will increase transparency and provide users of NRSRO credit ratings with information to assess an NRSRO's ability to address conflicts and to compare NRSROs with respect to their ability to manage the conflicts. Further, the amendments and new rule—because they are designed to integrate with an NRSRO's existing policies and procedures for taking rating actions—could mitigate potential inefficiencies associated with the requirements. For example, the amendments and new rule are designed to work within the existing framework of an NRSRO's policies and procedures for taking rating actions but not to regulate the substance of the credit rating or the procedures and methodologies for determining credit ratings.

The records NRSROs must make and keep under the amendment to Rule 17g-2 will be used by Commission examiners to assess whether a given NRSRO's policies and procedures are reasonably designed and whether it appears that the NRSRO is complying with them. Recordkeeping requirements are integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[552] Compliance by an NRSRO with its policies and procedures for look-back reviews and the oversight exercised by the Commission may benefit users of credit ratings by mitigating conflicts of interest, which may increase the integrity and quality of credit ratings.

Relative to the baseline, the amendments and new rule relating to look-back reviews will result in costs for NRSROs. NRSROs will need to expend resources to establish, make a record of, enforce, and periodically review and update (if necessary) the procedures they establish pursuant to section 15E(h)(4)(A) of the Exchange Act to ensure they comply with paragraph (c) of Rule 17g–8. They also will need to develop and periodically modify processes and systems for ensuring that, if the look-back review determines that a conflict of interest influenced the credit rating, a revised credit rating or an affirmation of the credit rating is promptly published (as appropriate) along with the corresponding disclosures required under paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7, or that the credit rating is placed on watch or review if the credit rating is not revised or affirmed within fifteen calendar days of the discovery that the credit rating was influenced by a conflict of interest. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (c) of Rule 17g–8 will result in total industry-wide one-time costs to NRSROs of approximately $295,000 and total industry-wide annual costs to NRSROs of approximately $71,000.[553]

Relative to the baseline, the amendments to Rule 17g–2 prescribing retention requirements for the documentation of the policies and procedures will result in costs to NRSROs. NRSROs already have recordkeeping systems in place to comply with the recordkeeping requirements in Rule 17g–2 before today's amendments. Therefore, the recordkeeping costs of this rule will be incremental to the costs associated with these existing requirements. Specifically, the incremental costs will consist largely of updating their record retention policies and procedures and retaining and producing the additional record. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (a)(9) of Rule 17g–2 and the amendment to paragraph (c) of Rule 17g–2 will result in total industry-wide one-time costs to NRSROs of approximately $12,000 and total industry-wide annual costs to NRSROs of approximately $3,000.[554]

The amendments and new rule by increasing the scrutiny of the work of former analysts could potentially decrease the quality of credit ratings in circumstances where the subjective judgment of participants in the rating process can improve the quality of ratings. In particular, an NRSRO may establish credit rating methodologies that diminish the ability of analysts to exercise subjective judgment in order to minimize the chance that in exercising judgment an analyst may be influenced by this conflict, which, in turn, will trigger the requirements in the amendments and new rule, including the requirement to disclose the existence of the conflict. If the ability to apply subjective analysis is diminished, the credit ratings issued by an NRSRO may not benefit fully from the expertise of the analysts.

The amendments and new rule should have a number of effects related to efficiency, competition, and capital formation.[555] First, they could improve the quality of credit-related information. As a result, users of credit ratings may make more efficient investment decisions based on this higher-quality information. Market efficiency also could improve if this information is reflected in asset prices. Consequently, capital formation could improve as capital may flow to more efficient uses with the benefit of this enhanced information. Alternatively, the quality of credit ratings may decrease in certain circumstances if an NRSRO establishes credit rating methodologies that diminish the ability of participants in the rating process to exercise subjective judgment. In this case, the efficiency of investment decisions, market efficiency,

[547] *See* 15 U.S.C. 78o–7(h)(5)(A).

[548] *See* 15 U.S.C. 78o–7(h)(5)(B).

[549] The reports are available at *http://www.sec.gov/divisions/marketreg/nrsro_etr.htm.*

[550] *See* Jess Cornaggia, Kimberly J. Cornaggia, and Han Xia, *Revolving Doors on Wall Street* (2014), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150998.*

[551] These authors state that ''the difference between the ratings awarded by transitioning analysts and their benchmarks changes by an average of 0.23 notches during the last five quarters leading up to a transition.'' *Id.*

[552] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582.

[553] *See* section V.C. of this release (discussing implementation and annual compliance considerations). These costs are derived by monetizing internal hour burdens identified in the PRA analysis in section IV.D.7. of this release. The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.7. of this release.

[554] *See* section V.C. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[555] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

and capital formation may also be adversely impacted if lower quality information is reflected in asset prices, which may impede the flow of capital to efficient uses. These amendments also will result in costs, some of which may have a component that is fixed in magnitude across NRSROs and does not vary with the size of the NRSRO. Therefore, the operating costs per rating of smaller NRSROs may increase relative to that of larger NRSROs, which could create adverse effects on competition. As a result of these amendments, the barriers to entry for credit rating agencies to register as NRSROs might be higher for credit rating agencies, while some NRSROs, particularly smaller firms, may decide to withdraw from registration as an NRSRO.

There are a number of reasonable alternatives to the amendments and new rule, as adopted. First, the Commission could require that NRSROs immediately place on credit watch or review credit ratings that are determined by a look-back review to have been influenced by a conflict of interest (as was proposed). This alternative might further benefit users of credit ratings by alerting them sooner of conflicted credit ratings, limiting the potential risk that investors and users of credit ratings might make credit-based decisions using incomplete, biased, or inaccurate information, and thereby reduce the risk of mispricing due to the use of such incomplete, biased, or inaccurate information. It also might increase the incentives of NRSROs to develop and adhere to rating policies and procedures that further decrease the chance that conflicts of interest may influence credit ratings. The quality of credit ratings could increase as a result. This alternative also might decrease the quality of credit ratings in certain circumstances if it causes NRSROs to further reduce the use of subjective judgment in rating methodologies relative to the amendments and new rule. This alternative might also result in additional costs for NRSROs and users of credit ratings. First, the NRSRO would need to expend resources to develop, modify, and enforce policies and procedures ensuring that it immediately places such conflicted ratings on credit watch or review in addition to documenting and retaining these policies and procedures pursuant to the amendments to Rule 17g–2. Second, if a look-back review determined that a conflict influenced a credit rating, the NRSRO would need to expend resources to place the credit rating on watch or review. In addition, a number of academic studies indicate that both stock and bond prices of an issuer react adversely when credit ratings are placed on negative credit watch.[556] Therefore, this alternative might also create mispricing and confusion in the market. In particular, a placement of a credit rating on credit watch creates uncertainty in the credit rating that is resolved when the credit rating is either revised or affirmed. As a result of unfamiliarity, users of credit ratings might not react rationally in the short term to the uncertainty introduced by placements of credit ratings on credit watch resulting from look-back reviews. Consequently, this alternative might result in costs for issuers and on market participants who may make non-optimal investment decisions as a result of mispricing and confusion. Several comment letters discussed these potential adverse consequences.[557] However, these costs could arise if the NRSRO is required to place the credit rating on credit watch or review because it does not revise or affirm the credit rating within fifteen calendar days of the discovery of the conflict.

Other alternatives include those that would apply standards other than acting ''promptly'' with respect to the required timing of review and rating actions after a rating is determined to have been conflicted in a look-back review. For example, an NRSRO could be required to take these actions ''as soon as practicable'' rather than ''promptly,'' as suggested by one commenter.[558] However, the Commission believes it is important that the NRSRO not delay completing the process that it will use to determine whether the credit rating must be revised to ensure that it is solely a product of the NRSRO's procedures and methodologies for determining credit ratings and to publish a revised credit rating or an affirmation of the credit rating with the required disclosure of information about the existence of the conflict. The longer the NRSRO takes to complete these steps the greater the risk that investors and other users of credit ratings will rely on a conflicted credit rating when making an investment or credit-related decision. Consequently, the final amendment retains the requirement that the NRSRO must ''promptly determine'' whether a credit rating must be revised. At the same time, the Commission recognizes that the amount of time necessary to complete the determination will depend on the facts and circumstances, including the number of credit ratings impacted, the degree to which the conflict influenced the credit ratings, and the complexity of the rating methodologies used to determine the credit ratings.[559]

There are a number of other alternatives that would impose additional requirements for addressing a credit rating that is found through a look-back review to be influenced by a conflict of interest. One alternative suggested by commenters would be to require a *de novo* review of a credit rating that was determined through a look-back review to have been influenced by a conflict of interest.[560] This alternative could produce higher-quality credit ratings because a *de novo* review may provide a higher level of assurance that the credit rating is no longer influenced by the conflict as the entire rating process would be undertaken (this time without the conflicted analyst participating). In other words, *de novo* reviews may be more likely to result in credit ratings that are in accordance with the NRSRO's procedures and methodologies for determining credit ratings.

On the other hand, this alternative might impose further costs as NRSROs may be able to conduct a sufficient review without taking all the steps necessary to perform a *de novo* review (for example, some of the prior work could have been undertaken by a credit analyst that was not influenced by the conflict). Requiring a *de novo* review also may implicate the prohibition in section 15E(c)(2) of the Exchange Act under which the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[561] Further, this alternative might decrease the quality of credit ratings in certain circumstances if it caused NRSROs to eliminate or reduce the use of subjective judgment in rating procedures or methodologies as

[556] *See* Kee H. Chung, Carol Ann Frost, and Myungsun Kim, *Characteristics and Information Value of Credit Watches,* Financial Management 119–158 (2012); Sugato Chakravarty, Chiraphol N. Chiyachantana, & Yen Teik Lee, *On the Informativeness of Credit Watch Placements* (2009), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1252542;* Christina E. Bannier and Christian W. Hirsch, *The Economic Function of Credit Rating Agencies—What Does the Watchlist Tell Us?,* J. of Banking and Finance 3037–3049 (2010); John R.M. Hand, Robert W. Holthausen, Richard W. Leftwich, *The Effect of Bond Rating Agency Announcements on Bond and Stock Prices, J. of Finance* 733–752 (1992); Robert W. Holthausen and Richard W. Leftwich, *The Effect of Bond Rating Changes on Common Stock Prices,* J. of Fin. Economics 57–89 (1986).

[557] *See A.M. Best Letter; DBRS Letter; FSR Letter; Morningstar Letter; S&P Letter.*

[558] *See Moody's Letter.*

[559] *See Moody's Letter; Morningstar Letter; S&P Letter.*

[560] *See AFSCME Letter; Better Markets Letter.*

[561] *See* 15 U.S.C. 78o-7(c)(2).

discussed earlier. In addition, the amendments and new rule provide flexibility for the NRSRO to make this determination by applying procedures and methodologies that it designs to ensure that the credit rating is no longer influenced by the conflict of interest, which could include procedures and methodologies that require a *de novo* review of the rated obligor or obligation in all or certain cases.

Commenters also proposed alternatives which would make the amendments and new rule less restrictive. One alternative suggested by commenters would be to not require publication of an affirmation after a credit rating has been determined to have been conflicted in a look-back review if, for example, in the period since the NRSRO published the credit rating, events unrelated to the conflict occurred that, when taken into account by the NRSRO's procedures and methodologies for determining credit ratings, would produce a credit rating at the same notch in the rating scale as the credit rating that was influenced by the conflict.[562] This alternative could benefit NRSROs by reducing the potential costs associated with publishing affirmations such as the cost of composing text to appear in the NRSRO's publications and press releases. This alternative also might increase the quality of credit ratings in certain circumstances if not having to disclose the existence of the conflict caused NRSROs to allow greater use of subjective judgment in rating methodologies as discussed earlier.

However, as discussed above, if the rule did not require publication of an affirmation, it would result in costs as users of the NRSRO's credit ratings would not learn of the existence of the conflict. Disclosing the existence of the conflict with the publication of the revised credit rating or affirmation of the credit rating will provide users of the NRSRO's credit ratings with information to assess the adequacy of the NRSRO's policies, procedures, and controls designed to manage conflicts of interest and, more generally, the integrity of the NRSRO's credit rating process. Moreover, the required disclosures could be useful to users of the NRSRO's credit ratings in considering the potential risk of using the NRSRO's credit ratings to make investment or other credit-based decisions in comparison to other NRSROs.

[562] *See DBRS Letter; S&P Letter.*

D. Fines and Other Penalties

1. Final Rule

Section 932(a)(8) of the Dodd-Frank Act amended section 15E of the Exchange Act to add subsection (p), which contains four paragraphs: (1), (2), (3), and (4).[563] Section 15E(p)(4)(A) provides that the Commission shall establish, by rule, fines and other penalties applicable to any NRSRO that violates the requirements of section 15E of the Exchange Act and the rules under the Exchange Act.[564]

The Exchange Act already provides a wide range of fines, penalties, and other sanctions applicable to NRSROs for violations of any section of the Exchange Act (including section 15E) and the rules under the Exchange Act (including the rules under section 15E).[565] For example, section 15E(d)(1) of the Exchange Act provides that the Commission shall censure an NRSRO, place limitations on the activities, functions, or operations of an NRSRO, suspend an NRSRO for a period not exceeding twelve months, or revoke the registration of an NRSRO if, among other reasons, the NRSRO violates section 15E of the Exchange Act or the Commission's rules under the Exchange Act.[566] In addition, section 932(a)(3) of the Dodd-Frank Act amended section 15E(d) to explicitly provide additional potential sanctions.[567] First, it provided the Commission with the authority to seek sanctions against persons associated with, or seeking to become associated with, an NRSRO.[568] The Commission can censure such persons, place limitations on the activities or functions of such persons, suspend such persons for a period not exceeding one year, or bar such persons from being associated with an NRSRO.[569] Second, section 932(a)(3) of Dodd-Frank Act amended section 15E(d) to provide the Commission with explicit authority to temporarily suspend or permanently revoke the registration of an NRSRO in a particular class or subclass of credit ratings if the NRSRO does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.[570] Furthermore, sections 21, 21A, 21B, 21C, and 32 of the Exchange Act provide additional sanctions if an NRSRO violates the Exchange Act, including the self-executing provisions in section 15E of the Exchange Act, or rules under the Exchange Act.[571]

In the proposing release, the Commission stated its preliminarily belief that these provisions of the Exchange Act, as amended by the Dodd-Frank Act, provide a sufficiently broad range of means to impose fines, penalties, and other sanctions on an NRSRO for violations of section 15E of the Exchange Act and the rules under the Exchange Act.[572] For example, the fines, penalties, and sanctions applicable to NRSROs are similar in scope to the fines, penalties, and sanctions applicable to other registrants under the Exchange Act, such as broker-dealers. Moreover, since enactment of the Rating Agency Act of 2006, the Commission has not identified a specific need for a fine or penalty applicable to NRSROs not otherwise provided for in the Exchange Act. Consequently, in the proposing release, the Commission stated its preliminary belief that it would be appropriate at that time to defer establishing new fines or penalties in addition to those provided for in the Exchange Act.[573] However, the Commission stated that, in the future, it may use the authority in section 15E(p)(4)(A) of the Exchange Act if a specific need to do so is identified.[574]

For the foregoing reasons, to implement section 15E(p)(4)(A) of the Exchange Act, the Commission proposed to amend the instructions to Form NRSRO by adding Instruction

[563] *See* Public Law 111–203, 932(a)(8); 15 U.S.C. 78o–7(p)(1) through (4).

[564] *See* 15 U.S.C. 78o–7(p)(4)(A).

[565] *See* 15 U.S.C. 78o–7(d); 15 U.S.C. 78u; 15 U.S.C. 78u; 15 U.S.C. 78u–2; 15 U.S.C. 78u–3; 15 U.S.C. 78ff.

[566] *See* section 15E(d)(1)(A) through (F) of the Exchange Act (15 U.S.C. 78o–7(d)(1)(A) through (F)), as amended by the Dodd-Frank Act.

[567] *See* Public Law 111–203, 932(a)(3); 15 U.S.C. 78o–7(d).

[568] 15 U.S.C. 78o–7(d)(1).

[569] *Id.*

[570] *See* Public Law 111–203, 932(a)(3); 15 U.S.C. 78o–7(d)(2). Prior to this amendment, the Commission had the authority to suspend or revoke the registration of an NRSRO if it failed to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity. *See* section 15E(d)(5) of the Exchange Act (15 U.S.C 78o–7(d)(5)) before being amended by the Dodd-Frank Act, which re-designated paragraph (d)(5) of section 15E as paragraph (d)(1)(E) (15 U.S.C 78o–7(d)(1)(E)). Section 15E(d)(2) of the Exchange Act, however, provides explicit authority to target a suspension or registration revocation to a specific class or subclass of security. *See* 15 U.S.C. 78o–7(d)(2).

[571] *See* 15 U.S.C. 78o–7; 15 U.S.C. 78u; 15 U.S.C. 78u–1; 15 U.S.C. 78u–2; 15 U.S.C. 78u–3; 15 U.S.C. 78ff. In fact, the Dodd-Frank Act amended section 21B of the Exchange Act (15 U.S.C. 78u–2) to provide the Commission with the authority to assess money penalties in cease-and-desist proceedings under section 21C (15 U.S.C. 78u–3). *See* section 929P(a)(2) of the Dodd-Frank Act.

[572] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33433.

[573] *Id.*

[574] *Id.*

A.10.[575] This instruction would provide notice to credit rating agencies applying for registration as an NRSRO and to NRSROs that an NRSRO is subject to applicable fines, penalties, and other available sanctions set forth in sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act (15 U.S.C. 78o–7, 78u, 78u–1, 78u–2, 78u–3, and 78ff, respectively) for violations of the securities laws.[576]

Several comment letters addressed the proposal.[577] Most commenters generally supported the Commission's proposal to defer establishing new fines or penalties in addition to those currently provided for in the Exchange Act,[578] with one commenter specifically noting that it supports the Commission's proposal to add the new instruction to Form NRSRO.[579] Commenters stated that the fines, penalties, and other sanctions currently applicable to NRSROs under the Exchange Act are ''sufficient,'' [580] and that no other additional fines or penalties are necessary or warranted.[581] However, one commenter suggested that, while other sections of the Exchange Act provide for appropriate penalties and sanctions, it is not appropriate to consider suspension or revocation of an NRSRO's registration under section 21C of the Exchange Act.[582]

The Commission is adopting Instruction A.10 to Form NRSRO [583] as proposed. As stated above, certain commenters agreed that the fines, penalties, and other sanctions currently applicable to NRSROs under the Exchange Act are sufficient and that additional fines, penalties, or other sanctions are not necessary or appropriate. Consequently, commenters supported the Commission's proposal to add Instruction A.10 to Form NRSRO. While the Commission is adopting Instruction A.10 to Form NRSRO, it is deferring establishing new fines or penalties in addition to those provided for in the Exchange Act. The Commission may choose to use the authority to establish new fines or penalties in the future.[584]

2. Economic Analysis

The final amendments should not create any costs for NRSROs and may provide some benefits. It could benefit credit rating agencies applying for registration as NRSROs and NRSROs because it should notify them of the potential consequences of violating provisions of the Exchange Act and Commission rules.

E. Disclosure of Information About the Performance of Credit Ratings

Section 932(a)(8) of the Dodd-Frank Act added subsection (q) to section 15E of the Exchange Act.[585] Section 15E(q)(1) provides that the Commission shall, by rule, require NRSROs to publicly disclose information on the initial credit ratings determined by the NRSRO for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of credit ratings and compare the performance of credit ratings by different NRSROs.[586] Section 15E(q)(2) provides that the Commission's rules shall require, at a minimum, disclosures that:

- are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs; [587]
- are clear and informative for investors having a wide range of sophistication who use or might use credit ratings; [588]
- include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the NRSRO; [589]
- are published and made freely available by the NRSRO, on an easily accessible portion of its Web site, and in writing, when requested; [590]
- are appropriate to the business model of an NRSRO; [591] and
- require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the credit rating was influenced by any other business activities, that the credit rating was based solely on the merits of the instruments being rated, and that such credit rating was an independent evaluation of the risks and merits of the instrument.[592]

The rules in existence before today's amendments require NRSROs to publish two types of information about the performance of their credit ratings: (1) Performance statistics [593] and (2) rating histories.[594] The Commission proposed to implement the rulemaking mandated in section 15E(q) of the Exchange Act, in substantial part, by significantly enhancing the requirements for generating and disclosing this information by amending the instructions to Form NRSRO as they relate to Exhibit 1 and the disclosure of transition and default statistics, and by amending Rule 17g–1, Rule 17g–2, and Rule 17g–7 with respect to the disclosure of rating histories.[595] The Commission is adopting the amendments substantially as proposed, with modifications, in part, in response to comments received.

[575] *Id.* at 33552.

[576] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33552.

[577] *See A.M. Best Letter; DBRS Letter; Morningstar Letter; S&P Letter.*

[578] *See A.M. Best Letter; DBRS Letter; Morningstar Letter; S&P Letter.*

[579] *See DBRS Letter.*

[580] *See Morningstar Letter.*

[581] *See A.M. Best Letter; DBRS Letter; Morningstar Letter; S&P Letter.*

[582] *See A.M. Best Letter.* As discussed above in section II.B.3. of this release, the Commission has modified the final amendments relating to suspending or revoking an NRSRO's registration from the proposal so that it no longer incorporates section 21C of the Exchange Act.

[583] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33552.

[584] One commenter recommended the Commission re-propose the rules and, in doing so, invoke its authority under section 15E(p)(4) of the Exchange Act to seek fines and the disgorgement of profits when an NRSRO persistently ''issues non-standardized'' credit ratings. *See CFA II Letter.*

[585] *See* Public Law 111–203, 932(a)(8); 15 U.S.C. 78o–7(q).

[586] *See* 15 U.S.C. 78o–7(q)(1).

[587] *See* 15 U.S.C. 78o–7(q)(2)(A).

[588] *See* 15 U.S.C. 78o–7(q)(2)(B).

[589] *See* 15 U.S.C. 78o–7(q)(2)(C).

[590] *See* 15 U.S.C. 78o–7(q)(2)(D).

[591] *See* 15 U.S.C. 78o–7(q)(2)(E).

[592] *See* 15 U.S.C. 78o–7(q)(2)(F). As discussed in section II.G.4. of this release, the Commission is including this attestation requirement in the rule the Commission is adopting to implement section 15E(s) of the Exchange Act, which requires, among other things, that the Commission adopt rules requiring an NRSRO to generate a form to be included with the publication of a credit rating. *See* 15 U.S.C. 78o–7(s); paragraph (a)(1)(iii) of Rule 17g–7.

[593] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33434. This type of disclosure shows the performance of an NRSRO's credit ratings in the aggregate through statistics. Specifically, it provides the percent of credit ratings assigned to obligors, securities, and money market instruments in each category of credit rating in a rating scale (for example, AAA, AA, A, BBB, BB, B, CCC, CC, and C) that over a given time period were downgraded or upgraded to another credit rating category (''transition rates'') or classified as a default (''default rates''). The goal is to provide a mechanism for users of credit ratings to compare the performance statistics of credit ratings in each category across NRSROs.

[594] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33434. This type of disclosure shows the credit rating history of a given rated obligor, security, or money market instrument. Specifically, it shows the initial credit rating and all subsequent modifications to the credit rating (such as upgrades and downgrades) and the dates of such actions. The goal is to allow users of credit ratings to compare how different NRSROs rated an individual obligor, security, or money market instrument and how and when those ratings were changed over time. The disclosure of rating histories also is designed to provide ''raw data'' that can be used by third parties to generate independent performance statistics such as transition and default rates.

[595] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33433–33452.

1. Amendments to Instructions for Exhibit 1 to Form NRSRO

a. Proposal

Exhibit 1 is part of the registration application a credit rating agency seeking to be registered as an NRSRO must submit to the Commission and that an NRSRO must file with the Commission, keep up-to–date, and publicly disclose.[596] Section 15E(a)(1)(B)(i) of the Exchange Act requires that an application f or registration as an NRSRO include performance measurement statistics over short-term, mid-term, and long–term periods (as applicable).[597] The Commission implemented this requirement, in large part, through Exhibit 1 to Form NRSRO and the instructions for Exhibit 1.[598] Section 15E(b)(1)(A) of the Exchange Act provides that the performance measurement statistics must be updated annually in the annual certification required by section 15E(b)(2).[599] Paragraph (i) of Rule 17g–1 provides, among other things, that the NRSRO must make the annual certification publicly available within ten business days of furnishing the annual certification to the Commission.[600]

Before today's amendments, the instructions for Exhibit 1 required the applicant or NRSRO to provide performance statistics for the credit ratings of the applicant or NRSRO, including performance statistics for each class of credit ratings for which the applicant is seeking registration or the NRSRO is registered.[601] The classes of credit ratings for which an NRSRO can be registered are enumerated in the definition of *nationally recognized statistical rating organization* in section 3(a)(62) of the Exchange Act: (1) Financial institutions, brokers, or dealers;[602] (2) insurance companies;[603] (3) corporate issuers;[604] (4) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of Title 17, Code of Federal Regulations, ''as in effect on the date of enactment of this paragraph'');[605] and (5) issuers of government securities, municipal securities, or securities issued by a foreign government.[606]

In addition, the instructions required that the performance statistics ''must at a minimum show the performance of credit ratings in each class over 1-year, 3-year, and 10-year periods (as applicable) through the most recent calendar year-end, including, as applicable: Historical ratings transition and default rates within each of the credit rating categories,[607] notches, grades, or rankings used by the applicant or NRSRO as an indicator of the assessment of the creditworthiness of an obligor, security, or money market instrument in each class of credit rating.''

Before today's amendments, the instructions for Exhibit 1 did not prescribe the methodology an applicant or NRSRO must use to calculate the performance statistics or the format by which they must be disclosed; nor did the instructions limit the type of information that can be disclosed in Exhibit 1.[608] Consequently, as stated in

[596] In particular, section 15E(a)(1)(A) of the Exchange Act requires an applicant to furnish an application for registration to the Commission, in such form as the Commission shall require, by rule or regulation. *See* 15 U.S.C. 78o–7(a)(1)(A). Section 15E(a)(1)(B) of the Exchange Act identifies information that must be included in the application for registration. *See* 15 U.S.C. 78o–7(a)(1)(B)(i) through (x). The Commission implemented sections 15E(a)(1)(A) and (B) of the Exchange Act by adopting Form NRSRO. *See* Form NRSRO *available at http://www.sec.gov/about/forms/formnrsro.pdf; see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33569–33582. Section 15E(a)(3) of the Exchange Act provides that the Commission, by rule, shall require an NRSRO, upon being granted registration, to make the information and documents in its completed application for registration, or in any amendment to its application, publicly available on its Web site, or through another comparable, readily accessible means, except for certain information that is submitted on a confidential basis. *See* 15 U.S.C. 78o–7(a)(3). The Commission implemented this provision by adopting paragraph (i) of Rule 17g–1. *See* 17 CFR 240.17g–1(i); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33569. Section 15E(b)(1) requires an NRSRO to promptly amend its application for registration if any information or document provided therein becomes materially inaccurate; however, (as discussed below) certain information does not have to be updated and other information must be updated only on an annual basis. *See* 15 U.S.C. 78o–7(b)(1); 15 U.S.C. 78o–7(b)(1); 15 U.S.C. 78o–7(a)(1)(B)(ix). The Commission implemented this provision by adopting Form NRSRO and paragraph (e) of Rule 17g–1. *See* Form NRSRO; 17 CFR 240.17g–1(e). *See also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33567, 33569–33582.

[597] *See* 15 U.S.C. 78o–7(a)(1)(B)(i).

[598] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33628, 33634.

[599] *See* 15 U.S.C. 78o–7(b)(1) and (2). In particular, section 15E(b) of the Exchange Act provides that not later than ninety days after the end of each calendar year, an NRSRO shall file with the Commission an amendment to its registration application, in such form as the Commission, by rule, may prescribe: (1) Certifying that the information and documents in the application for registration continue to be accurate; (2) listing any material change that occurred to such information and documents during the previous calendar year; and (3) updating its credit ratings performance measurement statistics. *See* 15 U.S.C. 78o–7(b). The Commission implemented these provisions by adopting Form NRSRO and paragraph (f) of Rule 17g–1. *See* Instruction F to Form NRSRO; 17 CFR 240.17g–1(f). *See also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33567, 33569–33582.

[600] *See* 17 CFR.240.17g–1(i).

[601] As used throughout this release, the term category of a credit rating scale refers to a distinct level in a rating scale represented by a unique symbol, number, or score. For example, if a rating scale consists of symbols (for example, AAA, AA, A, BBB, BB, B, CCC, CC, and C), each unique symbol would represent a category in the rating scale. Similarly, if a rating scale consists of numbers (for example, 1, 2, 3, 4, 5, 6, 7, 8, and 9), each number would represent a category in the rating scale. Each category also represents a notch in the rating scale. In addition, some NRSRO rating scales attach additional symbols or numbers to the symbols representing categories in order to denote gradations within a category. For example, a rating scale may indicate gradations within a category by attaching a plus or a minus or a number to a rating symbol. For example, AA+, AA, and AA- or AA1, AA2, and AA3 would be three gradations within the AA category. If a rating scale has gradations within a category, each category and gradation within a category would constitute a notch in the rating scale. For example, the following symbols would each represent a notch in the rating scale in descending order: AAA, AA+, AA, AA-, A+, A, A-, BBB+, BBB, BBB-, BB+, BB, BB-, CCC+, CCC, CCC-, CC, C, and D. Furthermore, for the purposes of this release, changing a credit rating (for example, upgrading or downgrading the credit rating) means assigning a credit rating at a different notch in the rating scale (for example, downgrading an obligor assigned an AA rating to an AA- rating or an A+ rating).

[602] *See* 15 U.S.C. 78c(a)(62)(A)(i).

[603] *See* 15 U.S.C. 78c(a)(62)(A)(ii).

[604] *See* 15 U.S.C. 78c(a)(62)(A)(iii).

[605] *See* 15 U.S.C. 78c(a)(62)(A)(iv). The instructions for Exhibit 1 in existence before today's amendments broadened this class of credit rating to include a credit rating of any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. The intent of the instruction was to include in the class (and, therefore, in the performance statistics for the class) credit ratings for structured finance products that are outside the scope of the definition referenced in section 3(a)(62)(A)(iv) of the Exchange Act. *See* 15 U.S.C. 78c(a)(62)(A)(iv); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6458. As discussed below, the final amendments to the instructions for Exhibit 1 continue to use this broadened definition.

[606] *See* 15 U.S.C. 78c(a)(62)(A)(v). With respect to this class of credit ratings, the instructions for Exhibit 1 in existence before today's amendments required the applicant or NRSRO to provide performance measurement statistics for the following three subclasses (as opposed to the class as a whole): Sovereigns, U.S. public finance, and international public finance. As discussed below, the final amendments to the instructions for Exhibit 1 continue to require performance statistics for these subclasses.

[607] The transition rate is the percent of credit ratings at a given rating notch that transition to another specified rating notch over a given time period. Only credit ratings that were outstanding at the beginning of the time period are used in the calculation of the transition rate. Transition rates are generally used to measure the stability of credit ratings. The default rate is the percent of credit ratings at a given rating notch that have defaulted over a given time period. Only the credit ratings that were outstanding at the beginning of the time period are used in the calculation.

[608] When adopting Form NRSRO, the Commission explained that the instructions would not prescribe how NRSROs must calculate transition rates and default rates, noting that commenters had opposed a standard approach because NRSROs use different

a 2010 report of the GAO, NRSROs at that time used different techniques to produce performance statistics, which limited the ability of investors and other users of credit ratings to compare the performance of credit ratings across NRSROs.[609] In addition, several NRSROs included substantial amounts of information in Exhibit 1 about performance statistics, in addition to transition and default rates.

As noted above, NRSROs have produced and presented performance statistics in various ways. For example, for the calendar year 2009 performance statistics published by the NRSROs, some NRSROs used a ''single cohort approach'' to determine transition rates for their credit ratings.[610] Under this approach, an NRSRO would calculate transition rates for the most recent 1-year, 3-year, or 10-year period. For example, for its 2009 3-year transition rates for corporate issuers using the single cohort approach, an NRSRO would calculate transition rates for the class of corporate issuers for the period December 31, 2006 through December 31, 2009. Other NRSROs used an ''average cohort approach.'' [611] Under this approach, an NRSRO would calculate transition rates for multiple 1-year, 3-year, or 10-year periods and then average them. For example, for its 2009 3-year transition rates for corporate issuers using the average cohort approach, an NRSRO would calculate 3-year transition rates for the class of corporate issuers for multiple 3-year periods (for example, 3-year periods from 1981 to 2009) and then average them. Two NRSROs also published ''Lorenz curves,'' which are ''visual tools for assessing the accuracy of the rank ordering of creditworthiness that a set of ratings provides.'' [612] The GAO found that the variability in how NRSROs produce performance statistics limited the ability of investors and other users of credit ratings to compare the performance of credit ratings across NRSROs.[613]

As described by the GAO, the single cohort approach uses information from the most recent time periods, while the average cohort approach uses information from multiple time periods. The GAO stated that the single cohort approach may be useful to predict the performance of credit ratings under similar circumstances, while the average cohort approach may be useful to predict future transition rates under different economic and other conditions.[614] The GAO also found that ''[b]oth approaches are valid, depending on the needs of the user, but they do not yield comparable information.'' [615]

As indicated above, before today's amendments, the instructions for Exhibit 1 permitted NRSROs to use differing methods to calculate performance statistics and to include additional information in Exhibit 1. This created the potential that the presentation of information in the exhibits would be inconsistent across NRSROs. To address this issue and to implement section 15E(q) of the Exchange Act, the Commission proposed significant amendments to the instructions for Exhibit 1.[616] The proposed amendments would standardize the calculation of the performance statistics by requiring the applicant or NRSRO to calculate 1-year, 3-year, and 10-year transition and default rates for each applicable class and subclass of credit rating using a single cohort approach.[617] Further, the results would need to be presented in tabular form using a standardized format (a ''Transition/Default Matrix'').[618] Finally, the proposed amendments would specify that an applicant or NRSRO must not disclose information in the Exhibit that is not required to be disclosed.[619]

Under the proposal, the ''issuers of asset-backed securities'' class of credit ratings would be divided into the following subclasses: RMBS; CMBS; collateralized loan obligations (''CLOs''); CDOs; asset-backed commercial paper (''ABCP''); other asset-backed securities (''other ABS''); and other structured finance products (''other SFPs'').[620]

As stated above, under the proposal the applicant or NRSRO would be required to use the single cohort approach to calculate transition and default rates in order to determine the percent of credit ratings at each notch in the rating scale for a given class or subclass and for the applicable time period (one, three, or ten years) that were rated at the same notch or transitioned to another notch as of the end of the period, and the percent of credit ratings at each notch that were classified as a default or paid off, or had been withdrawn for reasons other than being classified as a default or paid off during the period.[621] For example, a matrix containing 3-year transition and default rates for the class of corporate issuers would disclose the number of credit ratings of corporate issuers the applicant or NRSRO had outstanding as of the period start date that is three years prior to the most recent calendar year end at each notch in the rating scale used by the applicant or NRSRO, the percent of those credit ratings that were rated at the same notch and the percent that transitioned to each other notch in the rating scale as of the end of the 3-year period, and the percent that were classified as a default or paid off, or had been withdrawn at any time during the 3-year period.[622]

The Commission proposed that an applicant or NRSRO must classify the credit rating assigned to an obligor, security, or money market instrument as a *default* if, during the applicable period, either: (1) The obligor failed to timely pay principal or interest due according to the terms of an obligation or the issuer of the security or money market instrument failed to timely pay principal or interest due according to the terms of the security or money market instrument; or (2) the applicant or NRSRO classified the obligor, security, or money market instrument as having gone into default using its own

methodologies to determine credit ratings. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574. The Commission stated that it intended to continue to consider the issue ''to determine the feasibility, as well as the potential benefits and limitations, of devising measurements that would allow reliable comparisons of performance between NRSROs.'' *Id.* The Commission took an incremental step toward standardizing the disclosure requirements in Exhibit 1 by amending the Form in 2009 to require an NRSRO to disclose transition and default rates for each class of credit rating for which it was registered and for 1-year, 3-year, and 10-year periods. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations* 74 FR at 6457–6459.

[609] *See, e.g.,* GAO, *Securities and Exchange Commission: Action Needed to Improve Rating Agency Registration Program and Performance Related Disclosures,* Report 10–782 (Sept. 2010) (''GAO Report 10–782''). Section 7 of the Rating Agency Act required the GAO to review the implementation of the Rating Agency Act of 2006. *See* Public Law 109–291, 7. Among other things, the report evaluated the performance-related NRSRO disclosures required by Commission rules under the Exchange Act. *See* GAO Report 10–782, pp. 24–46.

[610] *See* GAO Report 10–782, p. 28.

[611] *Id.*

[612] *Id.* at 25, note 38 (''[Lorenz curves] are considered useful for comparing the relative accuracy of different rating systems or the relative accuracy of a single rating system measured at different points of time for different cohorts.'').

[613] *Id.* at 27–37.

[614] *Id.* at 27.

[615] *Id.* at 27.

[616] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33434–33444. *See also* 15 U.S.C. 78o–7(q)(2)(A) (requiring that the Commission's rules require disclosures that are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs).

[617] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33556–33558.

[618] *See id.* at 33557.

[619] *See id.* at 33556–33557.

[620] *See id.* at 33556.

[621] *See id.* at 33556–33558.

[622] *See id.* at 33556–33558.

definition of default.[623] The applicant or NRSRO would need to classify an obligor, security, or money market instrument as having gone into default even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument at a notch above default in its rating scale on or after the event of default or withdrew the credit rating on or after the event of default.[624]

As proposed, an applicant or NRSRO would classify a credit rating assigned to an obligor, security, or money market instrument as *paid off* if, during the applicable period: (1) An obligor extinguished the obligation by paying in full all outstanding principal and interest due on the obligation according to the terms of the obligation (for example, because the obligation matured, was called, or was prepaid) and the applicant or NRSRO withdrew the credit rating because the obligation was extinguished; or (2) the issuer of a security or money market instrument extinguished its obligation with respect to the security or money market instrument by paying in full all outstanding principal and interest due according to the terms of the security or money market instrument (for example, because the security or money market instrument matured, was called, or was prepaid) and the applicant or NRSRO withdrew the credit rating for the security or money market instrument because the obligation was extinguished.[625]

The proposal would require the applicant or NRSRO to determine and disclose the number of obligors, securities, and money market instruments assigned a credit rating as of the period start date for which the applicant or NRSRO withdrew a credit rating at any time during the applicable time period for a reason other than that the credit rating assigned to the obligor, security, or money market instrument was classified as a default or paid-off.[626] The applicant or NRSRO would have to classify the credit rating assigned to the obligor, security, or money market instrument as withdrawn even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument after withdrawing the credit rating.[627]

Finally, the performance statistics would need to be presented in a ''Transition/Default Matrix'' in a format specified in the instructions, which included a sample matrix.[628]

b. Final Rule

Paragraph (1) of the instructions for Exhibit 1. The Commission is adopting paragraph (1) of the instructions for Exhibit 1 with two technical modifications from the proposal.[629] This paragraph requires the applicant or NRSRO to provide performance statistics for each class of credit ratings for which the applicant is seeking registration as an NRSRO or the NRSRO is registered and for the applicable subclasses of credit ratings listed in the paragraph.[630] Specifically, it requires the applicant or NRSRO to provide transition and default rates for 1-year, 3-year, and 10-year periods for each applicable class or subclass of credit rating.[631] It further requires the applicant or NRSRO to produce and present three separate transition and default statistics for each applicable class or subclass of credit rating; namely, for 1-year, 3-year, and 10-year time periods through the most recent calendar year end. In addition, the applicant or NRSRO must present the transition and default rates for each time period together in tabular form using a standard format (a ''Transition/Default Matrix'').[632]

Paragraph (1) of the instructions for Exhibit 1 specifies the classes and subclasses of credit ratings for which the applicant or NRSRO must produce Transition/Default Matrices, as applicable.[633] The identified classes reference the classes of credit ratings for which an NRSRO can be registered as enumerated in the definition of *nationally recognized statistical rating organization* in section 3(a)(62)(A) of the Exchange Act.[634] As was the case prior to today's amendments, the class of credit ratings enumerated in section 3(a)(62)(A)(iv) of the Exchange Act (issuers of certain asset-backed securities) is expanded to include a broader range of structured finance products than are within the scope of the definition in section 3(a)(62)(A)(iv).[635] Moreover, this class has been divided into the following subclasses: RMBS;[636] CMBS;[637] CLOs;[638] CDOs;[639] ABCP;[640] other

[623] *See id.* at 33557–33558.

[624] *See id.* at 33441–33442, 33557–33558.

[625] *See id.* at 33557–33558.

[626] *See* 15 U.S.C. 78o–7(q)(2)(C) (requiring that the disclosures include information for credit ratings withdrawn by the NRSRO).

[627] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33557–33558.

[628] *See id.* at 33557.

[629] *See* paragraph (1) of the instructions for Exhibit 1. One commenter stated that the phrase ''up-to-date Exhibit 1'' as used in proposed paragraph (1) of the instructions for Exhibit 1 was ambiguous. *See Moody's Letter.* Specifically, as proposed, paragraph (1) of the instructions for Exhibit 1 would provide that the performance measurement statistics must be updated yearly in the NRSRO's annual certification in accordance with section 15E(b)(1)(A) of the Exchange Act and paragraph (f) of Rule 17g–1 (in particular, a Form NRSRO with updated performance measurement statistics—the annual certification—must be filed with the Commission no later than ninety days after the end of the calendar year). The proposed instructions also would remind an NRSRO that, pursuant to paragraph (i) of Rule 17g–1, the annual certification with the updated performance measurement statistics must be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site within ten business days after the filing and that the NRSRO must make its ''up-to-date'' Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit. The Commission agrees with the comment and is replacing the phrase ''up-to-date Exhibit 1'' with the phrase ''most recently filed Exhibit 1'' as suggested by the commenter. Further, as proposed, the instructions referenced the ''classes and subclasses'' for which an applicant is seeking registration or for which an NRSRO is registered. As discussed in section II.I.1. of this release, a commenter noted that applicants and NRSROs do not register in ''subclasses'' of credit ratings. *See DBRS Letter.* Paragraph (1) of the instructions for Exhibit 1 has therefore been modified to make this clear. *See* paragraph (1) of the Instructions for Exhibit 1.

[630] *See* paragraph (1) of the instructions for Exhibit 1.

[631] *See id.*

[632] *See id.*

[633] *See id.*

[634] *Compare* 15 U.S.C. 78c(a)(62)(A)(i) through (v), *with* paragraphs (1)(A) through (E) of the instructions for Exhibit 1. As was the case prior to today's amendments, paragraph (1) of the instructions for Exhibit 1 divides the class of credit ratings enumerated in section 3(a)(62)(A)(v) of the Exchange Act (issuers of government securities, municipal securities, or securities issued by a foreign government) into three subclasses: Sovereign issuers; U.S. public finance; and international public finance. *See* paragraph (1) of the instructions for Exhibit 1.

[635] *See* paragraph (1) of the instructions for Exhibit 1; 15 U.S.C. 78c(a)(62)(A)(iv). As was the case before today's amendments, the instructions for Exhibit 1 broaden this class of credit rating to include a credit rating of any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction.

[636] The instructions provide that *RMBS* means a securitization of primarily residential mortgages. *See* paragraph (1)(D)(i) of the instructions for Exhibit 1.

[637] The instructions provide that *CMBS* means a securitization of primarily commercial mortgages. *See* paragraph (1)(D)(ii) of the instructions for Exhibit 1.

[638] The instructions provide that *CLO* means a securitization of primarily commercial loans. *See* paragraph (1)(D)(iii) of the Instructions for Exhibit 1.

[639] The instructions provide that *CDO* means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other ABS, and corporate bonds. *See* paragraph (1)(D)(iv) of the instructions for Exhibit 1.

[640] The instructions provide that *ABCP* means short term notes issued by a structure that securitizes a variety of financial assets (for example, trade receivables, credit card receivables), which secure the notes. *See* paragraph (1)(D)(v) of the instructions for Exhibit 1.

ABS;[641] and other structured finance products.[642]

Regarding the proposed seven subclasses of asset-backed securities, one commenter stated that the proposed degree of granularity ''would lead to the creation of sparse Transition/Default Matrices because many NRSROs do not have enough ratings for each proposed subclass to produce statistically significant results'' and that the class of ABS ratings should be divided into three classes: RMBS, CMBS, and ''Other ABS.''[643] Another NRSRO stated that dividing the class of credit ratings for structured finance products as proposed ''would tend to further increase market transparency'' and that the proposed subclasses are ''suitable,'' but that ''greater stratification may in some cases produce subclasses that are too small to generate meaningful statistics.''[644]

In response, the Commission notes that the reason for dividing the broad class of structured finance products into these subclasses is to provide investors and other users of credit ratings with more useful information about the performance of an NRSRO's structured finance credit ratings.[645] Each subclass has characteristics that distinguish it from the other subclasses. Consequently, the separation of performance statistics into these subclasses will provide users of credit ratings with additional information and allow them to compare the performance of the credit ratings in each subclass among the NRSROs. Further, the NRSRO must disclose the number of credit ratings outstanding in each subclass at the beginning of the period, so users of credit ratings will be aware of the number of credit ratings the statistics are based upon.

Paragraph (2) of the instructions for Exhibit 1. The Commission is adopting paragraph (2) of the instructions for Exhibit 1 with modifications.[646] This paragraph prescribes how the applicant or NRSRO must present the performance statistics and other required information in the Exhibit.[647] Specifically, it requires that the Transition/Default Matrices for each applicable class and subclass of credit ratings be presented in the order that the classes and subclasses are identified in paragraphs (1)(A) through (E) of the instructions for Exhibit 1.[648] In addition, the order of the Transition/Default Matrices for a given class or subclass must be: The 1-year matrix, the 3-year matrix, and then the 10-year matrix.[649] Further, if the applicant or NRSRO did not issue credit ratings in a particular class or subclass for the length of time necessary to produce a Transition/Default Matrix for a 1-year, 3-year, or 10-year period, it must explain that fact in the location where the Transition/Default Matrix would have been presented in the Exhibit.[650]

The instructions require the applicant or NRSRO to clearly define in Exhibit 1, after the presentation of all applicable Transition/Default Matrices, each symbol, number, or score in the rating scale used by the applicant or NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings in any Transition/Default Matrix presented in the Exhibit.[651] The instructions also require the applicant or NRSRO to clearly explain the conditions under which it classifies obligors, securities, or money market instruments as being in default.[652] Further, the instructions require that the applicant or NRSRO provide in Exhibit 1 the uniform resource locator (''URL'') of its corporate Internet Web site where the credit rating histories required to be disclosed pursuant to paragraph (b) of Rule 17g-7 would be located (in the case of an applicant) or are located (in the case of an NRSRO).[653]

Finally, as proposed, the instructions provided that the Exhibit must contain no performance statistics or information other than as described in, and required by, the instructions for Exhibit 1; except that the applicant or NRSRO would be permitted to provide, after the presentation of all required Transition/Default Matrices and other required disclosures, Internet Web site URLs where other information relating to performance statistics of the applicant or NRSRO is located.[654] This provision was intended to address the fact that some NRSROs included substantial amounts of information in Exhibit 1 about performance statistics, in addition to transition and default rates.[655] As discussed in more detail below, some commenters stated that there are advantages and limitations to using the single cohort approach as compared to the average cohort approach to calculate the performance statistics.[656] While the instructions for Exhibit 1 mandate the use of the single cohort approach, the Commission believes that, if an NRSRO also calculates performance statistics using the average cohort approach, it would be appropriate to disclose that fact in Exhibit 1 and provide an Internet URL where the performance statistics are located. This will provide additional information to evaluate the performance of the NRSRO's credit ratings. For these reasons, paragraph (2) of the instructions for Exhibit 1 has been modified to provide that Exhibit 1 must contain no performance measurement statistics or information other than as described in, and required by, the Instructions for Exhibit 1; except that

[641] The instructions provide that *other ABS* means a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans, or equipment leases. *See* paragraph (1)(D)(vi) of the instructions for Exhibit 1.

[642] The instructions provide that *other structured finance product* means a structured finance product that does not fit into any of the other subclasses of structured products. *See* paragraph (1)(D)(vii) of the instructions for Exhibit 1.

[643] *See DBRS Letter.*

[644] *See S&P Letter.*

[645] *See, e.g.,* GAO Report 10–782, p. 36 (observing that the various structured finance sectors have risk characteristics that vary significantly and, therefore, presenting performance statistics for the class as a whole ''may not be useful.''). During the recent crisis, NRSROs assigned credit ratings to RMBS and CDOs that performed far differently than credit ratings of some other types of securitizations. *See, e.g.,* S&P, *A Global Cross-Asset Report Card of Ratings Performance in Times of Stress* (June 8, 2010).

[646] *See* paragraph (2) of the instructions for Exhibit 1.

[647] *See id.*

[648] *See id.*

[649] *See id.*

[650] *See id.* For example, if an NRSRO is registered in the corporate issuer class but has been issuing credit ratings for only seven years in that class, it could not produce a 10-year Transition/Default Matrix for the class. Instead, the NRSRO must provide an explanation in the location where a 10-year Transition/Default Matrix would have been located (namely, after the 3-year matrix) that it had not been issuing credit ratings in that class for a sufficient amount of time to produce a 10-year Transition/Default Matrix.

[651] *See* paragraph (2) of the instructions for Exhibit 1. As discussed in section II.J.2. of this release, the Commission is implementing section 938(a)(2) of the Dodd-Frank Act through paragraph (b)(2) of Rule 17g-8, which requires an NRSRO to have policies and procedures reasonably designed to clearly define each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class of credit ratings for which the NRSRO is registered, including in Exhibit 1 to Form NRSRO. *See* Public Law 111–203, 938(a)(2); paragraph (b)(2) of Rule 17g–8.

[652] *See* paragraph (2) of the instructions for Exhibit 1.

[653] *See id.* As discussed below in section II.E.3. of this release, the Commission is amending Rule 17g–2 and Rule 17g–7 to enhance the rating histories disclosure requirements currently codified in Rule 17g–2. Among other things, the amendments relocate the credit rating history disclosure requirements from Rule 17g–2 to Rule 17g–7.

[654] *See* paragraph (2) of the instructions for Exhibit 1. To the extent that an NRSRO wishes to include other information that it believes is relevant for the purposes of drawing comparisons among credit ratings, the NRSRO could use an Internet Web site URL as a channel to provide the reader with additional information the NRSRO believes to be relevant.

[655] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33437.

[656] The advantages and limitations of the single cohort approach as compared to the average cohort approach are also discussed in section II.E.4. of this release.

the NRSRO may provide after the presentation of all required Transition/Default Matrices and other disclosures:

- A short statement describing the required method of calculating the performance measurement statistics in Exhibit 1 (the single cohort approach) and any advantages or limitations to the single cohort approach the NRSRO believes would be appropriate to disclose;
- A short statement that the NRSRO has calculated and published on an Internet Web site performance measurement statistics using the average cohort approach (if applicable), a description of the differences between the single cohort approach and the average cohort approach used to calculate the performance measurement statistics, and the Internet Web site URL where the performance measurements statistics calculated using the average cohort approach are located; and
- The Internet Web site URLs where any other information relating to performance measurement statistics of the NRSRO is located.[657]

Paragraph (3) of the instructions for Exhibit 1. The Commission is adopting paragraph (3) of the instructions for Exhibit 1 with modifications to make the disclosures more understandable to users of credit ratings.[658] This paragraph prescribes the format for a Transition/Default Matrix and includes a sample matrix.[659] Specifically, the prescribed format is designed to allow the applicant or NRSRO to show in the matrix the number of outstanding credit ratings in the class or subclass at each notch in the applicable rating scale at the period start-date, and the percent of those credit ratings that were rated at the same notch at the end of the period, the percent of those credit ratings that were rated at each different notch in the rating scale at the end of the period, and the percent of those credit ratings that were classified as a default or paid off or were withdrawn at any time during the period.[660] The prescribed format also is designed so that this information will be displayed in Exhibit 1 in a standard manner across the NRSROs to make it easier for users of NRSRO credit ratings and others to understand and compare the statistics.

One commenter suggested adding the heading ''Status of those ratings at the end of the time period'' to the Transition/Default Matrix because ''less sophisticated investors'' may not understand the term ''transition,'' and also suggested that it may be useful to highlight the box on the chart that corresponds with the credit rating being at the same notch at the end of the period as it was at the beginning.[661] The Commission agrees that these types of modifications could assist users to better understand the information disclosed in the Transition/Default Matrices. Consequently, the narrative instructions in paragraph (3) and the illustration of the sample Transition/Default Matrix have been modified to require highlighting of the cell in the matrix that corresponds with the credit rating being at the same notch at the end of the period as it was at the beginning and to require that the legends at the top of the matrix reflect that the first two columns represent the status of the credit ratings as of the period start date, the subsequent rating category columns represent the status of the credit ratings as of the period end date, and the *Default, Paid Off,* and *Withdrawn (other)* columns represent other outcomes that occurred during the period.[662]

As adopted, the sample Transition/Default Matrix in Figure 2 is the sample matrix provided in the instructions that the applicant or NRSRO must use as a model for its Transition/Default Matrices.

Figure 2
Corporate Issuers – 10-Year Transition and Default Rates
(December 31, 2000 through December 31, 2010)

Credit Ratings as of 12/31/2000		Credit Ratings as of 12/31/2010 (Percent)									Other Outcomes During 12/31/2000-12/31/2010 (Percent)		
Credit Rating	Number of Ratings Outstanding	AAA	AA	A	BBB	BB	B	CCC	CC	C	Default	Paid Off	Withdrawn (other)
AAA	10	50%	10%									40%	
AA	2000	1%	39%	12%	10%	8%	5%	4%			1%	19%	1%
A	4000		6%	34%	15%	10%	6%	4%	3%		2%	18%	2%
BBB	3600		2%	9%	28%	15%	10%	6%	5%	1%	4%	17%	3%
BB	1000			2%	4%	20%	14%	5%			2%	16%	37%
B	500			1%	3%	6%	20%	20%	15%		15%	15%	5%
CCC	300					4%	6%	15%	25%	20%	20%	4%	6%
CC	200						2%	8%	10%	38%	30%	2%	10%
C	160							2%	8%	10%	67%	1%	12%
Total	11,770												

Paragraph (4) of the instructions for Exhibit 1. The Commission is adopting paragraph (4) of the instructions for Exhibit 1 with the modifications discussed below.[663] This paragraph prescribes how the applicant or NRSRO must calculate the performance statistics and enter information into the Transition/Default Matrices.[664]

[657] *See* paragraph (2) of the instructions for Exhibit 1.

[658] *See* paragraph (3) of the instructions for Exhibit 1.

[659] *See id.*

[660] *See id.*

[661] *See CFA/AFR Letter.* One commenter also suggested that the Commission re-propose the rules and, in doing so, require NRSROs to present their performance statistics in a way that allows the public to compare and cross-reference different assets with the same credit rating. *See CFA II Letter.* The Commission believes the amendments being adopted today—by simplifying the presentation of the transition and default statistics and enhancing the rating history disclosures—will make it much easier for this kind of comparison to be made.

[662] *See* paragraph (3) of the instructions for Exhibit 1.

[663] *See* paragraph (4) of the instructions for Exhibit 1.

[664] *See id.*

Determining Start Date Cohorts

The final amendments (as was proposed) require the applicant or NRSRO to use the single cohort approach to calculate the transition and default rates.[665] One NRSRO stated that the single cohort approach is a ''reasonable approach'' and ''is the best approach as it is, in our opinion, the clearest way to calculate a meaningful default rate.'' [666] Another NRSRO requested that the Commission provide ''fuller background'' on decisions such as the determination to use the single cohort approach rather than an average cohort approach, with a description of potential benefits and limitations of those decisions.[667] Some commenters suggested that the Commission use an average cohort approach in lieu of or in addition to the single cohort approach.[668]

The Commission recognizes that different methods of measuring the performance of credit ratings may have unique advantages in terms of the information provided. As the GAO noted in comparing the single cohort approach and the average cohort approach, ''[b]oth approaches are valid, depending on the needs of the user, but they do not yield comparable information.'' [669] For example, the average cohort approach may provide better information about how credit ratings perform on average across a wider variety of economic conditions when compared to the single cohort approach.[670] However, the single cohort approach, because it does not average out performance over multiple cohorts, may more readily highlight how a given NRSRO's credit ratings have performed in more recent economic cycles.

Moreover, the single cohort approach is a simpler approach than the other methods noted by the GAO and, therefore, it may be easier for less sophisticated investors and other users of credit ratings to understand how the performance statistics were produced. As stated above, section (q)(2)(B) of the Exchange Act provides that the Commission's rules shall require that the performance measurement disclosures be clear and informative for investors having a wide range of sophistication.[671] The Commission notes that one commenter stated that the single cohort approach ''is the clearest way to calculate a meaningful default rate.'' [672] In addition, it will be easier for NRSROs to produce performance statistics using this approach as it requires simpler calculations and, consequently, will be less burdensome than the other approaches.

One commenter stated that the single cohort approach could lead to results that are ''significantly more volatile within the shorter time period, which will make interpreting those results more difficult.'' [673] This commenter stated further that ''the volatility impact will be amplified for NRSROs with fewer ratings, which could lead to bias against smaller NRSROs.'' [674] The Commission has balanced this concern with the need to prescribe an easy to understand method for calculating the performance statistics. As discussed below, the requirements in the instructions for Exhibit 1 provide for very transparent disclosures about the number of credit ratings in the start date cohort and in the cohort for each notch in the credit rating scale of a given class or subclass.[675] This transparency will provide persons reviewing the performance statistics with information to assess how the small number of credit ratings in a given cohort may have impacted the results.[676] Moreover, as discussed above, the Commission has modified paragraph (2) of the instructions for Exhibit 1 to permit an NRSRO to include a statement about any advantages or limitations to the single cohort approach the firm believes would be appropriate to disclose and, if applicable, a statement disclosing that the NRSRO has calculated performance statistics using the average cohort approach and identifying the Internet Web site URL where those statistics are located.

One commenter suggested that NRSROs should be required to calculate performance statistics using both the single cohort approach and the average cohort approach.[677] One of the objectives of the amendments is to make the disclosures in Exhibit 1 to Form NRSRO shorter and easier to understand. Mandating two sets of 1-year, 3-year, and 10-year performance statistics (one based on the single cohort approach and one based on the average cohort approach) for each class or subclass of credit ratings would substantially increase the length and complexity of the disclosure in Exhibit 1. In addition, it would increase the compliance burden. However, as discussed above, NRSROs that also calculate performance statistics using the average cohort approach can disclose that fact in Exhibit 1.

Finally, one commenter stated that NRSROs should be required to use the single cohort approach for credit ratings of corporate and sovereign debt and a ''static pool approach'' for credit ratings of structured finance products.[678] The Commission believes that doing so would make the disclosure unnecessarily complex and undermine the objective of making the performance statistics clear and informative for investors having a wide range of sophistication.[679]

For all the reasons discussed above, the final amendments require NRSROs to produce the performance statistics using the single cohort approach.[680] However, in response to comments, the Commission is modifying the requirement with respect to identifying the credit ratings that must be included in a start-date cohort. Several commenters addressed the proposed requirement that a start-date cohort consist of the obligors, securities, and money market instruments in the applicable class or subclass of credit ratings that were assigned a credit rating as of the beginning of the period. One NRSRO stated that ''mixing units of study,'' consisting of obligors, securities, and money-market instruments ''can create mismatched data and potentially double counting.'' [681] Similarly, another NRSRO recommended that, except for the structured finance class of credit

[665] *See id.*

[666] *See S&P Letter.* This commenter also stated that a better way to measure the performance of rating systems ''that do not define their ratings in terms of target default and transition rates'' is ''a measure of rank-ordering power, such as the Gini coefficient.''

[667] *See Kroll Letter.*

[668] *See DBRS Letter* (advocating use of the average cohort approach); *CFA/AFR Letter* (advocating using both approaches).

[669] *See, e.g.,* GAO Report 10–782, p. 28.

[670] *See* section II.E.4. of this release (discussing in more detail the relative advantages of the single and average cohort approaches).

[671] *See* 15 U.S.C. 78o–7(q)(2)(B).

[672] *See S&P Letter.*

[673] *See DBRS Letter.*

[674] *See id.*

[675] *See* paragraph (4)(A) of the instructions for Exhibit 1 (requiring the applicant or NRSRO to enter into the second column of the Transition/Default Matrix the number of credit ratings in the start-date cohort for each notch in the rating scale). This disclosure is illustrated in the first and second columns of the Sample Transition/Default Matrix in Figure 2 (above).

[676] For example, if the outcome for a notch with ten credit ratings is that five were classified as a default during the period, the default rate reflected on the Transition/Default Matrix for that notch would be 50%. Similarly, if the outcome of a notch with 5,000 credit ratings is that 2,500 were classified as a default during the period, the default rate for that notch would be 50% as well. Investors and other users of credit ratings might conclude that 2,500 credit ratings being classified as defaulting during the period reflects significantly worse performance than five credit ratings being classified as defaulting during the period.

[677] *See CFA/AFR Letter.*

[678] *See TradeMetrics Letter.*

[679] *See* 15 U.S.C. 78o–7(q)(2)(B).

[680] *See* paragraph (4) of the instructions for Exhibit 1.

[681] *See Kroll Letter.*

ratings, the rule should require calculating a senior credit rating for a given issuer and using that rating in the construction of the cohort, as a single issuer can have many issuances, and including each one in the cohort may skew the performance statistics.[682] A third NRSRO stated that for the structured finance category of credit ratings, ''the obligations/issues should be included in the start-date cohorts'' because ''those transactions do not have obligors in a traditional sense . . .''[683] A fourth NRSRO agreed, stating that ''the start-date cohorts should be comprised of obligors for corporate ratings and securities lines for the various subclasses of structured finance ratings.''[684]

The Commission agrees with these comments and has modified the instructions. The final amendments provide that, to determine the number of credit ratings outstanding as of the period start date for all classes of credit ratings other than the class of issuers of asset-backed securities, the applicant or NRSRO must: (1) Identify each obligor that the applicant or NRSRO assigned a credit rating to as an entity where the credit rating was outstanding as of the period start date; (2) identify each additional obligor that issued securities or money market instruments that the applicant or NRSRO assigned credit ratings to where the credit ratings were outstanding as of the period start date; and (3) include in the start-date cohort only credit ratings assigned to an obligor as an entity, or, if the obligor is not assigned a credit rating as an entity, the credit rating of the obligor's senior unsecured debt.[685] All other credit ratings outstanding as of the period start date assigned to securities or money market instruments issued by the obligor must be excluded from the start-date cohort.[686] For the class of issuers of asset-backed securities, the start-date cohort (as was proposed) must consist of credit ratings that the applicant or NRSRO assigned to all securities or money market instruments in the class where the credit ratings were outstanding as of the period start date, excluding expected or preliminary credit ratings.[687]

Finally, as proposed, the start date cohort for all classes of credit ratings must exclude credit ratings that the applicant or NRSRO classified as in default (using its own definition of *default*) as of the period start-date (and, as discussed above, expected or preliminary credit ratings).[688] As explained in the proposing release, the Transition/Default Matrices should not include credit ratings of obligors, securities, and money market instruments the applicant or NRSRO has classified as in default because the firm is no longer assessing the relative likelihood that the obligor, security, or money market will continue to meet its obligations to make timely payments of principal and interest as they come due (that is, not default on its obligations).[689] Consequently, as long as the obligor, security, or money market instrument continues to be classified as in default there is no credit rating performance to measure. However, if the credit rating is upgraded from the default category because, for example, the obligor emerges from a bankruptcy proceeding, the obligor's credit rating will need to be included in a Transition/Default Matrix that has a start date after the upgrade.[690]

After determining the credit ratings in the start-date cohort, the applicant or NRSRO must determine the number of credit ratings in the start-date cohort for each notch in the rating scale used for the class or subclass as of the period start date.[691] The final step is to enter

[682] *See Moody's Letter.*

[683] *See S&P Letter.*

[684] *See DBRS Letter.*

[685] *See* paragraph (4)(A) of the instructions for Exhibit 1.

[686] *See id.* For example, assume an obligor is assigned a credit rating of AA as an entity, and also has outstanding senior unsecured debt that is also rated AA and subordinated debt that is rated BBB, meaning there are a total of three credit ratings associated with the obligor. Under the final amendments, the obligor's credit rating as an entity must be included in the start-date cohort, and the credit ratings of the obligor's senior unsecured debt and subordinated debt must be excluded. Alternatively, if the obligor in the above example is not assigned a credit rating as an entity, the credit rating of the obligor's senior unsecured debt must be included in the start-date cohort and the credit rating of the obligor's subordinated debt must be excluded.

[687] *See* paragraph (4)(A) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33438. For example, assume a structured finance issuer has ten tranches of securities and the NRSRO has assigned credit ratings to six of the tranches. All six credit ratings must be included in the start-date cohort. As stated, ''expected'' or ''preliminary'' credit ratings must be excluded from the start-date cohort. These types of credit ratings most commonly are issued by an NRSRO with respect to a structured finance product at the time the issuer commences the offering and typically are included in pre-sale reports. Expected or preliminary credit ratings may include a range of credit ratings, or any other indications of a credit rating prior to the assignment of an initial credit rating for a new issuance. Consequently, they should be excluded from the start date cohort since the issuance of the initial credit rating is the first formal expression of the NRSRO's view of the relative creditworthiness of the obligor, security, or money market instrument.

[688] *See* paragraph (4)(A) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33438–33439. The determination of whether the credit rating of the obligor, security, or money market instrument should be excluded from the start-date cohort would be based on the definition of *default* used by the applicant or NRSRO. As discussed below, in determining the outcome of a credit rating assigned to an obligor, security, and money market instrument during the applicable time period covered by a Transition/Default Matrix, the applicant or NRSRO will need to use the standard definition of *default* in paragraph (4)(B)(iii) of the instructions for Exhibit 1 (as opposed to its own definition). The use of a standard definition of *default* to determine the outcome of a credit rating during the applicable time period could result in a credit rating of an obligor, security, or money market instrument being included in the start-date cohort that, as of the start date, would be classified as in default under the standard definition of *default* in paragraph (4)(B)(iii). This is because the applicant or NRSRO may not have classified the obligor, security, or money market instrument as in default as of the start date if it uses a definition of *default* that is narrower than the standard definition in paragraph (4)(B)(iii). In this case, the credit rating of the obligor, security, or money market instrument should be included in the start-date cohort since the applicant or NRSRO, as of the start date, had assigned it a credit rating representing a relative assessment of the likelihood of default (rather than a classification of default) on the start date. Thus, the performance of the applicant or NRSRO in rating that obligor, security, or money market instrument should be incorporated into the default rate shown on the Transition/Default Matrix.

[689] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33438–33439. This does not mean that the obligor, security, or money market instrument will never be reflected in default rates. For example, assume that as of the date ten years prior to the most recently ended calendar year-end an obligor in the corporate issuer class was assigned a credit rating of BBB. This credit rating will be included in the start-date cohort for the 10-year Transition/Default Matrix and grouped with the other BBB credit ratings. Further, assume that during the first seven years of the 10-year period, the credit rating of the obligor was downgraded from BBB to BB (in year two), from BB to B (in year five) and from B to CCC (in year seven). Having an outstanding credit rating of CCC in year seven, the obligor's credit rating will be included in the start-date cohort for the 3-year Transition/Default Matrix and grouped with the other CCC credit ratings. Finally assume the obligor defaults in year 8. For the purposes of the 10-year and 3-year Transition/Default Matrices, the obligor's credit rating will need to be classified as having defaulted and be included in the default rates calculated for those matrices. However, because the obligor will be in default as of the period start date for the 1-year Transition/Default Matrix, it will not be included in the start-date cohort for that matrix.

[690] *See* paragraph (4)(A) of the instructions for Exhibit 1. For example, assume an obligor was classified as in default by the NRSRO as of the start date for the 10-year Transition/Default Matrix. The obligor's credit rating would be excluded from the start-date cohort for the matrix. Assume further that two years later the obligor emerged from a bankruptcy proceeding after a restructuring. At that point in time, the NRSRO upgraded the obligor from the default category by assigning it a credit rating of BBB. Assume that three years later the NRSRO upgraded the obligor's credit rating from BBB to A– and that it retained that rating for the next five years. In this case, the obligor must be included in the start-date cohorts for the 1-year and 3-year Transition/Default Matrices.

[691] *See* paragraph (4)(A) of the instructions for Exhibit 1. For the class of credit ratings in the Sample Transition/Default Matrix in Figure 2, this would mean determining how many credit ratings in the start-date cohort were assigned a credit rating of AAA, AA, A, BBB, BB, B, CCC, CC, and C as of

these amounts, as well as the total number of credit ratings in the start-date cohort, in the second column of the Transition/Default Matrix.[692]

Calculating Transition and Default Statistics

Paragraph (4)(B) of the instructions for Exhibit 1 prescribes how the applicant or NRSRO must calculate the performance statistics and enter the results into the Transition/Default Matrices.[693] More specifically, the instructions provide that each row representing a credit rating notch in the Transition/Default Matrix must contain percentages indicating the credit rating outcomes as of the period end date for all the credit ratings in the start-date cohort at that notch as of the period start date.[694] The instructions also provide that the percentages in a row must add up to 100%.[695] The final amendments (as was proposed) identify five potential outcomes for a credit rating in the start-date cohort: (1) It is assigned the same credit rating as of the period end date; (2) it is assigned a different credit rating as of the period end date; (3) it was classified as a default at any time during the period; (4) it was classified as paid off at any time during the period; or (5) the applicant or NRSRO withdrew the credit rating at any time during the period for a reason other than that the credit rating assigned to the obligor, security, or money market instrument was classified as a default or paid off.[696] Because the percentages in a row must add up to 100%, each credit rating in a start-date cohort must be assigned one and only one outcome.[697]

The final amendments (as was proposed) require the applicant or NRSRO to determine the number of credit ratings in a given notch as of the period start date that were assigned the same credit rating as of the period end date.[698] The instructions require that: (1) This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date; (2) the percent must be entered in the column representing the same notch; and (3) the cell must be highlighted.[699] An obligor, security, or money market instrument could have the same credit rating as of the period end date because the credit rating did not change between the start date and the end date or the credit rating transitioned to one or more other notches in the rating scale during the relevant period but transitioned back to the start-date notch where it remained as of the period end date. Consequently, the instructions provide that, to determine this number, the applicant or NRSRO must use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.[700]

The final amendments (as was proposed) require the applicant or NRSRO to determine the number of credit ratings in a given notch at the period start date that were assigned a credit rating at each other notch in the rating scale as of the period end date.[701] The instructions require that: (1) These numbers must be expressed as percentages of the total number of credit ratings at that notch as of the period start date; and (2) the percentages must be entered in the columns representing each notch.[702] The instructions in the paragraph clarify that, to determine these numbers, the applicant or NRSRO would need to use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.[703]

The final amendments (as was proposed) require the applicant or NRSRO to determine the total number of credit ratings in a given notch at the period start date that were classified as a default at any time during the applicable time period.[704] The instructions require that: (1) This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date;

the start date. For example, the Sample Transition/Default Matrix in Figure 2 shows a total start-date cohort of 11,770 credit ratings. Within this cohort and as of the December 31, 2000 start date, ten were AAA credit ratings, 2000 were AA credit ratings, 4000 were A credit ratings, 3600 were BBB credit ratings, 1000 were BB credit ratings, 500 were B credit ratings, 300 were CCC credit ratings, 200 were CC credit ratings, and 160 were C credit ratings.

[692] *See* paragraph (4)(A) of the instructions for Exhibit 1.

[693] *See* paragraph (4)(B) of the instructions for Exhibit 1.

[694] *See id.* For example, in the Sample Transition/Default Matrix in Figure 2, cumulative outcomes would need to be calculated for: The cohort of ten credit ratings at the AAA notch; the cohort of 2000 credit ratings at the AA notch; the cohort of 4000 credit ratings at the A notch; the cohort of 3600 credit ratings at the BBB notch; the cohort of 1000 credit ratings at the BB notch; the cohort of 300 credit ratings at the CCC notch; the cohort of 200 credit ratings at the CC notch; and the cohort of 160 credit ratings at the C notch.

[695] *See* paragraph (4)(B) of the instructions for Exhibit 1. For example, in the Sample Transition/Default Matrix in Figure 2, the outcomes for the ten credit ratings in the AAA category are: 50% remained at the AAA category, 10% transitioned to the AA category, and 40% were paid off during the period.

[696] *See* paragraphs (4)(B)(i) through (v) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33557–33558.

[697] *See* paragraph (4)(B) of the instructions for Exhibit 1.

[698] *See* paragraph (4)(B)(i) of the instructions for Exhibit 1.

[699] For example, in the Sample Transition/Default Matrix in Figure 2, there were ten credit ratings in the AAA cohort as of the December 31, 2000 start date. Of these ten, five (or 50%) were assigned a credit rating of AAA as of the December 31, 2010 end date. Accordingly, 50% is entered in the AAA column.

[700] *See* paragraph (4)(B)(i) of the instructions for Exhibit 1. For example, assume an obligor was assigned a credit rating of BBB as of the start date of a 10-year Transition/Default Matrix. Assume further that three years after the start date, the credit rating was upgraded to AA but then eight years after the start date the credit rating was downgraded to A, and nine years after the start date the credit rating was downgraded to BBB where it remained as of the period end date. For the purpose of the 10-year Transition/Default Matrix, the outcome assigned to this obligor would be that it had the same credit rating as of the period end date. However, the transitions that occurred in years eight and nine would be reflected, respectively, in the 3-year and 1-year Transition/Default Matrices for the class or subclass of credit ratings. In other words, the credit rating history for this obligor would reflect volatility over the short term but stability over the long term.

[701] *See* paragraph (4)(B)(ii) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33557–33558.

[702] *See* paragraph (4)(B)(ii) of the instructions for Exhibit 1. For example, in the Sample Transition/Default Matrix in Figure 2, there were 2000 credit ratings in the AA cohort as of the December 31, 2000 start date. Of these 2000 credit ratings, as of the period end date: Twenty (or 1%) transitioned to the AAA notch; 780 (or 39%) were at the AA notch as of the period end date; 240 (or 12%) transitioned to the A notch; 200 (or 10%) transitioned to the BBB notch; 160 (or 8%) transitioned to the BB notch; 100 (or 5%) transitioned to the B notch; and eighty (or 4%) transitioned to the CCC notch. Accordingly, 1% is entered into the AAA column, 39% is entered into the AA column, 12% is entered into the A column, 10% is entered into the BBB column, 8% is entered into the BB column, 5% is entered into the B column, and 4% is entered into the CCC column.

[703] *See* paragraph (4)(B)(ii) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33557–33558. As explained above, the applicant or NRSRO must reflect in the transition rate for a given notch the credit ratings at that notch as of the period end date (rather than any other credit ratings during the period). For example, in the Sample Transition/Default Matrix in Figure 2, there were 2000 credit ratings at the AA notch as of December 31, 2000. As of December 31, 2010, 4% (or 80) of the credit ratings were at the CCC notch. The path by which these credit ratings arrived at the CCC notch as of the period end date could have been through a series of rating actions that occurred during the ten year period (*e.g.,* being downgraded to A, then BBB, then BB, then B, and then CCC). The credit ratings during the period, other than the CCC rating as of the period end, must not be reflected in the transition rate for the AA notch.

[704] *See* paragraph (4)(B)(iii) of the instructions for Exhibit 1; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33557–33558.

and (2) the percent must be entered in the *Default* column.[705]

As indicated, the applicant or NRSRO must treat the credit rating as a default if the credit rating was classified as a default at any time during the applicable period.[706] This is different from the calculations of the percent of credit ratings that stayed at the same notch or transitioned to a different notch in the rating scale that are based on the end-date status of the credit rating.[707] This period-long approach is designed to address concerns that an applicant or NRSRO might withdraw a credit rating that was classified as a default during the period in order to improve the default rates presented in the matrix.[708]

The Commission proposed a standard definition of *default* to be used to classify credit ratings as defaults for the purposes of calculating the default rates.[709] The Commission's goal in proposing a standard definition was to make the default rates calculated and disclosed by the NRSROs more readily comparable.[710] The Commission was concerned that if applicants or NRSROs use their own definitions of *default,* differences in those definitions could result in applicants and NRSROs inconsistently classifying credit ratings as in default.[711]

A number of commenters addressed the proposed standardized definition of *default.* One NRSRO stated that it agreed ''in principle that there may be value in having'' a standard definition ''so long as allowance is made for ratings that use a term such as 'default' in a non-standard way.'' [712] Another NRSRO stated that the proposed definition of *default* would fail to classify as defaults non-payment events on all instruments that legally constitute equity, including all securitization instruments that use ''pass-through'' trusts.[713] One NRSRO stated that requiring an NRSRO to classify a security as having gone into default when the NRSRO would not choose that classification under its definition ''comes dangerously close to the prohibition against regulating the substance of credit ratings.'' [714] This NRSRO also suggested that the proposed language be modified to clarify that the ''terms of an obligation'' include any grace periods within which an obligor or issuer might cure the default. Another commenter objected to the proposed definition of *default,* because by incorporating the definition used by the NRSRO it ''defeats the aim of promoting uniformity in the performance data for credit ratings.'' [715]

The Commission is adopting a standard definition of *default* with a modification from the proposal to broaden the definition to capture certain events identified by one commenter. As adopted, the final amendments provide that the applicant or NRSRO must classify a credit rating as a *default* if any of the following conditions are met:

- The obligor failed to timely pay principal or interest due according to the terms of an obligation during the applicable period or the issuer of the security or money market instrument failed to timely pay principal or interest due according to the terms of the security or money market instrument during the applicable period;
- The security or money market instrument was subject to a write-down, applied loss, or other realized deficiency of the outstanding principal amount during the applicable period; or
- The applicant or NRSRO classified the obligor, security, or money market instrument as having gone into default using its own definition of *default* during the applicable period.[716]

The first and second prongs of the definition comprise the standard definition of *default* that must be used by the applicant or NRSRO.[717] The second prong was added to the definition in response to a comment that the standard definition of *default* did not incorporate certain events generally viewed as defaults but that do not involve failure to timely pay principal or interest, such as events relating to securitization instruments that use pass-through trusts.[718] The legal terms of securitizations using pass-through trusts generally do not entitle the certificate holders to receive a greater amount than is collected by the trust. Therefore, failure to make payments to certificate holders in excess of the amounts collected would not constitute a payment default as contemplated under the first prong of the definition.

The second prong is meant to capture events—such as principal write-downs—that are generally viewed to be defaults on this type of security even though such events do not involve failure to timely pay principal or interest. For example, a securitization that uses a pass through trust may experience a write-down of its principal due to losses on underlying collateral backing the security, if those losses cause the security to become under-collateralized (*i.e.,* the principal balance of the collateral is less than the principal balance owed to the holders of the security). Such a write-down results in an immediate loss to the certificate holders since the principal balance against which interest is calculated has been reduced. This is usually considered a situation of default for this type of security. The second prong would also capture distressed exchanges of preferred stock and other hybrid instruments where the principal amount due to preferred security holders is reduced, resulting in a loss to the security holders.

In response to the comment questioning whether the Commission should prescribe a standard definition of *default,*[719] the Commission notes that one objective of a standard definition is

[705] *See* paragraph (4)(B)(iii) of the instructions for Exhibit 1. For example, in the Sample Transition/Default Matrix in Figure 2, there were 500 credit ratings in the B cohort as of the December 31, 2000 start date. Of these 500 credit ratings, seventy-five (or 15%) were classified as having gone into default during the period (December 31, 2000 through December 31, 2010). Accordingly, 15% is entered in the *Default* column.

[706] *See* paragraph (4)(B)(iii) of the instructions for Exhibit 1.

[707] *See* paragraphs (4)(B)(i) and (ii) of the instructions for Exhibit 1.

[708] *See* 15 U.S.C. 78o–7(q)(2)(C) (providing that the disclosures include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the NRSRO). The following provides an example of how withdrawals can be used to impact a default rate. In the Sample Transition/Default Matrix in Figure 2, the default rate over the 10-year period for the 3600 credit ratings at the BBB notch is 4%. This means that 144 credit ratings in this cohort were classified as a default during the period (144/3600 = 4%). If the default rate was determined by the credit rating assigned to these 144 obligors as of the period end date, the NRSRO could withdraw, for example, 100 of these credit ratings after default. Consequently, only forty-four of the credit ratings would be classified as a default as of the period end-date and, therefore, the default rate for the BBB notch would be approximately 1.2% instead of 4% (44/3600 = approximately 1.2%).

[709] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33440–33442, 33557–33558.

[710] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33441. *See also* 15 U.S.C. 78o–7(q)(2)(A) (providing that the Commission's rules shall require disclosures that are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs).

[711] *See, e.g.,* GAO Report 10–782, p. 38 (''NRSROs can differ in how they define default. Therefore, some agencies may have higher default rates than others as a result of a broader set of criteria for determining that a default has occurred.'').

[712] *See Kroll Letter.*

[713] *See S&P Letter.*

[714] *See DBRS Letter.*

[715] *See Better Markets Letter.*

[716] *See* paragraphs (4)(B)(iii)(a) through (c) of the instructions for Exhibit 1.

[717] *See* paragraphs (4)(B)(iii)(a) and (b) of the instructions for Exhibit 1.

[718] *See S&P Letter. See also Nationally Recognized Statistical Rating Organizations,* 76 FR at 33444 (soliciting comment on whether the proposed standard definition of *default* was sufficiently broad to apply to most, if not all, events commonly understood as constituting a default).

[719] *See DBRS Letter.*

to avoid a situation in which NRSROs use differing definitions of *default,* which, as stated above, could result in some NRSROs using materially narrower definitions in order to produce more favorable default rates. Moreover, consistent with paragraph (q)(2)(A) of section 15E of the Exchange Act, the Commission sought to establish a rule that requires disclosures that are comparable among NRSROs and allows users of credit ratings to compare the performance of credit ratings across NRSROs.[720] Further, the final amendments do not require that NRSROs use the standard definition of *default* in determining and monitoring credit ratings. The amendments only require that the standard definition be used in calculating credit rating default statistics. Consequently, the amendments do not regulate the substance of credit ratings or the procedures or methodologies an NRSRO uses to determine credit ratings.[721]

The third prong of the definition applies if the applicant or NRSRO classified the obligor, security, or money market instrument as having gone into default using its own definition of *default.*[722] In response to the comment questioning whether the rule should incorporate the applicant's or NRSRO's internal definition,[723] the objective is to supplement the standard definition to address a situation in which the applicant's or NRSRO's definition of *default* is broader than the standard definition. In this case, the NRSRO potentially could classify a rated obligor, security, or money market instrument as having gone into default during the time period even though, under the standard definition, the applicant or NRSRO would not need to make a default classification. As stated above, each credit rating in the start date cohort must be assigned one of five potential outcomes: (1) It is assigned the same credit rating as of the period end date; (2) it is assigned a different credit rating as of the period end date; (3) it was classified as a default at any time during the period; (4) it was classified as paid off at any time during the period; or (5) the applicant or NRSRO withdrew the credit rating at any time during the period for a reason other than the credit rating assigned to the obligor, security, or money market instrument was classified as a default or paid off. If the NRSRO has classified the credit rating as a default, there is no other outcome other than default that would be appropriate. It would make the Transition/Default Matrices unnecessarily complex to specify a sixth outcome: That the NRSRO has classified the credit rating as a default but the standard definition did not. The standard definition is broad (particularly with the modification discussed above) and should apply to most cases commonly understood as a default. Consequently, it should rarely happen that an applicant or NRSRO classifies a credit rating as a default and the standard definition does not.[724] For these reasons, the definition incorporates the applicant's or NRSRO's definition of default.

The Commission agrees with the comment suggesting that the ''terms of an obligation'' as used in the standard definition of *default* would include any grace period provided in those terms within which an obligor or issuer may cure the default.[725] Consequently, an applicant or NRSRO need not classify a credit rating as a default under the standard definition if the obligor is within a grace period specifically provided for under the terms and conditions of the obligation and subsequently ''cures the default.''

Finally, as proposed, the final amendments provide that a credit rating must be classified as a default even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument at a notch above default in its rating scale on or after the event of default or withdrew the credit rating on or after the event of default.[726] This is designed to make clear that the requirement that a credit rating classified as a default at any time during the period covered by the Transition/Default Matrix must be included in the default rate irrespective of any post-default rating actions taken by the NRSRO.

As discussed above, the Transition/Default Matrix must provide statistics on the number of credit ratings in the start-date cohort at a given rating notch that were classified as paid off at any time during the relevant period.[727] The instructions require that: (1) This amount be expressed as a percent of the total number of a credit ratings in the start date cohort as of the period start date; and (2) the percent be entered in the *Paid Off* column.[728] This classification must be made if the credit rating is classified as paid off at any time during the period.[729]

The proposed rule prescribed a standard definition of *paid off* with two prongs: (1) One applicable to obligors; and (2) one applicable to securities and money market instruments.[730] One commenter stated that the paid off classification as applied to obligors ''is not practicable'' because some obligors do not have rated debt outstanding and it would be difficult to track whether all obligations of an obligor are paid off.[731] Further, as discussed above, the determination of the start-date cohorts for classes of credit ratings other than the issuer of asset-backed securities class will require—under the modifications to the proposal—that the applicant or NRSRO use the credit ratings of obligors as entities and exclude the credit ratings of securities issued by the obligor unless the obligor does not have an entity credit rating (in which case only the credit rating of the obligor's senior unsecured debt must be included). A credit rating of an obligor as an entity does not relate to a single obligation with a maturity date but rather to the obligor's overall ability to meet any obligations as they come due. Therefore, an obligor credit rating normally cannot be classified as paid off since it does not reference a specific obligation that will mature.

For these reasons, the Commission has modified the standard definition of *paid off* to eliminate the prong that applied to entity ratings of obligors. The final amendments provide that the applicant or NRSRO must classify the credit rating as paid off only if the issuer of the security or money market instrument extinguished its obligation with respect to the security or money market instrument during the applicable time period by paying in full all outstanding principal and interest due

[720] *See* 15 U.S.C. 78o–7(q)(2)(A).

[721] *See* 15 U.S.C. 78o–7(c)(2); *DBRS Letter.*

[722] *See* paragraph (4)(B)(iii)(c) of the instructions for Exhibit 1.

[723] *See Better Markets Letter.*

[724] The Commission recognizes that supplementing the standard definition of *default* with the definition used by the applicant or NRSRO creates the potential for inconsistent classifications. However, any such impact will increase the number of defaults for purposes of calculating the performance statistics (that is, the definition used by the applicant or NRSRO cannot narrow the standard definition). The Commission believes that the incremental increase in the number of credit ratings classified as default using the internal definition would be minimal given the broad scope of the standard definition and, therefore, would not have a material impact on the overall default rates.

[725] *See DBRS Letter.*

[726] *See* paragraph (4)(B)(iv) of the instructions for Exhibit 1.

[727] *See* paragraph (4)(B)(iv) of the instructions for Exhibit 1.

[728] *Id.* For example, in the Sample Transition/Default Matrix in Figure 2, there were 200 credit ratings in the CC cohort as of the December 31, 2000 start date. Of these 200 credit ratings, four (or 2%) were classified as paid off during the period (December 31, 2000 through December 31, 2010). Accordingly, 2% is entered in the *Paid Off* column.

[729] *See* paragraph (4)(B)(iv) of the instructions for Exhibit 1.

[730] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33442, 33557–33558.

[731] *See S&P Letter.*

according to the terms of the security or money market instrument (for example, because the security or money market instrument matured, was called, or was prepaid); and the applicant or NRSRO withdrew the credit rating for the security or money market instrument because the obligation was extinguished.[732]

As discussed above, the Transition/Default Matrix must provide statistics on the number of credit ratings in the start-date cohort at a given rating notch that were withdrawn for a reason other than they were classified as a default or paid-off.[733] The instructions require that: (1) This amount be expressed as a percent of the total number of credit ratings at a given notch in the rating scale as of the period start date; and (2) the percent be entered in the *Withdrawn (other)* column.[734] The instructions provide that the applicant or NRSRO must classify the credit rating as withdrawn even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument after withdrawing the credit rating.[735]

There are legitimate reasons to withdraw a credit rating assigned to an obligor, security, or money market instrument. For example, an NRSRO might withdraw a credit rating because the rated obligor or issuer of the rated security or money market instrument stopped paying for the surveillance of the credit rating or because the NRSRO issued and was monitoring the credit rating on an unsolicited basis and no longer wanted to devote resources to monitoring it. However, an applicant or NRSRO could withdraw a credit rating to make its transition or default rates appear more favorable.[736] The Commission believes that the instructions with respect to withdrawn credit ratings permit NRSROs the flexibility to withdraw credit ratings for legitimate reasons, including those stated above, while helping to prevent manipulation that would make their transition or default rates appear more favorable.

The Commission did not propose that NRSROs be required to track obligors, securities, or money market instruments after they had withdrawn credit ratings assigned to them, but the Commission did seek comment on whether this should be required.[737] Two NRSROs stated that NRSROs should not be required to track withdrawn ratings after withdrawal.[738] The amendments, as adopted, do not require NRSROs to track the outcomes of obligors, securities, or money market instruments after the credit ratings assigned to them are withdrawn.

2. Amendments to Rule 17g–1

As discussed above, section 932(a)(8) of the Dodd-Frank Act added subsection (q) to section 15E of the Exchange Act.[739] Section 15E(q)(2)(D) of the Exchange Act provides that the Commission's rules must require an NRSRO to publish the information about the performance of its credit ratings and make it freely available on an easily accessible portion of its Internet Web site, and in writing when requested.[740] The Commission proposed to implement section 15E(q)(2)(D) by amending paragraph (i) of Rule 17g–1.[741]

Before today's amendments, paragraph (i) of Rule 17g–1 required an NRSRO to make its current Form NRSRO and information and documents submitted in Exhibits 1 through 9 publicly available on its Internet Web site or through another comparable, readily accessible means within ten business days of being granted an initial registration or a registration in an additional class of credit ratings, and within ten business days of furnishing a Form NRSRO to update information on the Form, to provide the annual certification, and to withdraw a registration.[742] These requirements implemented section 15E(a)(3) of the Exchange Act, which provides, among other things, that the Commission shall, by rule, require an NRSRO, upon the granting of a registration, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment, publicly available on its Internet Web site, or through another comparable, readily accessible means.[743]

Although section 15E(q)(2)(D) addresses the disclosure of information about the performance of credit ratings (which NRSROs disclose in Exhibit 1 to Form NRSRO), the Commission proposed amending paragraph (i) of Rule 17g–1 to require an NRSRO to ''make its current Form NRSRO and Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet Web site'' to avoid having separate requirements for the Exhibit 1 performance statistics and the rest of Form NRSRO and the other public exhibits.[744] In this regard, the Commission stated that it believed that a Form NRSRO would be on an ''easily accessible'' portion of an Internet Web site if it could be accessed through a clearly and prominently labeled hyperlink to the form on the homepage of the NRSRO's corporate Internet Web site.[745]

In addition, to implement section 15E(q)(2)(D) of the Exchange Act, the Commission proposed to amend paragraph (i) to provide that an NRSRO ''must make its up-to-date Exhibit 1 to Form NRSRO freely available in writing to any individual who requests a copy of the Exhibit.''[746]

Because there were references in Form NRSRO and the Instructions for Form NRSRO to make Form NRSRO and information and documents submitted in Exhibits 1 through 9 ''publicly available on [the NRSRO's] Web site or through another comparable, readily accessible means,'' the Commission proposed amending these references to mirror the text of the proposed amendment to paragraph (i).[747]

[732] *See* paragraph (4)(B)(iv)(b) of the instructions for Exhibit 1.

[733] *See* paragraph (4)(B)(v) of the instructions for Exhibit 1.

[734] *Id.* For example, in the Sample Transition/Default Matrix in Figure 2, there were 4000 credit ratings in the A cohort as of the December 31, 2000 start date. Of these 4000 credit ratings, eighty (or 2%) were classified as withdrawn for other reasons during the period (December 31, 2000 through December 31, 2010). Accordingly, 2% is entered in the *Withdrawn (other)* column.

[735] *See* paragraph (4)(B)(v) of the instructions for Exhibit 1.

[736] For example, in the Sample Transition/Default Matrix in Figure 2, there were 3600 credit ratings in the BBB cohort as of the start date. The transition rates from a BBB rating to a lower rating are: 15% (BB), 10% (B), 6% (CCC), 5% (CC), and 1% (C). Taken together, this means that 37% (or 1332) of the credit ratings transitioned to a credit rating as of the end-date that was below BBB (that is, to categories commonly referred to as *non-investment grade* or *speculative*). An NRSRO could make its performance statistics appear better by decreasing the number of ''investment grade'' credit ratings that transition to ''non-investment grade'' credit ratings. For example, the credit ratings for 400 obligors, securities, or money market instruments assigned a BBB credit rating as of the start date could be withdrawn. This would reduce the transition rate of BBB credit ratings to credit ratings below BBB from 37% (1332/3600) to approximately 26% (932/3600).

[737] *See Nationally Recognized Statistical Rating Organizations,* 76 FR 33444–33445.

[738] *See Moody's Letter; S&P Letter.*

[739] *See* 15 U.S.C. 78o–7(q).

[740] *See* 15 U.S.C. 78o–7(q)(2)(D).

[741] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33445–33446.

[742] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33620.

[743] *See* 15 U.S.C. 78o–7(a)(3); *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33569.

[744] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33538.

[745] *See id.* at 33445.

[746] *See id.* at 33538.

[747] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33445.

Several comment letters addressed the proposal.[748] One NRSRO supported the proposal as long as it does not require the disclosure of confidential information.[749] Three NRSROs stated that, as NRSROs are required to make public disclosures in addition to Form NRSRO, a link on the homepage of their corporate Internet Web site labeled ''Regulatory Disclosures'' (or similar language) to a section of the site that included Form NRSRO would be appropriate and would still provide easy access to Form NRSRO and Exhibits 1 through 9.[750] Two NRSROs stated that there would be costs but no benefits in requiring that Exhibit 1 be made freely available in writing to any individual who requests a copy of the Exhibit, and these NRSROs suggested that NRSROs be able to charge reasonable postage and handling fees.[751]

The Commission is adopting the proposed amendments to paragraph (i) of Rule 17g–1 substantially as proposed. In conformity with the modification (in response to comment) to the proposed instructions for Exhibit 1 to Form NRSRO,[752] the Commission is modifying the proposal to replace the phrase ''up-to-date Exhibit 1'' with the phrase ''most recently filed Exhibit 1.'' The Commission also is replacing the phrase ''Web site'' with the word ''Web site,'' consistent with the usage in other NRSRO rules.

The Commission agrees with the comments suggesting that NRSROs may charge reasonable postage and handling fees for sending a written copy of Exhibit 1 to individuals who request it in written form.[753] This should reduce the costs of the requirement and incentivize individuals to access the information using the NRSRO's Internet Web site, which is a more efficient method of obtaining the information.

The Commission also is making conforming amendments to Form NRSRO and the Instructions to Form NRSRO (as was proposed).[754] Finally, the Commission agrees with commenters[755] that a Form NRSRO and Exhibits 1 through 9 to Form NRSRO would be on an ''easily accessible'' portion of an NRSRO's corporate Internet Web site if it could be accessed through a clearly and prominently labeled hyperlink labeled ''Regulatory Disclosures'' on the homepage of the Web site.

3. Amendments to Rule 17g–2 and Rule 17g–7

a. Proposal

Paragraph (a)(8) of Rule 17g–2 requires an NRSRO to make and retain a record that, ''for each outstanding credit rating, shows all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key (''CIK'') number of the rated obligor.''[756] An NRSRO is required to retain this record for three years under paragraph (c) of Rule 17g–2.[757]

Before today's amendments, paragraph (d)(2) of Rule 17g–2 (the ''10% Rule'') required an NRSRO to ''make and keep publicly available on its corporate Internet Web site in an eXtensible Business Reporting Language (''XBRL'') format'' the information required to be documented pursuant to paragraph (a)(8) of Rule 17g–2 for 10% of the outstanding credit ratings, selected on a random basis, in each class of credit rating for which the NRSRO is registered if the credit rating was paid for by the obligor being rated or by the issuer, underwriter, or sponsor of the security being rated (''issuer-paid'' credit ratings) and the NRSRO has 500 or more such issuer-paid credit ratings outstanding in that class.[758] Paragraph (d)(2) further provided that any ratings action required to be disclosed need not be made public less than six months from the date the action is taken; that if a credit rating made public pursuant to the rule is withdrawn or the rated instrument matures, the NRSRO must randomly select a new outstanding credit rating from that class of credit ratings in order to maintain the 10% disclosure threshold; and that in making the information available on its corporate Internet Web site, the NRSRO must use the List of XBRL Tags for NRSROs as specified on the Commission's Internet Web site.

Before today's amendments, paragraph (d)(3) of Rule 17g–2 (the ''100% Rule'') required an NRSRO to make publicly available on its corporate Internet Web site information required to be documented pursuant to paragraph (a)(8) of the rule for any credit rating initially determined by the NRSRO on or after June 26, 2007, the effective date of the Rating Agency Act of 2006.[759] The 100% Rule applied to all types of credit ratings (as opposed to the 10% Rule, which was limited to issuer-paid credit ratings). However, the 100% Rule prescribed different grace periods for when an NRSRO must disclose a rating action depending on whether or not it involved an issuer-paid credit rating. For issuer-paid credit ratings, the grace period was twelve months after the date the rating action was taken, and for non-issuer paid credit ratings, the grace period was twenty-four months after the date the rating action was taken. The NRSRO was required to disclose the rating history information on its corporate Internet Web site in an XBRL format using the List of XBRL Tags for NRSROs as published by the Commission on its Internet Web site.[760]

The Commission proposed repealing the 10% Rule, significantly amending the 100% Rule, and codifying the revised 100% Rule in paragraph (b) of Rule 17g–7.[761] As discussed below in section II.E.3.b. of this release, these proposals took into account findings by the GAO.[762] As proposed to be amended, the 100% Rule would incorporate requirements in place before the proposed amendments and, in addition, would require that an NRSRO disclose rating history information on an ''easily accessible'' portion of its Internet Web site, add more rating histories to its disclosures, provide more information about each rating action, and not remove a rating history from the

[748] *See DBRS Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[749] *See S&P Letter.*

[750] *See DBRS Letter; Moody's Letter; Morningstar Letter.*

[751] *See DBRS Letter; S&P Letter.*

[752] *See Moody's Letter.*

[753] *See DBRS Letter; S&P Letter.*

[754] *See* Item 5, the Note to Item 6.C, Item 8, and Item 9 of Form NRSRO; Instruction A.3 and Instruction H to Form NRSRO.

[755] *See DBRS Letter; Moody's Letter; Morningstar Letter.*

[756] 17 CFR 240.17–2(a)(8). A CIK number has ten digits and is assigned to uniquely identify a filer using the Commission's EDGAR system. CUSIP is an acronym for the Committee on Uniform Securities and Identification. A CUSIP number consists of nine characters that uniquely identify a company or issuer and the type of security.

[757] *See* 17 CFR 240.17g–2(c).

[758] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63864.

[759] *Id.*

[760] Information about the List of XBRL Tags is located at the following page on the Commission's Web site: *http://www.sec.gov/spotlight/xbrl/nrsro-implementation-guide.shtml.* The XBRL Tags identified by the Commission include mandatory tags with respect to the information identified in paragraph (a)(8) of Rule 17g–2. The XBRL Tags also identify additional information that could be tagged by the NRSRO.

[761] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33446–33452.

[762] *See id.* (discussing the GAO findings); GAO Report 10–782, pp. 40–46 (discussing, among other things, the limitations of the data fields specified in the original rule). *See also* section II.E.3.b. of this release.

disclosure until twenty years after the NRSRO withdraws the credit rating.[763]

To add more rating histories to the disclosures, the 100% Rule, as proposed, would no longer be limited to the disclosure of histories for credit ratings that were *initially determined on or after* June 26, 2007.[764] Instead, as proposed, the rule would apply to any credit rating that was *outstanding* as of June 26, 2007, but the rating histories disclosed for these credit ratings would not need to include information about actions taken before June 26, 2007. Moreover, in order to immediately include these credit ratings in the disclosure, the proposals would require the NRSRO to disclose the credit rating assigned to the obligor, security, or money market instrument and associated information as of June 26, 2007. The proposals provided that the rating actions that would need to be included in the history are the initial credit rating or the credit rating as of June 26, 2007 (if the initial credit rating was prior to that date) and any subsequent upgrades or downgrades of the credit rating (including a downgrade to, or assignment of, default), any placements of the credit rating on credit watch or review, any affirmation of the credit rating, and a withdrawal of the credit rating.

To provide more information about each rating action in a rating history, the proposals would increase the number and scope of the required data fields.[765] Specifically, the 100% Rule, as proposed, would identify seven categories of data that would need to be disclosed when a credit rating action is published. The categories of information were:

- The identity of the NRSRO disclosing the rating action;
- The date of the rating action;
- If the rating action is taken with respect to a credit rating of an obligor as an entity, the following identifying information about the obligor, as applicable: (1) The CIK number of the rated obligor; and (2) the legal name of the obligor;
- If the rating action is taken with respect to a credit rating of a security or money market instrument, as applicable: (1) CIK number of the issuer of the security or money market instrument; (2) the legal name of the issuer of the security or money market instrument; and (3) the CUSIP of the security or money market instrument;
- A classification of the rating action as either: (1) A disclosure of a credit rating that was outstanding as of June 26, 2007 for purposes of the rule; (2) an initial credit rating; (3) an upgrade of an existing credit rating; (4) a downgrade of an existing credit rating, which would include classifying the obligor, security, or money market instrument as in default, if applicable; (5) a placement of an existing credit rating on credit watch or review; (6) an affirmation of an existing credit rating; or (7) a withdrawal of an existing credit rating and, if the classification is withdrawal, the reason for the withdrawal as either a default, the obligation was paid off, or the withdrawal was for other reasons;
- The classification of the class or subclass that applies to the credit rating as either: (1) Financial institutions, brokers, or dealers; (2) insurance companies; (3) corporate issuers; (4) RMBS, CMBS, CLO, CDO, ABCP, other ABS, or another structured finance product (in the issuers of structured finance products class); or (5) sovereign issuer, U.S. public finance, or international public finance (in the issuers of government securities, municipal securities, or securities issued by a foreign government class); and
- The credit rating symbol, number, or score the NRSRO assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the rating action, the credit rating symbol, number, or score the NRSRO assigned to the obligor, security, or money market instrument as of the date of the rating action.[766]

The proposed amendments specified when a rating action and its related data would need to be disclosed by establishing two distinct grace periods: Twelve months and twenty-four months.[767] In particular, a rating action would need to be disclosed: (1) Within twelve months from the date the action is taken, if the credit rating subject to the action was issuer-paid;[768] or (2) within twenty-four months from the date the action is taken, if the credit rating subject to the action was not issuer-paid.[769] These proposed separate grace periods for issuer-paid and non-issuer-paid credit ratings were consistent with the requirements of the 100% Rule prior to today's amendments.[770]

Finally, the proposed amendments provided that an NRSRO may cease disclosing a rating history of an obligor, security, or money market instrument no earlier than twenty years after the date a rating action with respect to the obligor, security, or money market instrument is classified as a withdrawal.[771]

b. Final Rule

As proposed, the Commission is eliminating the 10% Rule.[772] The 10% Rule did not permit comparability across NRSROs because it captured only issuer-paid credit ratings in a class of credit ratings where there are 500 or more such ratings and only if two or more NRSROs randomly select the same rated obligor, issuer, or money instrument to be included in the sample.[773] Moreover, the 10% Rule did not produce sufficient ''raw data'' to allow third parties to generate independent performance statistics.[774] The goal of the rule was to provide some information about how an NRSRO's credit ratings performed, particularly ratings assigned to obligors, securities and money market instruments that had been rated for ten or twenty years. In light of the enhancements to the instructions for Exhibit 1 to Form NRSRO (discussed above in section II.E.1. of this release) and the 100% Rule, retaining the 10% Rule would provide little, if any, incremental benefit to investors and other users of credit ratings in terms of providing information about the performance of a given NRSRO's credit ratings. Several commenters addressed the proposal to eliminate the 10% Rule.[775] All of these commenters supported its elimination.

The Commission is adopting the amendments to the 100% Rule (including moving its provisions from Rule 17g–2 to Rule 17g–7) with

[763] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33446–33452.

[764] *See* paragraph (b)(1) of Rule 17g–7, as proposed (emphasis added); *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541–33542.

[765] *See* paragraph (b)(2) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541–33542.

[766] *See* paragraphs (b)(2)(i) through (vii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541–33542.

[767] *See* paragraph (b)(4) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[768] *See* paragraph (b)(4)(i) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[769] *See* paragraph (b)(4)(ii) of Rule 17g–7; as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[770] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63842 (discussing the 100% Rule and the reasons the Commission adopted distinct twelve and twenty-four month grace periods).

[771] *See* paragraph (b)(5) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[772] *See* paragraph (d) of Rule 17g–2.

[773] *See, e.g.,* GAO Report 10–782, pp. 40–47.

[774] *See id.*

[775] *See CFA/AFR Letter; DBRS Letter; S&P Letter.*

modifications, in part, in response to comments.[776] Two commenters generally supported the proposed amendments to the 100% Rule.[777] On the other hand, one NRSRO objected to the Commission's proposal to expand the 100% Rule ''until a more thorough cost-benefit analysis'' has been conducted.[778] This NRSRO stated that on average only one person per month is accessing its rating history disclosures, but that it incurs substantial costs to make the information available. Further, it stated that constantly updating the database for the 100% Rule ''would impose an unwarranted burden on NRSROs'' and that the Commission has ''substantially underestimated the costs'' of the proposal. Another NRSRO also did not support the proposal, stating that it would impose significant costs on NRSROs, that lost subscription revenue due to the requirement to provide historical data for free will limit NRSROs' ability to innovate, and that industry competition will be undermined, particularly for smaller NRSROs who may be more dependent on subscription fees.[779] Among other benefits, the modification to the proposal—as discussed below—should address some of the practical and burden concerns raised by NRSROs.

The final amendments (as was proposed) require that the NRSRO publicly disclose the rating histories for free on an easily accessible portion of its corporate Internet Web site.[780] It also broadens the scope of credit ratings that will be subject to the disclosure requirements (as was proposed).[781] The objective is to require the disclosure of information about all outstanding credit ratings in each class and subclass of credit ratings for which the NRSRO is registered but within certain prescribed timeframes.

In addition to general burden concerns noted above, commenters raised significant concerns about the proposal to include all credit ratings that were outstanding as of June 26, 2007 and information about credit ratings that is more than three years old (that is, outside the record retention requirements of Rule 17g–2).[782] For example, one NRSRO stated that it may not have, or may find it difficult to obtain, the additional information required by the amendments.[783] A second NRSRO that generally supported the amendments also stated that NRSROs may not be able to provide XBRL information as of June 26, 2007, since those rating actions are beyond the scope of the 3-year record retention requirement.[784] A third NRSRO stated that—because it does not consider affirmations, confirmations, placement of credit ratings on watch or review, and assignment of default status to be credit rating actions and does not subdivide withdrawn ratings into the subcategories of withdrawn due to default, withdrawn because the obligation was paid in full, and withdrawn for ''other'' reasons—it does not capture that information in a format that is readily retrievable.[785] Consequently, the commenter recommended that the amendment exempt an NRSRO from providing historical data to the extent it does not already capture the data in a readily retrievable format.

The Commission is persuaded that the proposal raises legitimate practical concerns (for example, the additional information may not be available) and would impose a substantial burden. Accordingly, the final amendments have been modified from the proposal so that an NRSRO need only retrieve information that is no more than three years old.[786] In particular, under the final amendments, for a class of credit rating in which the NRSRO is registered with the Commission as of the effective date of the rule, the disclosure requirement applies to a credit rating in the class that was outstanding as of, or initially determined on or after, the date three years prior to the effective date of the rule.[787] Further, for a class of credit rating in which the NRSRO is registered with the Commission *after* the effective date of the rule, the disclosure requirement applies to a credit rating in the class that was outstanding as of, or initially determined on or after, the date three years prior to the date the NRSRO is registered in the class.[788] Consequently, an NRSRO that is registered in a particular class of credit ratings as of the rule's effective date will need to begin complying with the rule by disclosing information about all credit ratings in that class that were outstanding as of the date three years prior to the effective date or that were initially determined on or after that date, subject to the grace periods discussed below. After the effective date of the rule, a credit rating agency that becomes registered with the Commission as an NRSRO or an NRSRO that adds a class of credit ratings to its NRSRO registration will need to begin complying with the rule by disclosing information about all credit ratings in the classes for which it is registered that were outstanding as of the date three years prior to the registration date or that were initially determined on or after that date, subject to the grace periods. This aligns the retrieval requirement for all NRSROs regardless of when they are registered in a class of credit ratings.[789] It also substantially reduces the burden of adding past rating actions to the rating histories because the NRSRO will need to provide only

[776] *See* paragraph (b) of Rule 17g–7.

[777] *See CFA/AFR Letter; Levin Letter.*

[778] *See DBRS Letter.*

[779] *See Fitch Letter.*

[780] *See* paragraph (b)(1) of Rule 17g–7. As discussed above, section 15E(q)(2)(D) of the Exchange Act provides that the Commission's rules shall require the information about the performance of credit ratings be published and made freely available by the NRSRO on an easily accessible portion of its Web site and in writing when requested. *See* 15 U.S.C. 78o–7(q)(2)(D). The Commission did not propose that the ''in writing'' requirement apply to the disclosures of rating histories because such a requirement would not be feasible. *See Nationally Recognized Statistical Rating Organizations,* 76 FR 33447, n.264. Consistent with the proposal, the final amendments do not apply the ''in writing'' requirement to the disclosures of rating histories. First, the data file containing the disclosures would need to be updated by the NRSRO as new rating actions are added. Thus, it would not remain static like the Exhibit 1 performance measurement statistics, which are updated annually. Consequently, by the time a party received a written copy of the disclosure, it may not be up to date. Second, the amount of information in the data file would be substantial (particularly for NRSROs that have issued hundreds of thousands of credit ratings) and would increase over time. For these reasons, converting the information in the electronic disclosure to written form and mailing it to the party making the request would be impractical. In terms of utility, as discussed below, the electronic disclosure of the data must be made using an XBRL format. This is a much more efficient and practical medium for accessing and analyzing the information rather than obtaining it in paper form.

[781] *See* paragraphs (b)(1)(i) and (ii) of Rule 17g–7.

[782] *See DBRS Letter; Fitch Letter; Moody's Letter; Morningstar Letter.*

[783] *See S&P Letter.*

[784] *See Morningstar Letter.*

[785] *See Moody's Letter* (also stating that collecting data for past rating actions would require ''tens of thousands of hours of analysis'').

[786] *See* paragraphs (b)(1)(i) and (ii) of Rule 17g–7.

[787] *See* paragraph (b)(1)(i) of Rule 17g–7. Rule 17g–2 requires certain rating history information to be retained for a period of three years. *See, e.g.,* 17 CFR 240.17g–2(a)(8).

[788] *See* paragraph (b)(1)(ii) of Rule 17g–7.

[789] For example, under the proposal, NRSROs registered with the Commission in a class of credit ratings when the rule went effective would need to have retrieved information about the credit ratings in that class covering a period from June 26, 2007 to the effective date of the rule. The span of time between June 26, 2007 and the effective date of the rule would be fixed at that point and all NRSROs registered in one or more classes of securities on the effective date would need to retrieve information spanning the same period of time. However, any NRSRO registered after the effective date, or an NRSRO adding a class of credit ratings to its registration after the effective date, would to need retrieve information spanning a longer period of time and, as time progressed, the retrieval period would increase as would the burden of retrieval.

three years of historical information initially, which should mitigate, to some degree, concerns about having to retrieve information that was not retained by the NRSRO.[790]

Under the proposal, if a credit rating was added to the rating histories disclosure either because it was outstanding as of June 26, 2007 or was initially determined on or after that date, the rating history for the credit rating needed to include every subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default), any placements of the credit rating on credit watch or review, any affirmation of the credit rating, and a withdrawal of the credit rating.[791] Several commenters raised concerns about the proposed types of rating actions that would trigger the disclosure requirements, including rating affirmations.[792] One NRSRO suggested that the disclosure rules apply only to initial ratings because subscription-based NRSROs will likely have significantly more rating actions, and the proposed rule may encourage these NRSROs to provide less frequent surveillance.[793] Another commenter stated that a rating affirmation should not be included in rating actions as the required disclosures may make NRSROs less likely to provide confirmations of credit ratings, which may make it impossible to amend transaction documents.[794] An NRSRO stated that including affirmations in rating actions would significantly increase the burden on NRSROs.[795] The commenter recommended that if affirmations were included, the Commission should state that the term *affirmation* refers only to a published announcement, or written communication in the case of a private or confidential credit rating, by an NRSRO that it is maintaining the credit rating at its current level, and that the term should not include any purely internal discussions by an NRSRO about a credit rating.

The Commission is persuaded by the comments that the types of rating actions triggering the disclosure requirement can be reduced and the 100% Rule can still meet the objective of allowing users of credit ratings and others to compare the performance of credit ratings among NRSROs and generate their own performance statistics. Consequently, to focus the disclosure on the rating actions that are most relevant to evaluating performance, the final amendments provide that the history of a credit rating must include, in addition to the initial credit rating or the initial entry of the credit rating into the history, any subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default) and a withdrawal of the credit rating.[796] These are the rating actions necessary to calculate transition and default rates. With this modification, the final amendments eliminate the requirement to include placements on watch and affirmations (and the required data associated with those actions) in the rating histories. In addition to reducing the burden of the rule, this may alleviate concerns that requiring NRSROs to disclose rating histories (even with the grace periods) may cause subscribers to stop paying for access to credit ratings or for downloads of credit rating actions and instead to use the disclosures of rating histories as a substitute for these types of subscriptions. For example, information about placements of credit ratings on watch and credit rating affirmations may be information that subscribers value as part of their subscriptions.

The final amendments (as was proposed) increase the information that must be disclosed about a rating action.[797] Specifically, paragraph (b)(2) of Rule 17g–7 specifies seven categories of data that must be disclosed with a rating action.[798] The objective of these enhancements is to make the disclosures more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs.[799] As discussed below, the Commission has made some modifications to the required data categories in response to suggestions by commenters and to correspond to the modifications discussed above that change the scope of the credit ratings and rating actions covered by the disclosure requirement.

Paragraphs (b)(2)(i) and (ii) of Rule 17g–7 are being adopted as proposed.[800] Paragraph (b)(2)(i) identifies the first category of data that must be disclosed with each rating action: The identity of the NRSRO disclosing the rating action.[801] Because the NRSRO must assign an XBRL Tag to each item of information, including and tagging the identity of the NRSRO will assist users who download and combine data files of multiple NRSROs to sort credit ratings by a given NRSRO. Paragraph (b)(2)(ii) identifies the second category of data: The date of the rating action.[802] This will allow a person reviewing the credit rating histories of the NRSROs to reach conclusions about their relative capabilities in making appropriate and timely adjustments to their credit ratings.[803]

Paragraph (b)(2)(iii) of Rule 17g–7, as proposed, would identify the third category of data that must be disclosed: (1) The CIK number of the rated obligor; and (2) the name of the obligor.[804] Under the proposal, the information in this category would need to be disclosed only if the rating action is taken with respect to a credit rating of an obligor as an entity (as opposed to a credit rating of a security or money market instrument).[805]

Commenters raised concerns about requiring disclosure of the CIK number.[806] One NRSRO questioned the cost-effectiveness of the requirement and recommended that the requirement to provide CIK numbers be eliminated.[807] Another NRSRO stated that it was ''unnecessarily burdensome'' to require the use of identifiers that may become obsolete, that require NRSROs to pay a fee, or that may not be used outside the United States, as long as NRSROs ''use some kind of identifier

[790] As indicated above, one commenter recommended that the rule exempt an NRSRO from providing historical data to the extent it does not already capture the data in a readily retrievable format. *See Moody's Letter.* While the Commission believes the modifications discussed above will address the commenter's concerns to a large degree, an NRSRO can seek exemptive relief from the Commission under section 36 of the Exchange Act. *See* 17 U.S.C. 78mm.

[791] *See* paragraph (b)(1) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[792] *See ABA Letter; Deloitte Letter; Moody's Letter; Morningstar Letter; TradeMetrics Letter.*

[793] *See Morningstar Letter.*

[794] *See ABA Letter.*

[795] *See S&P Letter.*

[796] *See* paragraphs (b)(1)(i) and (ii) of Rule 17g–7.

[797] *See* paragraph (b)(2) of Rule 17g–7.

[798] The Commission will update the List of XBRL Tags to include some of the new data fields. Other fields are covered by existing Tags, including by some of the voluntary Tags.

[799] *See, e.g.,* GAO Report 10–782, p. 41 (''First, SEC [sic] did not specify the data fields the NRSROs were to disclose in the rule, and the data fields provided by the NRSROs were not always sufficient to identify a complete rating history for ratings in each of the seven samples. If users cannot identify the rating history for each rating in the sample, they cannot develop performance measures that track how an issuer's credit rating evolves.'').

[800] *See* paragraphs (b)(2)(i) and (ii) of Rule 17g–7.

[801] *See* paragraph (b)(2)(i) of Rule 17g–7.

[802] *See* paragraph (b)(2)(ii) of Rule 17g–7.

[803] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33448–33449.

[804] *See* paragraph (b)(2)(iii) of Rule 17g–2, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[805] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33449.

[806] *See DBRS Letter; Moody's Letter* (suggesting use of the LEI).

[807] *See DBRS Letter.*

system sufficient to identify the rated obligor and obligation,'' for example, ''an internationally recognized LEI [Legal Entity Identifier] system.'' [808]

The Commission believes that the use of an LEI can promote accuracy and standardization of NRSRO data, and therefore can further the purpose of allowing users of credit ratings to compare the performance of credit ratings by different NRSROs.[809] The effort to standardize a universal LEI has progressed significantly over the last few years, and an international standard was published by the International Organization for Standardization (''ISO'') in June 2012, which set out the elements of a working system.[810]

The Commission is modifying the proposal to require, with respect to a rating action involving a credit rating of an obligor as an entity, the disclosure of the obligor's LEI issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee [811] or the Global LEI Foundation, if available, or, if the LEI is not available, the disclosure of the obligor's CIK, if available.[812] The Commission believes that having some method of identifying the obligor—in addition to its name—is appropriate as it will make the data searchable and comparable across NRSROs. Coded identifiers like the LEI and CIK will add a level of standardization to the credit rating history data, making for easier electronic querying and processing.

An NRSRO recommended not requiring inclusion of the legal name of the issuer because inconsistent use of abbreviations has made this problematic.[813] The Commission believes that the name of the obligor provides a more intuitive means of searching for a specific credit rating history in comparison to the LEI or CIK number. The Commission does not, however, view the LEI or CIK as a replacement for a name. For example, the user of the data can search for the name if the user does not know the LEI or CIK number. The Commission agrees with the commenter that requiring the specific legal name can be problematic. Consequently, the proposal has been modified to require the NRSRO to provide the obligor's ''name'' rather than ''legal name.'' [814] An NRSRO must disclose a name that clearly identifies the obligor and use that name consistently.[815] For these reasons, the final amendments require the disclosure of the obligor's name.[816]

Paragraph (b)(2)(iv) of Rule 17g–7, as proposed, would identify the fourth category of data to be disclosed with a rating action: (1) The CIK number of the issuer of the security or money market instrument; (2) the name of the issuer of the security or money market instrument; and (3) the CUSIP of the security or money market instrument.[817] The information in this category would need to be disclosed when the rating action is taken with respect to a security or money market instrument. The Commission is adopting paragraph (b)(2)(iv) of Rule 17g–7 with modifications from the proposal.

First, the paragraph requires an NRSRO to disclose the LEI of the issuer, if available, or, if an LEI is not available, the CIK number of the issuer, if available.[818] This will make paragraph (b)(2)(iv) consistent with paragraph (b)(2)(iii), which, as discussed above, requires the disclosure of the LEI of the obligor, if available, or, if an LEI is not available, the CIK number of the issuer, if available. Second, as adopted, the paragraph requires the NRSRO to disclose the ''name'' of the issuer, rather than the ''legal name'' as was proposed.[819] This also will make paragraph (b)(2)(iv) consistent with paragraph (b)(2)(iii).

The Commission is adopting the requirement to disclose the CUSIP of the security or money market instrument as was proposed.[820] One NRSRO stated that the cost of adding CUSIP data should be included in the Commission's cost-benefit analysis.[821] In response, the Commission notes that the requirement to disclose the CUSIP of the security or money market instrument was required by the 100% Rule before today's amendments.[822] When adopting the 10% Rule and the 100% Rule, the Commission considered the costs associated with the CUSIP requirement.[823] The Commission recognizes that the continued requirement to disclose the CUSIP number of the security or money market instrument subject to the rating action imposes licensing costs. However, without the CUSIP requirement, the disclosures could be of little utility as there would be no standard identifier with which to search for a specific security or money market instrument. This would make it difficult for users of the rating history disclosures to locate and compare the rating history for a given security or money market instrument. The Commission has balanced the cost of the requirement with the benefit of making the disclosures readily searchable and, therefore, enhancing their utility. For these reasons, the final amendments retain the CUSIP disclosure requirements.[824]

Paragraph (b)(2)(v) of Rule 17g–7, as proposed, would identify the fifth

[808] *See Moody's Letter.* The LEI is a reference code to uniquely identify a legally distinct entity that engages in a financial transaction. Further information about LEI is available at *http://www.treasury.gov/initiatives/wsr/ofr/Documents/LEI_FAQs_August2012_FINAL.pdf.*

[809] The Commission has prescribed the use of an LEI for the purposes of reporting information on Form PF. *See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Adviser Act of 1940 Release No. 3308 (Oct. 31, 2011), 76 FR 71128 (Nov. 16, 2011). Form PF is available at *http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf.* The glossary of terms for the form provides the following definition of *LEI:* ''With respect to any company, the 'legal entity identifier' assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a financial institution, if a 'legal entity identifier' has not been assigned, then provide the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.''

[810] *See* ISO 17442:2012, Financial services—Legal Entity Identifier (LEI). A copy of the standard can be purchased at *http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=59771. See also* CFTC, *Amended Order Designating The Provider Of Legal Entity Identifiers To Be Used In Recordkeeping And Swap Data Reporting Pursuant To The Commission's Regulations, available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/leiamendedorder.pdf* (order expanding, through mutual acceptance by international regulators, the list of identifiers that can be used by registered entities and swap counterparties in complying with the CFTC's swap data reporting regulations).

[811] *See www.leiroc.org.*

[812] *See* paragraph (b)(2)(iii)(A) of Rule 17g–7. The proposal is modified by separating the LEI and CIK disclosure requirements in paragraph (b)(2)(iii)(A) and the legal name disclosure requirement in paragraph (b)(2)(iii)(B). *See* paragraphs (b)(2)(iii)(A) and (B) of Rule 17g–7. While the description of the LEI in Rule 17g–7 is different than the description in the glossary of terms for Form PF, it is intended to have the same meaning. The description in Rule 17g–7 is designed to be more generic and, therefore, address future changes in the organizations administering LEIs.

[813] *See S&P Letter.*

[814] *See* paragraph (b)(2)(iii)(B) of Rule 17g–7.

[815] As discussed below in section II.G.3. of this release, the Commission is taking a similar approach to the identification of the obligor's name in the form to accompany a credit rating.

[816] *See* paragraph (b)(2)(iii)(B) of Rule 17g–7.

[817] *See* paragraph (b)(2)(iii) of Rule 17g–2, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[818] *See* paragraph (b)(2)(iv)(A) of Rule 17g–7.

[819] *See* paragraph (b)(2)(iv)(B) of Rule 17g–7.

[820] *See* paragraph (b)(2)(iv)(C) of Rule 17g–7.

[821] *See DBRS Letter.*

[822] *See* 17 CFR 240.17g–2(a)(8) and (d)(3).

[823] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6477 (adopting the 10% Rule); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63859 (adopting the 100% Rule).

[824] If securities or money market instruments are assigned LEIs, the Commission would consider replacing the CUSIP requirement with an LEI requirement.

category of data to be disclosed with a rating action: A classification of the type of rating action.[825] Under the proposal, the NRSRO would be required to select one of seven classifications to identify the type of rating action.[826] In particular, the seven possible classifications were:

- A disclosure of a credit rating that was outstanding as of June 26, 2007;[827]
- An initial credit rating;[828]
- An upgrade of an existing credit rating;[829]
- A downgrade of an existing credit rating, which would include classifying the obligor, security, or money market instrument as in default, if applicable;[830]
- A placement of an existing credit rating on credit watch or review;[831]
- An affirmation of an existing credit rating;[832] or
- A withdrawal of an existing credit rating and, if the classification is withdrawal, the reason for the withdrawal as: (1) The obligor defaulted, or the security or money market instrument went into default; (2) the obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; or (3) the credit rating was withdrawn for reasons other than those set forth in items (1) or (2) above.[833]

The Commission is adopting paragraph (b)(2)(v) of Rule 17g–7 with modifications. First, the final amendments eliminate the rating action classifications with respect to placing a credit rating on watch or review and with respect to affirming a credit rating.[834] As discussed above, the amendments do not require the rating histories disclosure to include these types of rating actions.

Second, paragraph (b)(2)(v)(A) of Rule 17g–7 has been modified.[835] As discussed above, this provision was designed to alert a user of the rating histories disclosure that the credit rating and related information about the credit rating was added to the history because of the requirement in the proposal to add all credit ratings outstanding as of June 26, 2007. The final amendments—as discussed above—modify this requirement from the proposal so that an NRSRO must include with each credit rating disclosed under paragraph (b)(1) of Rule 17g–7 a classification of the rating action, if applicable, as an addition to the rating history disclosure: (1) Because the credit rating was outstanding as of the date three years prior to the effective date of the requirements in paragraph (b) of Rule 17g–7; or (2) because the credit rating was outstanding as of the date three years prior to the date the NRSRO became registered in the class of credit ratings.[836] Consequently, paragraph (b)(2)(v)(A) of Rule 17a–7, as adopted, is modified to conform to this change.[837]

Paragraph (b)(2)(v)(E) of Rule 17g–7, as adopted, requires the NRSRO, in the case of a withdrawal, to classify the reason for the withdrawal as either: (1) The obligor defaulted, or the security or money market instrument went into default; (2) the obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; or (3) the credit rating was withdrawn for reasons other than those set forth in (1) and (2) above.[838] These sub-classifications parallel, in many respects, the outcomes identified in paragraphs (4)(B)(iii), (iv), and (v) of the instructions for Exhibit 1 to Form NRSRO discussed above in section II.E.1.b. of this release. However, unlike the instructions for Exhibit 1, the final amendments do not prescribe standard definitions of *default* and *paid-off* for the purposes of making these classifications in the rating histories disclosure. The rating histories disclosure requirement is designed to allow investors and other users of credit ratings to compare how each NRSRO treats a commonly rated obligor, security, or money market instrument. In other words, unlike the production of performance statistics where standard definitions are necessary to promote comparability of aggregate statistics, the historical rating information should indicate on a granular level the differences among the NRSROs with respect to the rating actions they take for a commonly rated obligor, security, or money market instrument, including their differing definitions of default. This will allow investors and other users of credit ratings to review, for example, when one NRSRO downgraded an obligor to the default category as compared to another NRSRO or group of NRSROs. Among other things, investors and other users of credit ratings could review the data to identify NRSROs that are either quick or slow to downgrade obligors, securities, or money market instruments to default. In addition, an NRSRO with a very narrow definition of *default* might continue to maintain a security at a notch in its rating scale above the default category when other NRSROs, using broader definitions, had classified the security as having gone into default. Creating a mechanism to identify these types of variances is a goal of the enhancements to the 100% Rule.

The Commission believes a default and the extinguishment of an obligation because it was paid in full are the most frequently occurring reasons for an NRSRO to withdraw a credit rating. As discussed above in section II.E.1. of this release, there are other reasons an NRSRO might withdraw a credit rating, including that the rated obligor or issuer

[825] *See* paragraph (b)(2)(v) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations.*

[826] The required disclosure would need to be the type of rating action and not the credit rating resulting from the rating action. For example, if the rating action was a downgrade, the NRSRO would need to classify it as a ''downgrade'' and not, for example, a change of the current credit rating from the AA notch to the AA- notch or from the C notch to default. This would allow users of the disclosures to sort the information by, for example, initial credit ratings, upgrades, and downgrades.

[827] *See* paragraph (b)(2)(v)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542. As discussed above, under the proposal, all credit ratings outstanding as of June 26, 2007 and associated information as of that date would need to be disclosed to establish the first data point in the rating history of a credit rating that was outstanding as of that date. This would have meant that thousands, if not hundreds of thousands, of rating histories each beginning on June 26, 2007 would be disclosed. The proposed classification was designed to alert users of the disclosures that the proposed rule caused the June 26, 2007 entry in the rating history of the obligor, security, or money market instrument and not because, for example, a credit rating was initially determined for the obligor, security, or money market instrument on that date.

[828] *See* paragraph (b)(2)(v)(B) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542. An NRSRO would select this classification if the rating action was the first credit rating determined by the NRSRO with respect to the obligor, security, or money market instrument.

[829] *See* paragraph (b)(2)(v)(C) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[830] *See* paragraph (b)(2)(v)(D) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[831] *See* paragraph (b)(2)(v)(E) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[832] *See* paragraph (b)(2)(v)(F) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[833] *See* paragraph (b)(2)(v)(G) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[834] *See* paragraph (b)(2)(v) of Rule 17g–7. As a result of these modifications, paragraph (b)(2)(v)(G) of Rule 17g–7, as proposed, is re-designated paragraph (b)(2)(v)(E) of Rule 17g–7.

[835] *See* paragraph (b)(2)(v)(A) of Rule 17g–7.

[836] *See* paragraph (b)(1) of Rule 17g–7.

[837] *See* paragraph (b)(2)(v)(A) of Rule 17g–7. The final amendments identify the classification as an addition to the rating history disclosure because the credit rating was outstanding as of the date three years prior to the effective date of the requirements in the amendments or because the credit rating was outstanding as of the date three years prior to the NRSRO becoming registered in the class of credit ratings. *Id.*

[838] *See* paragraph (b)(2)(v)(G) of Rule 17g–7.

of the rated security or money market instrument stopped paying for the surveillance of the credit rating or the NRSRO decided not to devote resources to continue to perform surveillance on the credit rating on an unsolicited basis. However, the withdrawal of credit ratings could be used to make performance statistics appear more favorable. Consequently, as with the Transition/Default Matrices in Exhibit 1 to Form NRSRO, an NRSRO would be required to identify when a credit rating was withdrawn for reasons other than default or the extinguishment of the obligation upon which the credit rating is based. Similar to the Transition/Default Matrices, persons using the rating history information could analyze how often an NRSRO withdraws a credit rating for other reasons in a class or subclass of credit ratings.

One NRSRO stated that it does not subdivide withdrawn ratings into the subcategories of: (1) Withdrawn due to default; (2) Withdrawn because the obligation paid in full; and (3) withdrawn for ''other'' reasons.[839] This NRSRO also stated that since it does not monitor withdrawn ratings, it could not certify with confidence that its performance statistics include all defaults with respect to withdrawn ratings, and requiring such monitoring might constitute regulation of the substance of an NRSRO's rating procedures. However, section 15E(q)(2)(C) of the Exchange Act requires that the Commission's rules require the disclosure of performance information for a variety of credit ratings, including for credit ratings withdrawn by an NRSRO.[840] As discussed above, the reason an NRSRO withdraws a credit rating is important information in terms of assessing the performance of an NRSRO's credit ratings. For these reasons, the final amendments retain the requirement to classify the reason for the withdrawal. In response to comment,[841] as stated above with respect to the amendments to the instructions for Exhibit 1 to Form NRSRO, the Commission is clarifying that the amendments as adopted do not require NRSROs to monitor withdrawn credit ratings for a period of time after withdrawal. A withdrawn credit rating is categorized at the time of withdrawal. There is no requirement to update the rating history thereafter.

Paragraph (b)(2)(vi) of Rule 17g–7, as proposed, would identify the sixth category of data that must be disclosed with a rating action: A classification of the class or subclass of the credit rating.[842] The Commission is adopting this paragraph as proposed.[843] The classifications for the classes of credit ratings are based on the definition of *nationally recognized statistical rating organization* in section 3(a)(62) of the Exchange Act.[844] Consequently, the first classification is financial institutions, brokers, or dealers.[845] The second classification is insurance companies.[846] The third classification is corporate issuers.[847]

The fourth classification is issuers of structured finance products.[848] If the credit rating falls into this class, the NRSRO must disclose which of the following sub-classifications it falls into: RMBS;[849] CMBS;[850] CLOs;[851] CDOs;[852] ABCP;[853] other asset-backed securities;[854] or other structured finance products.[855] The sub-classifications are the same subclasses for structured finance credit ratings an applicant and NRSRO must use for the purposes of the Transition/Default Matrices to be disclosed in Exhibit 1 to Form NRSRO.[856]

The fifth classification is issuers of government securities, municipal securities, or securities issued by a foreign government.[857] If the credit rating falls into this class, the final amendments require the NRSRO to identify a sub-classification as well.[858] The sub-classifications are the same as the sub-classifications for this class in the instructions for Exhibit 1 to Form NRSRO: (1) Sovereign issuers; (2) U.S. public finance; or (3) international public finance.[859]

Paragraph (b)(2)(vii) of Rule 17g–7, as proposed, would identify the seventh category of data that must be disclosed with a rating action: The credit rating symbol, number, or score in the applicable rating scale of the NRSRO assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the action, the credit rating symbol, number, or score in the applicable rating scale of the NRSRO assigned to the obligor, security, or money market instrument as of the date of the rating action.[860] The NRSRO also would have to indicate whether the credit rating is in a default category. The Commission is adopting this paragraph as proposed.[861] The rating symbol, number, or score is a key component of the data that must be disclosed as it reflects the NRSRO's view of the relative creditworthiness of the obligor, security, or money market instrument subject to the rating as of the date the action is taken.

Paragraph (b)(3) of Rule 17g–7, as proposed, would provide that the information identified in paragraph

[839] *See Moody's Letter.*

[840] *See* 15 U.S.C. 78o–7(q)(2)(C).

[841] *See Moody's Letter; S&P Letter.*

[842] *See* paragraph (b)(2)(vi) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[843] *See* paragraph (b)(2)(vi) of Rule 17g–7.

[844] *See* 15 U.S.C. 78o–7(a)(62). This is consistent with how the classes of credit ratings are identified for the purposes of the performance statistics that must be disclosed in Exhibit 1 to Form NRSRO. *Compare* paragraphs (b)(2)(vi)(A) through (E) of Rule 17g–7, *with* paragraphs (1)(A) through (E) of the instructions for Form NRSRO.

[845] *See* paragraph (b)(2)(vi)(A) of Rule 17g–7; 15 U.S.C. 78o–7(a)(62)(B)(i).

[846] *See* paragraph (b)(2)(vi)(B) of Rule 17g–7; 15 U.S.C. 78o–7(a)(62)(B)(ii).

[847] *See* paragraph (b)(2)(vi)(C) of Rule 17g–7; 15 U.S.C. 78o–7(a)(62)(B)(iii).

[848] *See* paragraph (b)(2)(vi)(D) of Rule 17g–7; 15 U.S.C. 78o–7(a)(62)(B)(iv). Consistent with the instructions for Exhibit 1 to Form NRSRO, this class of credit rating is broader than the class identified in section 15E(a)(62)(B)(iv) of the Exchange Act.

[849] *See* paragraph (b)(2)(vi)(D)(*1*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *RMBS* for the purposes of the rule means a securitization primarily of residential mortgages.

[850] *See* paragraph (b)(2)(vi)(D)(*2*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *CMBS* for the purposes of the rule means a securitization primarily of commercial mortgages.

[851] *See* paragraph (b)(2)(vi)(D)(*3*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *CLO* for the purposes of the rule means a securitization primarily of commercial loans.

[852] *See* paragraph (b)(2)(vi)(D)(*4*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *CDO* for the purposes of the rule means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds.

[853] *See* paragraph (b)(2)(vi)(D)(*5*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *ABCP* for the purposes of the rule means short term notes issued by a structure that securitizes a variety of financial assets (for example, trade receivables or credit card receivables), which secure the notes.

[854] *See* proposed paragraph (b)(2)(vi)(D)(*6*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *other asset backed security* for the purposes of the rule means a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans, or equipment leases.

[855] *See* proposed paragraph (b)(2)(vi)(D)(*7*) of Rule 17g–7. Consistent with Exhibit 1 to Form NRSRO, the term *other structured finance product* for the purposes of the rule means a structured finance product not identified in the other sub-classifications of structured finance products.

[856] *See* paragraphs (b)(2)(vi)(D)(*1*) through (*7*) of Rule 17g–7; paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 to Form NRSRO.

[857] *See* paragraph (b)(2)(vi)(E) of Rule 17g–7; 15 U.S.C. 78o–7(a)(62)(B)(v).

[858] *See* paragraphs (b)(2)(vi)(E)(*1*) through (*3*) of Rule 17g–7.

[859] *See* paragraphs (b)(2)(vi)(E)(*1*) through (*3*) of Rule 17g–7; paragraphs (1)(E)(i) through (iii) of the instructions for Exhibit 1.

[860] *See* paragraph (b)(2)(vii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[861] *See* paragraph (b)(2)(vii) of Rule 17g–7. Because the final amendments eliminate rating affirmations from the rating histories, this requirement will be triggered only when an NRSRO withdraws a credit rating that had not changed.

(b)(2) of Rule 17g–7 must be disclosed in an interactive data file that uses an XBRL format and the List of XBRL Tags for NRSROs as published on the Internet Web site of the Commission.[862] One commenter stated that constantly updating the database for the 100% Rule ''would impose an unwarranted burden on NRSROs'' and requested that the Commission confirm that it may update the database monthly.[863] The Commission agrees that the rule should prescribe a standard timeframe within which the XBRL data file must be updated and that the standard should take into account the burden of updating the file. Consequently, the final amendments provide that the XBRL data file must be updated no less frequently than monthly consistent with the commenter's proposal.[864]

Paragraph (b)(4) of Rule 17g–7, as proposed, would specify when a rating action would need to be disclosed by establishing two distinct grace periods: Twelve months and twenty-four months.[865] In particular, a rating action would need to be disclosed: (1) Within twelve months from the date the action is taken, if the credit rating subject to the action was paid for by the obligor being rated or by the issuer, underwriter, depositor, or sponsor of the security being rated; [866] or (2) within twenty-four months from the date the action is taken, if the credit rating subject to the action is not a rating described above.[867] These separate grace periods are consistent with the requirements of the 100% Rule before today's amendments.[868] Commenters expressed opposing views on the appropriate length of the grace periods and whether there should be one grace period for all NRSROs.[869] One NRSRO stated that the grace periods are ''appropriate.'' [870] Another NRSRO stated that the Commission should consider a three-year grace period for rating histories of subscriber-paid credit ratings.[871] Two NRSROs were opposed to having two grace periods,[872] and one of these NRSROs stated that there should be an eighteen month grace period for all NRSROs ''if the goal is to foster comparability among NRSROs.'' [873] Another commenter was ''disappointed'' that the Commission was retaining the twelve and twenty-four month grace periods, because ''such delay is excessive and severely diminishes the usefulness of the information.'' [874]

The Commission believes that the twelve and twenty-four month grace periods strike an appropriate balance between the interests of users of credit ratings and the interests of NRSROs with various business models.[875] In particular, the longer grace period for NRSROs operating under the subscriber-paid business model is premised on the fact that the revenues earned by these NRSROs for their credit rating activities are derived largely from subscriptions to access their credit ratings and related analyses. NRSROs operating under the issuer-pay business model earn revenues largely from the fees paid by obligors and issuers to determine credit ratings for the obligor as an entity or for the issuer's securities or money market instruments. These issuer-paid credit ratings typically are publicly disclosed. For these reasons, subscriber-paid NRSROs would be disproportionately impacted if the rating histories disclosure requirement resulted in subscribers canceling subscriptions. Consequently, the Commission continues to believe the longer twenty-four month grace period is appropriate to limit the disproportionate impact on subscriber-paid NRSROs.

Finally, paragraph (b)(5) of Rule 17g–7, as proposed, would provide that an NRSRO may cease disclosing a rating history of an obligor, security, or money market instrument no earlier than twenty years after the date a rating action with respect to the obligor, security, or money market instrument is classified as a withdrawal of the credit rating, provided no subsequent credit ratings are assigned to the obligor, security, or money market instrument after the withdrawal classification.[876] This proposed requirement was designed to ensure that information about credit ratings that are withdrawn for any reason would remain a part of the disclosure for a significant period of time. Two NRSROs commented on this aspect of the proposal.[877] One NRSRO stated that ten years is sufficient, consistent with the Transition/Default Matrices in Exhibit 1 to Form NRSRO, and that the Commission should perform a cost/benefit analysis of the requirement periodically to confirm that the benefits outweigh the costs.[878] The other NRSRO stated that the information would become less useful to investors as the volume of information on withdrawn ratings increases.[879] The Commission agrees at this time that a shorter retention period is appropriate considering the costs and benefits of retaining rating histories with respect to withdrawn ratings. Consequently, the final amendments provide that the NRSRO may cease disclosing a rating history of an obligor, security, or money market instrument if at least fifteen years has elapsed since a rating action classified as a withdrawal of a credit rating pursuant to paragraph (b)(2)(v)(E) of Rule 17g–7 was disclosed in the rating history of the obligor, security, or money market instrument.[880]

4. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments relating to the disclosure of information about the performance of credit ratings.[881] The baseline that existed before today's amendments was one in which NRSROs were required to make publicly available two types of information about the performance of their credit ratings: (1) Transition and default statistics; and (2) rating histories for certain subsets of the obligors, securities, and money-market instruments that they have rated.[882]

Before today's amendments, the instructions for Exhibit 1 required the applicant or NRSRO to provide performance statistics for the credit ratings of the applicant or NRSRO,

[862] *See* paragraph (b)(3) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[863] *See DBRS Letter.*

[864] *See* paragraph (b)(3) of Rule 17g–7.

[865] *See* paragraph (b)(4) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[866] *See* paragraph (b)(4)(i) of Rule 17g–7, as proposed.

[867] *See* paragraph (b)(4)(ii) of Rule 17g–7, as proposed.

[868] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63842 (discussing the 100% Rule and the reasons the Commission adopted distinct twelve and twenty-four month grace periods).

[869] *See DBRS Letter; ICI Letter; Kroll Letter; Morningstar Letter; S&P Letter.*

[870] *See Morningstar Letter.*

[871] *See Kroll Letter.*

[872] *See DBRS Letter; S&P Letter.*

[873] *See DBRS Letter.*

[874] *See ICI Letter.*

[875] Section 15E(q)(2)(E) of the Exchange Act provides that the Commission's rules must require that the credit rating performance disclosures are appropriate for various business models of NRSROs. *See* 15 U.S.C. 78o–7(q)(2)(E).

[876] *See* paragraph (b)(5) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[877] *See DBRS Letter; S&P Letter.*

[878] *See DBRS Letter.*

[879] *See S&P Letter.*

[880] *See* paragraph (b)(5) of Rule 17g–7.

[881] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[882] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6483; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63864.

including performance statistics for each class of credit ratings for which the applicant is seeking registration or the NRSRO is registered. In addition, the instructions required that the performance statistics must, at a minimum, show the performance of credit ratings in each class over one-year, three-year, and ten-year periods (as applicable) through the most recent calendar year-end, including transition and default rates within each of the credit rating categories, notches, grades, or rankings used by the applicant or NRSRO. Before today's amendments, the instructions for Exhibit 1 did not prescribe the methodology to be used to calculate the performance statistics or the format in which they must be disclosed; nor did the instructions limit the type of information that can be disclosed in the Exhibit. The instructions did, however, require an applicant or NRSRO to define the credit rating categories, notches, grades, or rankings it used and to explain the performance measurement statistics, including the inputs, time horizons, and metrics used to determine the statistics. Disclosures provided in Exhibit 2, which require a ''general description of the procedures and methodologies used'' by the NRSRO in determining credit ratings, may have provided additional context for comparing the performance statistics of different NRSROs. NRSROs made their most recent Forms NRSRO and Exhibits 1 through 9 to the forms available on their corporate Internet Web sites, though they were also permitted to make the disclosures publicly available through another comparable, readily accessible means. They were not required to provide Exhibit 1 in writing when requested.

NRSROs also voluntarily provided additional performance statistics in Exhibit 1 or elsewhere on their public Internet Web sites, such as transition and default statistics for particular asset sub-classes, geographies, or industries, or alternative analyses such as Lorenz curves. The voluntary disclosures of such statistics have varied, and some NRSROs, particularly larger ones, may have been able to provide more supplementary statistics at a granular level because they had more credit ratings, over a longer historical period, to analyze.[883]

In characterizing the baseline, it is useful to consider the performance statistics disclosed in NRSROs' annual certifications for the 2009 calendar year, as reviewed by the GAO in its 2010 report. While the disclosures from that year may not be representative of current NRSRO practices, they provide insight into NRSRO practices in 2009 under the rules governing the disclosure of performance statistics before today's amendments. Reviewing the 2009 disclosures of the ten NRSROs then registered, the GAO found significant differences across NRSROs in the computation of performance statistics, which limited their comparability.[884] These differences included, among other things: (1) Whether a single cohort approach or an average cohort approach was used; (2) whether or not statistics were adjusted to exclude withdrawn credit ratings; (3) whether default rates were indicated relative to initial credit ratings or credit ratings as of the beginning of a given period, and (4) whether default statistics were adjusted based on the time to default.[885] The GAO found that five NRSROs did not provide the number of credit ratings in each rating category, which made it impossible either to re-calculate more comparable statistics or to judge the reliability of the performance statistics.[886] The GAO also found that the asset-backed security class of credit ratings may have been too broad for performance statistics for this class as a whole to be meaningful.[887] The GAO concluded that ''the disclosure of these statistics has not had the intended effect of increasing transparency for users.'' [888]

Before today's amendments, the requirements for NRSROs to make certain rating histories publicly available (the 10% Rule and the 100% Rule) were contained in paragraphs (d)(2) and (d)(3) of Rule 17g–2, respectively. The 10% Rule applied only to NRSROs operating under the issuer-pays model, and required the disclosure of rating actions for a random 10% sample of outstanding credit ratings in each class in which an NRSRO was registered and for which the NRSRO had more than 500 issuer-paid credit ratings outstanding. The 100% Rule applied to all NRSROs, and required the disclosure of rating actions for any credit ratings initially determined by the NRSRO on or after June 26, 2007. Under both rules, the rating action information required to be disclosed was consistent with the information required to be retained pursuant to paragraph (a)(8) of Rule 17g–2. The rating actions that were required to be included in the histories were initial ratings, upgrades, downgrades, placements on credit watch, and withdrawals, and the information required to be disclosed for each such rating action was the rating action, date of the action, the name of the security or obligor, and, if applicable, the CUSIP of the security or CIK number of the obligor. The 10% Rule included a six-month grace period after ratings actions were taken before disclosure was required, while the 100% Rule included a twelve-month grace period for issuer-paid credit ratings and a twenty-four-month grace period for all other credit ratings. NRSROs made the required rating histories publicly available on their corporate Internet Web sites.

In characterizing the baseline, it is useful to consider, as in the case of performance statistics, the conclusions of the GAO in its 2010 report with respect to the disclosure of rating histories by NRSROs. While the disclosures from that period may not be representative of current NRSRO practices, the GAO study provides insight into NRSRO practices at the time of the report and into the limitations of the 10% Rule and 100% Rule before today's amendments. The GAO stated its view that the rating histories provided at that time could not be used to generate reliable performance statistics because, among other things: (1) The 10% samples were being generated in ways that did not make them representative of the total population of credit ratings produced by the NRSROs; (2) the 100% samples were also unrepresentative, because, for example, they were missing the issuer credit ratings of many major American corporations because these credit ratings were initiated before 2007; (3) the data fields provided were insufficient; and (4) not all NRSROs disclosed defaults in these histories.[889] The GAO also stated,

[883] *See* GAO Report 10–782, p. 25.

[884] *See id.* at 24.

[885] *See id.* at 27–37. *See also id.* at 22–23 (''For the transition rates, they differed by whether they (1) were for a single cohort or averaged over many cohorts, (2) constructed cohorts on an annual basis or monthly basis, (3) were adjusted for entities that have had their ratings withdrawn or unadjusted, and (4) allowed entities to transition to default or not.''); *Id.* at 30–31 (''NRSROs also used different methodologies for calculating default rates. In general, default rates differed by whether they were (1) relative to ratings at the beginning of a given time period or relative to initial ratings, (2) adjusted for entities that had their ratings withdrawn or unadjusted, (3) adjusted for how long entities survived without defaulting or unadjusted, (4) calculated using annual or monthly cohorts, and (5) calculated for a single cohort or averaged over many cohorts.'').

[886] *See* GAO Report 10–782, pp. 28, 36.

[887] *Id.* at 36.

[888] *Id.* at 94.

[889] *See* GAO Report 10–782, p. 40–46 (stating, for example, with respect to the 10% samples, that the GAO ''could not use these samples to generate reliable performance statistics for the NRSROs, as the rule intended, for the following reasons: (1) The data fields the NRSROs included in their disclosures were not always sufficient to identify

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in explaining why the 10% and 100% samples were unrepresentative of the universe of credit ratings, that these samples were not required to include credit ratings that had been withdrawn in prior periods, leading to a sample in which cases of defaults would be underrepresented.[890] The GAO concluded that it was unlikely that the required rating histories could be used to generate performance measures and studies to evaluate and compare NRSRO performance.[891]

Relative to the baseline, the amendments to the instructions for Exhibit 1 to Form NRSRO, Rule 17g–1, Rule 17g–2, and Rule 17g–7 with respect to the disclosure of performance statistics and rating histories should result in benefits for users of credit ratings. The amendments, which implement the provisions of section 15E(q) of the Exchange Act and, as discussed in sections II.E.1. and II.E.3. of this release, took into account findings by the GAO, should result in performance statistics that are more directly comparable across NRSROs and ratings histories that are more useful for performance analyses than those provided under the baseline requirements.[892] To the extent that the new disclosures therefore facilitate the evaluation of the performance of an NRSRO's credit ratings and comparisons of rating performance across NRSROs—including direct comparisons of different NRSROs' treatment of the same obligor or instrument—the amendments may benefit users of credit ratings by allowing them to better assess the reliability and information content of credit ratings from different NRSROs and, in the case of subscriber-paid credit ratings, make more informed decisions regarding whether to subscribe to the credit ratings of particular NRSROs.

Specifically, the amendments to the instructions for Exhibit 1 requiring a standardized calculation of performance statistics—using specified definitions and the single cohort approach—to be presented in a standardized format and specifying that an applicant or NRSRO must not disclose information in the Exhibit that is not required to be disclosed are expected to result in simpler, more standardized disclosures relative to the disclosures produced under the baseline requirements. Moreover, the single cohort approach involves simpler computations than other approaches, so it may be easier for users of credit ratings to understand how the statistics were produced. Also, requiring all NRSROs to use the single cohort approach ensures that the cohorts being analyzed will be aligned across NRSROs, increasing the comparability of the statistics versus other computation methods (such as the average cohort approach). The amendments therefore may allow users of credit ratings, including users with a wide range of sophistication, to more readily compare the performance of credit ratings of different NRSROs than they could previously. The new requirement to divide the class of issuers of asset-backed securities into subclasses and the requirement to separately disclose the number of credit ratings that are withdrawn because the obligation has been paid in full, because the obligor defaulted, and for other reasons, as well as to report the total number of credit ratings in the start-date cohort in each category, should provide users of credit ratings with additional information that may help them better interpret the transition and default rates for the purpose of evaluating and comparing performance.[893]

In addition, the new requirements that expand the scope of credit ratings that must be included in the rating histories should, over time, generate databases that will include a comprehensive sample of rating actions (in contrast to the data disclosed under the baseline requirements). The databases also will include information about cohorts of credit ratings beyond those reflected in the performance statistics disclosed in Exhibit 1. Thus, the enhanced rating histories can be used to generate alternative statistics for evaluating and comparing NRSRO performance, including certain transition and default statistics using average cohort approaches (though, as discussed below, these statistics will likely be based on fewer cohorts than were used by NRSROs that disclosed performance statistics in Exhibit 1 using the average cohort approach before today's amendments). Because the data will be more comprehensive than that disclosed in the baseline, it should also be more likely, relative to the baseline, that rating histories of different NRSROs with respect to the same obligor or instrument will be available. Therefore, users of credit ratings should have more opportunities to directly compare and analyze different NRSROs' treatment of the same obligor or instrument over time. The requirements regarding the enhanced data fields to be included with a rating action should make any analyses using the rating histories more practicable than was the case with the more limited data fields produced under the baseline requirements.[894]

However, the benefits of the amendments in facilitating the evaluation and comparisons of NRSROs may be constrained by limits on the information required by the final rules, which, as discussed in this section, are intended to reduce the burdens on NRSROs resulting from the amendments and, with respect to the performance statistics, make them easier for users of credit ratings to understand how the statistics were produced. For example,

complete ratings histories for the rated entities comprising each sample, (2) the data fields did not always give us enough information to identify specific types of ratings for making comparisons, (3) the data fields did not always give us enough information to identify the beginning of the ratings histories in all of the samples, (4) SEC rules do not require the NRSROs to publish a codebook or any explanation of the variables used in the samples, (5) not all NRSROs are disclosing defaults in the ratings histories provided as part of their 10 percent samples, and (6) SEC guidance to the NRSROs for generating the random samples does not ensure that the methods used will create a sample that is representative of the population of credit ratings produced by each NRSRO.'').

[890] *See* GAO Report 10–782, p. 46.

[891] *See id.* at 95.

[892] While the amendments are designed to facilitate comparisons across NRSROs, differences in the meanings of the credit ratings of different NRSROs and in the procedures and methodologies they use to determine credit ratings will likely influence the ability to make perfect comparisons. For example, there is variability across NRSROs with respect to the information that is reflected in a credit rating. *See, e.g., S&P Letter;* GAO Report 10–782, p. 37–39. Some credit ratings, for example, reflect relative assessments of the likelihood an obligor or issuer will default on the ''first dollar'' owed, whereas other credit ratings also reflect the expected loss in the case of default. In interpreting the performance statistics and rating histories, users of credit ratings may thus need to account for additional contextual information, such as the general description of the procedures and methodologies used by the NRSRO to determine credit ratings required to be disclosed in Exhibit 2, in order to understand the limits to the comparability of the disclosures.

[893] While the standard definition of *default* is intended to facilitate comparisons across NRSROs, there may continue to be differences across NRSROs in the identification of defaults in the performance statistics which may reduce somewhat the comparability of these statistics. When an event occurs that does not meet the standardized definition of *default* in Exhibit 1, it may still be categorized as a default by an NRSRO under its own definition of *default,* which is incorporated into the Exhibit 1 definition. In interpreting the performance statistics, users of credit ratings may thus need to account for additional contextual information such as the new requirement to ''clearly explain'' the usage of the term *default* directly after the performance statistics.

[894] There may be differences across NRSROs in the identification of defaults and paid off obligations in the rating histories which reduce somewhat the comparability of this data across NRSROs, since the amendments do not prescribe definitions of these terms for the purpose of the rating histories. In interpreting the rating histories, users of credit ratings may thus need to account for additional contextual information such as the new requirement to ''clearly explain'' the conditions under which an NRSRO classifies obligors, securities, or money market instruments as being in *default* after the performance statistics presented in Exhibit 1.

while mandating that only single cohort statistics be presented fosters comparability, the resulting disclosures will present the performance of only three particular cohorts of credit ratings (beginning one, three, and ten years prior to the end of the fiscal year). These statistics therefore may be subject to substantial volatility, particularly for NRSROs with fewer credit ratings.[895] The fact that the credit ratings of particular NRSROs may be more heavily weighted towards particular industries, geographies, or other sectors that might experience more defaults or other changes in creditworthiness over a particular measurement period also may exacerbate volatility in their performance statistics and make it difficult to separate differences in NRSRO performance from the effects of recent conditions.[896] NRSROs are only required to provide their current Form NRSRO on their Web sites, so users of credit ratings may not have access to previous Forms NRSRO in order to consider the cohorts analyzed in these other years.[897]

The rating histories may be helpful to users of credit ratings in addressing the limitations of the performance statistics both in that information about many additional cohorts may be available and also through the ability to directly compare NRSRO performance with respect to the same obligor or instrument. Such direct comparisons should not be skewed by the industry or sector focus of a given NRSRO. However, the final rules require only one or two years of history to be disclosed initially, depending on the applicable grace periods, so the benefits of these histories will be delayed until the histories grow to a length suitable for analysis. Also, as discussed below, even as data for additional years becomes available, the ability of NRSROs to remove a rating history from the data file fifteen years after the credit rating is withdrawn will limit the amount of historical information in the data file and, therefore, limit analyses by users of credit ratings that require a representative sample of credit ratings over an extended period of time. On the other hand, users of credit ratings that are interested in comparing NRSRO performance over time with respect to the same obligor or instrument should not face the same limitation and, therefore, should be able to take advantage of the full length of histories provided under the amendments.

A potential consequence of selecting one approach to be used for purposes of the Exhibit 1 disclosures is that it may impact the disclosures NRSROs make using other approaches. For example, even though the amendments require NRSROs to use the single cohort approach, NRSROs may continue on a voluntary basis to provide, not directly in Exhibit 1 but by reference to an Internet Web site address in this exhibit, disclosures of additional performance statistics such as statistics using the average cohort approach. These supplementary statistics may address some of the aforementioned limitations of statistics using the single cohort approach in that they may provide users of credit ratings with information about many more cohorts of credit ratings. However, NRSROs that previously disclosed average cohort statistics to fulfill their Exhibit 1 requirements might not continue to report these statistics voluntarily or might report them in an even less standardized fashion than previously (for example, for performance periods different from the one-year, three-year, and ten-year periods required in Exhibit 1). Importantly, NRSROs might be less likely to voluntarily disclose such additional statistics when they do not compare favorably to the performance of competitors.

The amendments may result in other benefits to users of credit ratings and NRSROs by enhancing accountability, competition, and efficiency. As has been widely documented, the most common NRSRO business model—the issuer-pay revenue model—creates an inherent conflict of interest.[898] Given this conflict, and because the demand for an NRSRO's credit ratings depends on its reputation for producing credit ratings of high quality, reputation is thought to play a particularly important disciplinary role in this industry.[899] To the extent that the amendments facilitate the external monitoring and comparative analysis of NRSROs, they may allow users of credit ratings to develop more refined views of NRSRO performance and thereby indirectly increase accountability and encourage integrity in the production of credit ratings, since NRSROs should have the incentive to maintain reputations for producing credit ratings of high quality in order to remain competitive. More comparable performance data also may help smaller NRSROs and new and recent entrants into the industry, including subscriber-paid NRSROs, to attract attention to their track records of issuing and monitoring credit ratings. If they produce track records comparable or superior to those of other NRSROs, this could enhance their ability to develop a reputation for producing high quality credit ratings. Such a reputation may allow them to better compete with more established competitors. The enhanced ability of users of credit ratings to evaluate the performance of NRSROs also may increase their ability to accurately interpret the information conveyed by credit ratings, potentially resulting in more efficient investment decisions. Market efficiency could also improve if this information is reflected in asset prices.[900]

The amendments to Rule 17g–1 and Rule 17g–7 requiring that these disclosures be published on an ''easily accessible'' portion of the NRSRO's Internet Web site could result in incremental benefits relative to the baseline. As mentioned above, the Commission agrees with commenters

[895] Averages over a smaller sample size are more susceptible to being skewed by individual extreme data points. *See also DBRS Letter* (stating that ''results will be significantly more volatile within the shorter time period, which will make interpreting those results more difficult'' and that ''the volatility impact will be amplified for NRSROs with fewer ratings'').

[896] A particular industry, geography, or other sector of the market may experience a period of poor performance common to all issuers and securities in that group, resulting in high default rates in that period. Economy-wide default rates are likely to be less volatile than the default rates for these individual groups since they reflect an average across many such groups, which may face downturns at different times. Thus, when considering performance over a short period, as in the case of the single cohort approach, the performance of NRSROs that focus on fewer industries, geographies, or other sectors may be skewed by any recent extremes in performance experienced by these sectors, leading to more volatile performance statistics. When such NRSROs are compared to other NRSROs, it may be difficult to interpret whether differences in their single cohort performance statistics may be due to the recent performance of the sectors they focus on or whether they reflect differences in the ability of the NRSROs to produce accurate ratings.

[897] In the future, users of credit ratings will have access to certain previous Forms NRSRO, including Exhibits 1 through 9 to these Forms. As discussed below in section II.L. of this release, the amendments to Rule 101 of Regulation S–T will require an NRSRO to submit Form NRSRO and Exhibits 1 through 9 to the Form electronically through the EDGAR system. Submission through the EDGAR system will maintain the public availability of a Form NRSRO even after updated versions are submitted.

[898] *See, e.g.,* Lawrence White, *Markets: The Credit Rating Agencies,* J. of Economic Perspectives (Spring 2010), Volume 24, Number 2, p. 211–226.

[899] *See, e.g.,* Jerome Mathis, James McAndrews, and Jean-Charles Rochet, *Rating the Raters: Are Reputation Concerns Powerful Enough to Discipline Rating Agencies?,* J. of Monetary Economics (July 2009), p. 657–674; Lawrence White, *Markets: The Credit Rating Agencies, J. of Economic Perspectives* (Spring 2010), Volume 24, Number 2, p. 211–226; Daniel M. Covitz and Paul Harrison, *Testing Conflicts of Interest at Bond Rating Agencies with Market Anticipation: Evidence that Reputation Incentives Dominate,* Federal Reserve Board (Dec. 2003), *available* at *http://www.federalreserve.gov/pubs/feds/2003/200368/200368pap.pdf.*

[900] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

that the disclosures would be on an ''easily accessible'' portion of an NRSRO's Internet Web site if they could be accessed through a clearly and prominently labeled hyperlink labeled ''Regulatory Disclosures'' on the homepage of the Web site. Some NRSROs may already provide Form NRSRO, Exhibits 1 through 9 to the form, and rating histories in such a location. However, to the extent that these amendments result in NRSROs moving the disclosures to a more prominent location on their Internet Web sites to fulfill the requirement that they be ''easily accessible,'' they may incrementally assist users of credit ratings in locating these disclosures. Requiring that Exhibit 1 be made available in writing when requested may benefit any users of credit ratings who do not have access to the Internet.

Relative to the baseline, the amendments with respect to the disclosure of performance statistics and rating histories will impose costs on applicants and NRSROs. In particular, while all NRSROs currently disclose transition and default rates, the content and presentation of these performance statistics differ, to varying degrees, from the information required and the format prescribed by the rules. The revised requirements therefore will require the initial collection and analysis of certain additional historical data (for example, whether issuers or instruments defaulted under the standard definition) as well as changes in systems and procedures to collect and present this information according to the amendments going forward. The Commission's estimates of these costs—which are based on analyses for purposes of the PRA—are provided below.

Two NRSROs have commented that, in some cases, collecting certain historical information would require substantial cost or could be impossible.[901] The historical information required for the transition and default statistics which NRSROs may not have stored (or stored in a readily retrievable format) consists of, over a ten year history, the more detailed categorization of any withdrawn credit ratings and the assignment of credit ratings in the asset-backed securities class into sub-classes. As discussed above, the Commission has modified the amendments to reduce the amount of historical information that may need to be retrieved with respect to withdrawn credit ratings. In particular, the amendments provide that, except in the case of the asset-backed securities class of credit ratings, the transition and default statistics must include only credit ratings assigned to an obligor as an entity or, if there is no such credit rating, the credit rating of the obligor's senior unsecured debt, instead of all credit ratings of securities or money-market instruments in the respective class or subclass. The Commission has also revised the standard definition of *paid off* to eliminate the prong that applied to credit ratings of obligors as entities. Because the Commission has narrowed the scope of the credit ratings that must be included in the performance statistics for four of the five classes of credit ratings, and has revised the standard definition of *paid off* so that it does not apply to entity credit ratings, the cost of categorizing historical withdrawals based on the standard definitions of *default* and *paid off* and withdrawals for other reasons should be substantially reduced. The modifications from the proposal should therefore mitigate concerns to some degree about having to obtain information that was not traditionally retained by the NRSRO because it will significantly narrow the scope of such information that will need to be collected in order to calculate the performance statistics. While the Commission believes that these modifications may substantially reduce the amount of historical data to be collected, an NRSRO can seek exemptive relief from the Commission under section 36 of the Exchange Act.

The costs of the compliance efforts described above should vary across NRSROs due to: (1) Differences in the quantity of credit ratings they issue and the number of classes of credit ratings for which they issue credit ratings; (2) differences in terms of how their disclosures under the baseline requirements compare to the disclosures required under the amendments; (3) differences with respect to the historical information they currently store in a readily-retrievable format; (4) differences in the number of past years and number of historical credit ratings for which additional historical information will need to be collected; and (5) differences in the design and flexibility of their information systems. However, based on analysis for purposes of the PRA, the Commission estimates that the amendments to Exhibit 1 to Form NRSRO will result in total industry-wide one-time costs to NRSROs of approximately $737,000 and total industry-wide annual costs to NRSROs of approximately $295,000.[902]

Under the amendments to paragraph (i) of Rule 17g–1, NRSROs are required to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of their corporate Internet Web site and to provide a paper copy of Exhibit 1 to individuals who request a paper copy. NRSROs may need to re-configure their corporate Internet Web sites to comply with the amendments and will need to establish procedures and protocols for processing requests for a paper copy. Based on analysis for purposes of the PRA, the Commission estimates that the amendments to paragraph (i) of Rule 17g–1 will result in total industry-wide one-time costs to NRSROs of approximately $150,000 and total industry-wide annual costs to NRSROs of approximately $121,000.[903]

The amendments to the instructions for Exhibit 1 also may result in other costs to NRSROs. For some NRSROs, it is possible that using only the single cohort approach to produce the performance statistics in Exhibit 1 may lead users of credit ratings to misinterpret their performance, negatively impacting competition in the industry. Specifically, as discussed above, the single cohort approach will produce statistics about three particular cohorts of credit ratings and may thus be subject to volatility. Further, the statistics may be particularly volatile for certain NRSROs, such as those that have a small number of credit ratings in a given start date cohort or those that focus on particular industries, geographies, or other sectors within a class of credit ratings. The requirements of the final amendments (that is, showing the number of credit ratings in the start date cohort) are designed to provide persons reviewing the statistics with sufficient information to readily assess the impact that a small number of credit ratings can have on the statistics. Also, the disclosure of ratings histories should permit more refined comparisons of performance in cases where differences in performance statistics may reflect differences in the universe of obligors or instruments rated

[901] *See, e.g., Moody's Letter* (stating that collecting certain data for past rating actions would have to be done manually); *S&P Letter* (stating that ''it may not be possible to track'' the distinction between ratings withdrawn for different reasons ''retroactively'').

[902] *See* section V.E. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.2. of this release.

[903] *See* section V.E. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.1. of this release.

by NRSROs. However, some persons reviewing the transition and default rates could inappropriately view the volatility resulting from such factors unfavorably, potentially disadvantaging these NRSROs relative to the baseline to the extent that their reputation for producing quality credit ratings is negatively affected. The competitive position of small NRSROs may be further disadvantaged by the burden associated with establishing systems to produce the statistics, since this cost may not depend on the number of credit ratings in the start-date cohorts and thus may result in a higher relative burden for small NRSROs.[904]

Under the baseline requirements, NRSROs publicly disclosed certain rating histories data to fulfill the requirements of the 10% Rule and the 100% Rule, but the sample of credit ratings subject to the disclosure, the rating actions disclosed, the extent of the histories, and the included data fields differ, to varying degrees, from those required by the amendments. The amendments may thus require NRSROs to add more rating histories to their disclosures because in contrast to the baseline requirements the amendments: (1) Apply to all credit ratings outstanding as of the specified date or initiated thereafter rather than a random sample of credit ratings; (2) do not exclude credit ratings that were outstanding as of the specified date but initiated before June 26, 2007; and (3) require the rating histories of withdrawn ratings to be retained in the file for fifteen years. Also, the amendments will require NRSROs to revise which rating actions are included and to provide more information about each rating action in the rating histories. NRSROs initially will have to collect additional historical data and edit the history files to meet these requirements. Some of the required information which might not have been collected previously—such as the categorization of credit ratings in the asset-backed securities class into sub-classes—will be retrieved in the process of complying with the amended instructions for Exhibit 1 to Form NRSRO discussed above. NRSROs also will have to reprogram existing systems and make changes in procedures to collect and upload the information according to the amendments going forward. NRSROs may have to make changes to their corporate Internet Web sites to disclose the information on an ''easily accessible'' portion of their Web sites, though the incremental changes required beyond the Web site changes to disclose Form NRSRO discussed above may be minimal. On an ongoing basis, the cost of the procedures required to update the rating histories files at least monthly may exceed the annual burden previously imposed by the 10% Rule (which is being repealed) and the 100% Rule before today's amendments, given the comprehensive nature of the data required. The Commission's estimates of these costs—which are based on analyses for purposes of the PRA—are provided below.

One commenter stated that the Commission ''substantially underestimated the costs'' of the proposed amendments to the 100% Rule in the proposing release.[905] Two other commenters raised concerns that retrieving the required historical data would require substantial cost or could be impossible.[906] The Commission acknowledges that the amendments will impose significant costs on NRSROs, and has modified the proposal in a number of ways to mitigate costs. First, the final amendments eliminate the requirement to include information for all credit ratings outstanding on June 26, 2007, and replace it with a standard three-year backward-looking requirement that applies irrespective of when the NRSRO is registered in a class of credit ratings. This should significantly reduce the costs of retrieving and analyzing historical information for the purposes of making the rating histories disclosures. Further, the final amendments eliminate two types of rating actions that would trigger a requirement to add information to a credit rating's history: Placements of the credit rating on watch or review and affirmations of the credit rating. This may further reduce the cost of retrieving the historical information that must be disclosed in the rating histories, since a record of an affirmation of the credit rating may not previously have been stored (or stored in a readily retrievable format) by NRSROs. Consequently, because of these modifications, NRSROs should not need to perform analyses to identify historical affirmations and reconstruct the information that would need to have been disclosed under the proposal in connection with each affirmation of the credit rating (for example, the date of the action). The remaining information that is required to be disclosed, but may not have been systematically stored by NRSROs previously (such as the required categorization of the reason for a withdrawal), generally will need to be collected only once for each rating history rather than for multiple rating actions within a history, as each rating history should, for example, have only one withdrawal (whereas a history could have multiple affirmations of the credit rating). The narrowing of the scope of the types of rating actions that are required to be included in the rating histories also should reduce the burden of updating the XBRL data file with new information in the future. While the Commission believes the modifications discussed above may substantially reduce the costs of retrieving historical data, an NRSRO can seek exemptive relief from the Commission under section 36 of the Exchange Act. The amendments also specify a standard for updating the file—no less frequently than monthly. This should mitigate concerns that the file would need to be updated more frequently. Finally, the final amendments modify the proposal to reduce the time period a credit rating history must be retained after the credit rating is withdrawn from twenty years to fifteen years. This should reduce the data retention and maintenance costs associated with the amendments compared to the proposal.

The costs of the compliance efforts described above with respect to the amended requirements for disclosing rating histories should vary across NRSROs due to: (1) Differences in the quantity of credit ratings they issue and have issued in the historical years subject to disclosure; (2) differences in the data fields that they currently include in their rating histories; (3) differences with respect to the historical information they currently store in a readily-retrievable format; and (4) differences in the design and flexibility of their information systems. However, based on analysis for purposes of the PRA, the Commission estimates that the amendments to Rule 17g–2 and paragraph (b) of Rule 17g–7 will result in total industry-wide one-time costs to NRSROs of approximately $393,000, and total industry-wide annual costs to NRSROs of approximately $131,000.[907]

One commenter stated that the proposed amendments ''may force NRSROs to incur increased licensing

[904] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[905] *See DBRS Letter.*

[906] *See, e.g., Moody's Letter* (stating that collecting certain data for past rating actions would have to be done manually and ''would require tens of thousands of hours of analysis''); *S&P Letter* (stating that ''it may not be possible to track'' the distinction between ratings withdrawn for different reasons ''retroactively'').

[907] *See* section V.F. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.6. of this release.

costs to add new CUSIP data.'' [908] The CUSIP Global Services' license fees may vary based on the level of usage (that is, the number of CUSIPs databased and the licensees' business lines and regions of operation where the data will be used) and the form of usage (such as the internal databasing of CUSIP data or the distribution of CUSIP data).[909] The Commission believes that most NRSROs already have licensing agreements in place for their current usage of CUSIP data, but it is possible that these baseline licensing agreements may need to be expanded given the additional CUSIP data that may have to be stored and disclosed to comply with the amendments. The comment letter that highlighted these potential costs did not provide an estimate of these costs and did not provide data or analysis that would allow the Commission to estimate how NRSROs' CUSIP licenses would need to be changed to account for the new requirements.[910] Without information about the scope of the NRSROs' current licenses and the cost of obtaining updated licenses, it is not feasible for the Commission to develop an estimate of any such costs.[911]

Another potential cost to NRSROs is the potential loss of revenue from the sale of access to historical ratings data, as more of this data becomes publicly available. The Commission understands that revenue from this source may be significant for certain NRSROs, though commenters did not provide data or analysis that would allow the Commission to estimate the amount of revenue that could be lost.[912] The Commission is unable to estimate the revenue attributable to the sale of access to historical ratings data from other sources because the information about NRSRO revenues available to the Commission is not broken down at this level of granularity and, in practice, access to such historical data may be bundled with access to analytical tools and other services. This potential loss of revenue may be mitigated by the grace periods before disclosure, the fact that historical information before the three-year look-back period is not required to be disclosed, the exclusion of placements on credit watch and affirmations from the rating actions that must be disclosed in the public rating histories,[913] and the ability to remove a rating history from the public data file fifteen years after the credit rating is withdrawn. However, it is difficult to predict how subscribers will react to the change in the extent of publicly available data.

Because any such losses in revenue likely would disproportionately affect NRSROs that are more dependent on revenue from selling access to historical ratings data, and particularly NRSROs that operate on the subscriber-pay model, the disclosure requirement may disadvantage these NRSROs to the detriment of competition in the industry. Additional impacts on competition may result from the disproportionate burden on small NRSROs, given that some of the compliance costs are not likely to vary with size, and on NRSROs that have systems and data collection procedures that vary the most from the requirements of the amendments.

In addition to these effects, the amendments may affect capital formation. Some academic research indicates that credit rating agencies should not focus exclusively on ratings accuracy, but also should consider the feedback effects of their credit ratings on the probability of survival of an issuer.[914] Specifically, these theories suggest that if credit ratings can directly affect the default probability of an issuer, such as when a ratings downgrade itself makes it harder or more costly for a company to raise funds, then it may be optimal for credit rating agencies to delay credit rating downgrades in order to lessen the impact of such feedback on the company's prospects. If the adopted rules drive increased transparency with respect to performance, and this leads to pressures on NRSROs to assign more accurate credit ratings by making earlier downgrades, the amplified feedback effects could increase the default frequencies of issuers and other obligors.[915]

The Commission has considered the costs and benefits of reasonable alternatives relative to today's amendments, including certain alternatives that have been raised by commenters and discussed above. One NRSRO requested that the Commission provide ''fuller background'' on decisions such as the determination to require the single cohort approach rather than an average cohort approach for performance statistics, with a description of potential benefits and limitations of those decisions.[916] As an alternative to the single cohort approach, the Commission could have required NRSROs to use the average cohort approach, or to present two sets of statistics using the average and single cohort approaches respectively, as suggested by commenters.[917] Statistics generated using the average cohort approach would provide information to users of credit ratings that is not available from statistics generated using the single cohort approach, specifically with regard to how credit ratings perform on average across a wider variety of economic conditions. Such information may be of use to users of credit ratings in evaluating and comparing the performance of NRSROs. However, variation in the length of histories available at the different NRSROs makes it difficult to produce a standardized methodology for computing average cohort statistics that would be comparable across NRSROs. Also, because the single cohort approach requires simpler calculations, it may be less burdensome for NRSROs to produce such statistics and easier for less sophisticated investors to understand how such performance measurement statistics were produced. As discussed above, NRSROs will continue to be permitted to present alternative statistics on a voluntary basis on their public Web sites, and by reference to a URL in Exhibit 1.

A second alternative with respect to the performance statistics would be to require the disclosure of withdrawn credit ratings, without requiring that this category be separated into credit ratings that were withdrawn because the related obligation was paid off, because the obligor defaulted, or for other reasons. This alternative would be less burdensome than the approach in the amendments, because, as discussed by

[908] *See DBRS Letter* (''Expanding the ratings history universe, may also force NRSROs to incur increased licensing costs to add new CUSIP data. Any such costs should be factored into the Commission's cost-benefit analysis of this proposal.'').

[909] Information about CUSIP licenses is available at *http://www.cusip.com/cusip/cgs-license-fees.htm.*

[910] *See DBRS Letter.*

[911] CUSIP Global Services does provide some information about potential license fees on its public Web site, but explicitly states that the disclosed fee schedule does not apply to ''information providers, whose fees for their own usage and redistribution of CGS data are calculated using a different pricing model.'' The Web site also states that the ''[f]inal determination of fees is at the judgment of CGS and consideration will be given to aspects of a customer's profile.'' *See http://www.cusip.com/cusip/cgs-license-fees.htm.*

[912] *See, e.g., Fitch Letter.*

[913] For example, as discussed below, academic research suggests that placements on credit watch are significant information events, so some users of credit ratings may value information about historical NRSRO usage and timing of placements on credit watch.

[914] *See, e.g.,* Gustavo Manso, *Feedback Effects of Credit Ratings,* J. of Financial Economics (2013), Volume 109, p. 535–548.

[915] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[916] *See Kroll Letter.*

[917] *See CFA/AFR Letter; DBRS Letter.*

two commenters,[918] NRSROs that have not tracked this information historically likely would incur costs to collect the required information retroactively and change their systems to collect and report this information going forward. However, given that an applicant or NRSRO could withdraw a credit rating to make its transition or default rates appear more favorable, information about the reasons for withdrawal is likely to be useful to users of credit ratings in interpreting the performance statistics.

An alternative approach to the amendments regarding rating histories would be to require the inclusion of placements on credit watch in the rating histories, while still excluding ratings affirmations, which would be consistent with the rating actions subject to disclosure in histories under the baseline requirements. Among the three commenters that recommended that the scope of rating actions included in public rating histories be narrowed, two did not raise concerns about the inclusion of placements on credit watch.[919] Academic research has found that credit watch announcements are associated with abnormal stock and bond returns, indicating that placing a rating on credit watch is a significant information event.[920] Including these announcements in rating histories would thus allow persons to, for example, judge which NRSROs have historically been more likely to provide, and more timely at providing, this information to the users of credit ratings, and thus may increase the accountability, time sensitivity, and judiciousness of NRSROs in placing credit ratings on credit watch. However, while making information about placements on credit watch publicly available in the rating histories may benefit users of credit ratings that value this information, the fact that some users of credit ratings may value this information also means that excluding such information from rating histories may make subscribers to NRSRO services that include access to historical ratings data (including placements on credit watch) somewhat less likely to stop subscribing as an increasing amount of historical ratings data becomes publicly available. The Commission therefore believes that excluding placements on credit watch from the rating histories may reduce potential losses in NRSRO revenues from services that include access to their credit ratings and/or rating histories while still permitting users of credit ratings to use the public rating histories to conduct certain analyses (such as calculating alternative transition and default statistics) to evaluate and compare NRSRO performance.

Additional alternatives with respect to rating history disclosure would be to not permit a rating history for a credit rating to be removed from the data file fifteen years after the credit rating is withdrawn, or to shorten the retention period to ten years as suggested by a commenter.[921] Under the first alternative, the retention period could be substantially increased or a history could be required to be retained permanently. In particular, because the amendments allow credit ratings to be removed from the histories fifteen years after they are withdrawn, any data that becomes available for periods over fifteen years in the past will not reflect a representative sample of the credit ratings of the NRSRO, since withdrawn credit ratings, including credit ratings withdrawn because of default, will be underrepresented in the sample of outstanding credit ratings in the rating histories for a period that is more than fifteen years in the past.[922] Thus, the data files disclosed pursuant to the amendments will over time result in no more than fifteen years (and likely no more than thirteen or fourteen years, given the permitted grace periods) of data that is fully comprehensive and can therefore be used to calculate performance statistics or perform other analyses that require a representative sample of credit ratings. The data will, over time, become sufficient to produce, for example, five-year and twelve-year performance statistics using the single cohort approach or, for example, three-year performance statistics using the average cohort approach applied to the eleven annual cohorts beginning thirteen years ago. However, performance statistics using the data from ratings histories will be limited to cohorts of credit ratings over these thirteen or fourteen years of history and thus may not reflect as wide as a variety of economic conditions as may be desired.

Increasing the retention period would therefore benefit users of credit ratings interested in using the rating histories to perform analyses that require a representative sample of the credit ratings of the NRSRO outstanding as of a date or a series of dates that are more than thirteen or fourteen years in the past. However, as in the case of excluding data with respect to placements on credit watch, applying a shorter retention period may reduce potential losses to NRSROs of revenue from selling access to historical ratings data. Also, one NRSRO stated that ''the amount of data storage required'' to comply with a twenty-year retention requirement for the public rating histories ''would be considerable.'' [923] The Commission therefore believes that a fifteen-year retention requirement may reduce the burden on NRSROs, while still permitting users of credit ratings to use the public rating histories to conduct certain analyses (such as transition and default statistics that require up to thirteen or fourteen years of data, or comparisons over longer horizons of NRSRO performance with respect to the same obligor or instrument) to evaluate and compare NRSRO performance.

For these reasons, the Commission also does not believe it would be appropriate to shorten the retention period to ten years as suggested by one commenter.[924] A ten year retention period (rather than a fifteen year retention period) would further limit the utility of the rating histories in terms of being able to use the data to generate performance statistics that are different than the performance statistics that must be disclosed in Exhibit 1 to Form NRSRO.

A further alternative for rating history disclosure would be to increase or decrease the grace periods relative to the twelve- and twenty-four-month grace periods that are permitted for issuer-paid and other credit ratings respectively under the amendments. Longer permitted grace periods likely would reduce potential losses experienced by NRSROs in revenues

[918] *See Moody's Letter* (stating that it does not ''systematically capture data that sub-divides withdrawn credit ratings into the three sub-categories'' and that collecting this data for past rating actions ''would have to be done manually''); *S&P Letter* (''NRSROs may not currently distinguish between ratings on instruments that are paid off and withdrawn. Tracking this distinction going forward, to the extent it is not presently being done, will require significant systems changes. In addition, it may not be possible to track this distinction retroactively.'').

[919] *See ABA Letter; S&P Letter.* Another commenter recommended that the Commission exclude both affirmations and placements on credit watch, as well as assignments of default status, from the definition of *rating action. See Moody's Letter.*

[920] *See, e.g.,* Hand, Holthausen, and Leftwich, *The Effect of Bond Rating Agency Announcements on Bond and Stock Prices;* Chung, Frost, and Kim, *Characteristics and Information Value of Credit Watches.*

[921] *See DBRS Letter.*

[922] *See* GAO Report 10–782, pp. 46, 98. *See also id.* at 98 (stating that ''[t]o the extent that withdrawn ratings are not included in the data, users will not be able to generate withdrawal-adjusted statistics and the data will underrepresent defaulted issuers and issues'' and recommending that ''withdrawn ratings are not removed from these disclosures'').

[923] *See S&P Letter.*

[924] *See DBRS Letter.*

from services that include access to their credit ratings and/or rating histories. However, shorter grace periods would increase the benefits from the disclosure by making more, and more timely, information available to users of credit ratings for the purpose of evaluating and comparing the performance of NRSROs. The Commission believes it has appropriately balanced the costs and benefits of increasing or decreasing the grace periods in setting the grace periods permitted under the amendments.

F. Credit Rating Methodologies

Section 932(a)(8) of the Dodd-Frank Act amended section 15E of the Exchange Act to add subsection (r).[925] Section 15E(r) of the Exchange Act provides that the Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by NRSROs that require each NRSRO to ensure that objectives identified in section 15E(r) are met.[926] The Commission proposed to implement section 15E(r) in large part, through paragraph (a) of Rule 17g-8, which would require an NRSRO to establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure it meets the objectives identified in section 15E(r).[927] The intent was to provide flexibility for an NRSRO to establish policies and procedures that can be integrated with its procedures and methodologies for determining credit ratings, which vary across NRSROs.[928] The proposed approach also was sensitive to the limitation in section 15E(c)(2) of the Exchange Act, given that the objectives set forth in section 15E(r) of the Exchange Act relate to the procedures and methodologies an NRSRO uses to determine credit ratings.[929] The Commission also proposed an amendment to Rule 17g-2 to apply the record retention and production requirements of that rule to the documentation of the policies and procedures that would be required under proposed paragraph (a) of Rule 17g-8.[930]

1. Paragraph (a) of New Rule 17g–8

As proposed, paragraph (a) of Rule 17g-8 would require an NRSRO to establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure that it achieves the objectives identified in section 15E(r) of the Exchange Act.[931] In particular, the prefatory text of paragraph (a) would require an NRSRO to establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure that it meets the objectives identified in paragraphs (a)(1), (2), (3), (4), and (5).[932] The rule text in proposed paragraphs (a)(1), (2), (3), (4), and (5) of Rule 17g–8 largely mirrored the statutory text of section 15E(r) of the Exchange Act.[933]

The Commission is adopting the prefatory text of paragraph (a) of Rule 17g–8 as proposed.[934] The final rule requires an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that it meets the objectives identified in paragraphs (a)(1), (2), (3), (4), and (5) of the rule.

One commenter stated that the proposal appropriately recognizes that procedures and methodologies vary across NRSROs and thus there is a need for flexibility to establish policies and procedures that can be integrated with the NRSRO's existing credit rating methodologies.[935] Some commenters expressed general opposition to the proposal on the basis of cost.[936] One of these commenters stated that certain aspects of the proposals, including those regarding credit rating methodologies, would compound barriers to entry, and that many of the rules would be expensive and burdensome to implement.[937] More specifically, this commenter stated that the Commission should take into account the dominance of very large players and expand exemptions for small NRSROs designed to level the competitive field.[938]

In response, the Commission notes that the final rule is designed to meet the rulemaking mandate of section 15E(r) of the Exchange Act in a manner that provides flexibility to NRSROs to design the required policies and procedures. Consequently, an NRSRO can tailor and scale its policies and procedures to its business model, size, and the scope of its activities as well as to its procedures and methodologies for determining credit ratings, which should mitigate concerns to some degree about the costs of the final rule and its potential to create barriers to entry for small credit rating agencies. The Commission also believes that the policies and procedures required under section 15E(r), as implemented by the Commission in paragraph (a) of Rule 17g–8, will promote the integrity and transparency of the procedures and methodologies NRSROs use to determine credit ratings by, for example,

[925] *See* Public Law 111–203, 932(a)(8); 15 U.S.C. 78o–7(r).

[926] The objectives are: (1) To ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are (A) approved by the board of the NRSRO or a body performing a similar function; and (B) in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies; (2) to ensure that when material changes to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models) are made, that (A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply; (B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the NRSRO within a reasonable time period determined by the Commission, by rule; and (C) the NRSRO publicly discloses the reason for the change; and (3) to notify users of credit ratings (A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating; (B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs; (C) when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; and (D) of the likelihood of a material change described in subparagraph (B) resulting in a change in current credit ratings. *See* 15 U.S. C. 78o-7(r)(1) through (3).

[927] *See* paragraph (a) of Rule 17g-8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33452–33465. As discussed below, the Commission proposed to implement section 15E(r)(3)(A) of the Exchange Act (which addresses notice of the version of a procedure or methodology used with respect to a particular credit rating) also through paragraph (a) of Rule 17g-7, as proposed. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459.

[928] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33452.

[929] *See id.* at 33452. *See also* 15 U.S.C. 78o–7(r); 15 U.S.C. 78o–7(c)(2) (providing, in pertinent part, that the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings).

[930] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33456.

[931] *See* proposed paragraph (a) of Rule 17g–8; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[932] *See* proposed prefatory text of paragraph (a) of Rule 17g–8; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[933] *Compare* paragraphs (a)(1), (2), (3), (4), and (5) of Rule 17g–8, as proposed, *with* 15 U.S. C. 78o–7(r)(1) through (3).

[934] *See* prefatory text of paragraph (a) of Rule 17g–8.

[935] *See ICI Letter.*

[936] *See A.M. Best Letter; Kroll Letter.* Alternatively, another commenter expressed the view that rule should, in general, be strengthened by explicitly requiring NRSROs to assign higher risk to products issued by financial institutions with a track record of issuing poor quality assets. *See Levin Letter.* This recommendation is beyond the scope of the proposal and could implicate section 15E(c)(2) of the Exchange Act. *See* 15 U.S. C. 78o-7(c)(2) (which, among other things, prohibits the Commission from regulating the substance of credit ratings and the procedures and methodologies by which any NRSRO determines credit ratings).

[937] *See Kroll Letter.*

[938] *See id.*

promoting board oversight of these procedures and methodologies and requiring disclosure when material changes are made to them. Nonetheless, as discussed below in the economic analysis, the Commission acknowledges that these requirements will result in costs and that those costs could create competitive barriers.

As proposed, paragraph (a)(1) of Rule 17g–8 would implement section 15E(r)(1)(A) of the Exchange Act.[939] This section identifies the objective of ensuring that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board.[940] Paragraph (a)(1), as proposed, would require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board.[941] The Commission intended this requirement to operate in conjunction with section 15E(t)(3)(A) of the Exchange Act, which establishes a statutory requirement that the board of an NRSRO ''shall oversee'' the establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings.[942]

The Commission is adopting paragraph (a)(1) of Rule 17g–8, as proposed.[943] The final rule requires an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies it uses to determine credit ratings are approved by its board of directors or a body performing a function similar to that of a board of directors.[944] In relation to this requirement in paragraph (a)(1), section 15E(t)(3)(A) of the Exchange Act (as discussed above) contains a self-executing requirement that the board of an NRSRO ''shall oversee'' the ''establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings.'' [945] Consequently, as discussed in the proposing release, the policies and procedures required pursuant to paragraph (a)(1) of Rule 17g–8, as adopted, must be reasonably designed to ensure that the NRSRO's board carries out this statutorily mandated responsibility.[946] In addition, section 15E(t)(5) of the Exchange Act provides that the Commission may permit an NRSRO to delegate responsibilities required in section 15E(t) to a committee if the Commission finds that compliance with the provisions of that section present an unreasonable burden on a small NRSRO.[947] In this case, the policies and procedures required pursuant to paragraph (a)(1) of Rule 17g–8, as adopted, must be reasonably designed to ensure the NRSRO's committee carries out the responsibility to oversee the establishment, maintenance, and enforcement of the NRSRO's procedures and methodologies for determining credit ratings.[948]

One commenter stated that the proposal appropriately meets the Exchange Act mandate.[949] Another commenter cited the high costs associated with having an independent board and stated that given those high costs the scope of board functions should not be inadvertently expanded.[950] This commenter also stated that it would have been helpful for the final rule to provide greater guidance to confirm that the board is not required to approve or pass judgment on, for example, ''qualitative and quantitative data and models.'' [951] A second commenter stated that a periodic approval process is more consistent with the board of directors' oversight role and provides the board of directors a better opportunity to provide well-planned and meaningful guidance that would be better at creating consistency in best practices across the NRSRO.[952] A third commenter stated that responsibility for the development of ratings criteria, methodologies, and models ''should be in the hands of experienced ratings professionals'' and that the board should be responsible for approving the policies and procedures that are used to develop the NRSROs' criteria, methodologies, and models.[953] The commenter did not interpret the proposal to require the board to approve the criteria, methodologies, or models themselves, stating that any such requirement would not be feasible given the vast amounts of continually developing criteria used by NRSROs.[954]

In response to the comments, the Commission notes that section 15E(t)(3)(A) of the Exchange Act provides that the board of an NRSRO shall oversee the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings.[955] Consequently, the self-executing requirement in the statute governs the responsibility of the board. Paragraph (a)(1) of Rule 17g–8 governs the responsibility of the NRSRO to have policies and procedures reasonably designed to ensure that the board carries out this responsibility. In terms of complying with the statutory requirement to oversee rating policies and procedures, the Commission recognizes that the board cannot be involved in managing the day-to-day affairs of the NRSRO. There must be an appropriate balance between the board's responsibilities as a governing body and the responsibilities of the NRSRO's managers as supervisors of the daily activities of the NRSRO. As a practical matter, an NRSRO will need to appropriately allocate responsibilities to the NRSRO's board and to the NRSRO's managers with respect to the implementation of rating procedures and methodologies, with the board exercising its statutory responsibility to oversee the establishment, maintenance, and enforcement of the NRSRO's policies and procedures for determining credit ratings. Consequently, the Commission does not expect board members to undertake the detailed work of developing rating procedures and methodologies.

Further, as discussed above, section 15E(t)(5) of the Exchange Act provides exception authority under which the Commission may permit an NRSRO to delegate responsibilities of the board required in section 15E(t) to a committee if the Commission finds that compliance with the provisions of that section present an unreasonable burden on a small NRSRO.[956] The ability to request an exception under section 15E(t)(5) provides a means for a small NRSRO to seek relief to delegate

[939] *See* paragraph (a)(1) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[940] *See* 15 U.S.C. 78o–7(r)(1)(A).

[941] *See* paragraph (a)(1) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[942] *See* 15 U.S.C. 78o–7(t)(3)(A); *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[943] *See* paragraph (a)(1) of Rule 17g–8.

[944] *See id.*

[945] *See* 15 U.S.C. 78o–7(t)(3)(A).

[946] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[947] *See* 15 U.S.C. 78o–7(t)(5).

[948] *See* 15 U.S.C. 78o–7(t)(3)(A).

[949] *See S&P Letter.*

[950] *See Kroll Letter.* Section 15E(t)(2) of the Exchange Act prescribes a self-executing requirement that at least one half of the members of an NRSRO's board must be independent. *See* 15 U.S.C 78o–7(t)(2).

[951] *See Kroll Letter.*

[952] *See Morningstar Letter.*

[953] *See S&P Letter.*

[954] *See id.*

[955] *See* 15 U.S.C. 78o–7(t)(3)(A).

[956] *See* 15 U.S.C. 78o–7(t)(5).

responsibilities to a committee if the potential costs and burdens associated with the requirements of section 15E(t) of the Exchange Act—including the requirement that the board oversee the establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings—are an unreasonable burden.[957]

Commenters also questioned whether the board of directors would need to have members with expertise in rating methodologies.[958] One of these commenters stated that the rule should require the NRSRO to appoint at least one board member with quantitative financial analysis expertise.[959] Section 15E(t)(3)(A) of the Exchange Act, while mandating that the NRSRO's board must ''oversee'' the establishment, maintenance, and enforcement of the NRSRO's policies and procedures for determining credit ratings, does not address whether the board must include a member with specific expertise in this area.[960] Similarly, section 15E(r)(1)(A) of the Exchange also does not address board expertise and, consequently, neither does paragraph (a)(1) of Rule 17g–8.[961] In complying with the statute and rule, an NRSRO and its shareholders will need to strike an appropriate balance between board members who have generalized experience and those who have more specific experience with aspects of the NRSRO's business activities, including with rating methodologies.

Paragraph (a)(2) of Rule 17g–8, as proposed, would implement section 15E(r)(1)(B) of the Exchange Act.[962] This section identifies the objective of ensuring that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies.[963] As proposed, paragraph (a)(2) would require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, that the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO.[964]

The Commission is adopting paragraph (a)(2) of Rule 17g–8 as proposed.[965] Section 15E(c)(3)(A) of the Exchange Act requires an NRSRO to ''establish, maintain, enforce, and document an effective internal control structure *governing the implementation of* and adherence to policies, procedures, and methodologies for determining credit ratings.'' [966] Consequently, section 15E(c)(3)(A) establishes a statutory requirement that an NRSRO have an internal control structure that governs the implementation of rating procedures and methodologies.[967] In addition, paragraph (a)(2) of Rule 17g–8 establishes a complementary requirement that an NRSRO have policies and procedures reasonably designed to ensure that rating procedures and methodologies are developed and modified in accordance with the NRSRO's procedures for developing and modifying rating procedures and methodologies.[968]

Two commenters supported the proposal.[969] In contrast, one commenter suggested the Commission take a different approach than was proposed in paragraph (a)(2) of Rule 17g–8.[970] Specifically, this commenter recommended that the rule establish a ''committee assessment function'' devoted to analyzing the performance of rating committees.[971] In response, the Commission notes that the rulemaking mandate in section 15E(r)(1)(B) of the Exchange Act addresses ensuring that the NRSRO uses rating procedures and methodologies that are in accordance with the NRSRO's procedures and methodologies for developing and modifying such procedures and methodologies.[972] In other words, the statute is concerned with ensuring that the NRSRO follows its processes for developing and modifying rating procedures and methodologies. The commenter's suggestion for a committee assessment function addresses the performance of rating committees in determining credit ratings (that is, in applying the rating procedures and methodologies). Consequently, the Commission considers the commenter's proposal outside the scope of this rulemaking.

Paragraph (a)(3)(i) of Rule 17g–8, as proposed, would implement section 15E(r)(2)(A) of the Exchange Act.[973] This section identifies the objective of ensuring that, when material changes are made to rating procedures and methodologies (including changes to qualitative and quantitative data and models), the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply.[974] As proposed, paragraph (a)(3)(i) would require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures and methodologies apply.[975]

Paragraph (a)(3)(ii) of Rule 17g–8, as proposed, would implement section 15E(r)(2)(B) of the Exchange Act.[976] This section identifies the objective of ensuring that when material changes are made to rating procedures and methodologies (including changes to qualitative and quantitative data and models), to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the NRSRO within a reasonable time period determined by the Commission, by rule.[977] As proposed, paragraph (a)(3)(ii) would require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and

[957] The Commission will respond to such requests in a manner similar to requests for relief under section 36 of the Exchange Act. *See* 15 U.S.C. 78mm. Further information about requesting relief under section 36 of the Exchange Act is *available at http://www.sec.gov/rules/exempt.shtml.*

[958] *See, e.g., AFSCME Letter* (expressing concerns that the board may not possess the necessary expertise, particularly in quantitative analysis, to carry out the oversight function specified in paragraph (a)(1) of Rule 17g–8); *COPERA Letter* (expressing similar concerns); *Morningstar Letter.*

[959] *See AFSCME Letter.*

[960] *See* 15 U.S.C. 78o–7(t)(3)(A). The statute does require the NRSRO to have independent board members, some of whom must be users of credit ratings of NRSROs. *See* 15 U.S.C. 78o–7(t)(2)(A).

[961] *See* 15 U.S.C. 78o–7(r)(1)(A).

[962] *See* paragraph (a)(2) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[963] *See* 15 U.S.C. 78o–7(r)(1)(B).

[964] *See* paragraph (a)(2) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542.

[965] *See* paragraph (a)(2) of Rule 17g–8.

[966] *See* 15 U.S.C. 78o–7(c)(3)(A) (emphasis added).

[967] *See id.*

[968] *See* paragraph (a)(2) of Rule 17g–8.

[969] *See ICI Letter; S&P Letter.*

[970] *See Harrington Letter.*

[971] *See id.*

[972] *See* 15 U.S.C. 78o–7(r)(1)(B).

[973] *See* paragraph (a)(3)(i) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[974] *See* 15 U.S.C. 78o–7(r)(2)(A).

[975] *See* paragraph (a)(3)(i) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33542–33543.

[976] *See* paragraph (a)(3)(ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453–33454.

[977] *See* 15 U.S.C. 78o–7(r)(2)(B).

quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[978] The proposed rule text differed from the text of section 15E(r)(2)(B) of the Exchange Act because it provided that the changes must be applied to then-current credit ratings within a reasonable period of time taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[979]

The Commission is adopting paragraphs (a)(3)(i) and (ii) of Rule 17g–8 with modifications to paragraph (a)(3)(i) to clarify the requirements of the rule in response to comment.[980] Specifically, one commenter stated that the provision appropriately meets the requirements of the Exchange Act but asked the Commission to clarify that paragraph (a)(3)(i) is applicable only to changes to procedures and methodologies that may impact new credit ratings, and that the implementation of changes affecting existing ratings are addressed separately in paragraph (a)(3)(ii).[981] The commenter's interpretation of paragraph (a)(3)(i) is incorrect. The Commission intended this paragraph to address the procedures and methodologies an NRSRO uses to determine new credit ratings and to make adjustments to current credit ratings. Otherwise, the policies and procedures required under paragraph (a)(3)(i) would not address the consistent treatment of current credit ratings. However, to remove any ambiguity, the text of paragraph (a)(3)(i) has been modified to clarify that the paragraph applies to ''current and future credit ratings.'' [982]

Another commenter questioned whether the provision was appropriate given the commenter's view that an NRSRO cannot ensure that changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply because qualitative assessments differ from credit rating committee to credit rating committee.[983] The Commission acknowledges that rating procedures and methodologies commonly incorporate qualitative analysis that introduces a degree of subjectivity to the rating process. The final rule is not intended to interfere with the qualitative process that is part of determining a credit rating. Rather, it is designed to ensure that an NRSRO does not apply different rating procedures and methodologies when determining credit ratings with respect to types of obligors or obligations that are intended to be subject to the same rating procedures and methodologies. If, for example, an NRSRO changes a rating procedure or methodology for determining initial credit ratings for RMBS, the policies and procedures of the NRSRO must be reasonably designed to ensure that the NRSRO does not continue to use the old procedure or methodology to determine initial credit ratings for some RMBS and the new procedure or methodology to determine initial credit ratings for other RMBS.[984]

The Commission is making modifications to paragraph (a)(3)(ii) of Rule 17g–8 from the rule text as proposed.[985] As stated above, one commenter asked the Commission to clarify that paragraph (a)(3)(i) is applicable only to changes to procedures and methodologies that may impact new credit ratings, and that the implementation of changes affecting current ratings are addressed separately in paragraph (a)(3)(ii).[986] As discussed above, the commenter's interpretation of paragraph (a)(3)(i) was not correct and the paragraph has been modified to clarify that it applies to current and future credit ratings. However, the commenter is correct that paragraph (a)(3)(ii) was intended to apply to current credit ratings. Specifically, the Commission intended paragraph (a)(3)(ii) to address the timeframe in which an NRSRO must apply an updated procedure or methodology for performing surveillance or monitoring of credit ratings to current credit ratings to which the changed procedure or methodology applies. For example, if the NRSRO changes the methodology for monitoring credit ratings of RMBS, paragraph (a)(3)(i) of the final rule requires the firm to have policies and procedures that are reasonably designed to ensure that it uses the updated methodology to monitor all RMBS credit ratings going forward.[987] The change in methodology, however, may require the NRSRO to adjust the current credit ratings assigned to RMBS. Paragraph (a)(3)(ii), as proposed, was intended to address the timeframe in which an NRSRO must apply the updated methodology to current credit ratings to determine whether they should be adjusted. The Commission has modified the text of paragraph (a)(3)(ii) to make this more clear. Specifically, the final rule requires an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, *applied to current credit ratings to which the changed procedures or methodologies apply* within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[988]

One commenter asked for clarification as to what time period constitutes a ''reasonable period'' for applying changed surveillance or monitoring procedures and methodologies to current credit ratings.[989] Two commenters supported the decision not to prescribe a timeframe given the variables surrounding such a change (for example, number of impacted credit ratings).[990] Another commenter acknowledged the need for flexibility with respect to the timeframe but expressed the concern that absent any guidance there would continue to be insufficient resources made available for surveillance and monitoring of credit

[978] *See* paragraph (a)(3)(ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[979] *See* paragraph (a)(3)(ii) of Rule 17g–8, as proposed; 15 U.S.C. 78o–7(r)(2)(B). The proposed rule text was designed to implement the rulemaking provision in section 15E(r)(2)(B) that the changes are to be applied to then-current credit ratings by the NRSRO within a reasonable time period determined by the Commission, by rule. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453–33454.

[980] *See* paragraph (a)(3)(i) and (ii) of Rule 17g–8.

[981] *See S&P Letter.*

[982] *See* paragraph (a)(3)(i) of Rule 17g–8.

[983] *See Harrington Letter.*

[984] Similarly, if the NRSRO changes a procedure or methodology for monitoring credit ratings of RMBS, the policies and procedures of the NRSRO under paragraph (a)(3)(i) must be reasonably designed to ensure that it does not continue to use the old procedure or methodology to monitor some RMBS and the new procedure or methodology to monitor other RMBS.

[985] *See* paragraph (a)(3)(ii) of Rule 17g–8.

[986] *See S&P Letter.*

[987] *See* paragraph (a)(3)(i) of Rule 17g–8.

[988] *See* paragraph (a)(3)(ii) of Rule 17g–8 (emphasis added to highlight the modification).

[989] *See DBRS Letter.*

[990] *See S&P Letter; DBRS Letter.*

ratings.[991] Two commenters argued that the Commission must establish a firm deadline for the application of revised rating methodologies or surveillance procedures to current credit ratings to ensure NRSROs act promptly.[992] Another commenter, more generally, urged the Commission to require prompt re-testing after the NRSRO makes any such material changes.[993]

In response to the comments that the rule should prescribe a specific timeframe in which the review must take place or prescribe what constitutes a reasonable period of time, the Commission is not persuaded that doing so would be feasible or appropriate. For example, some NRSROs have hundreds of thousands of credit ratings outstanding in certain classes of credit ratings, whereas others have fewer than one thousand.[994] Consequently, if the specified timeframe was too short, an NRSRO with a large number of credit ratings might need to rush to meet the deadline. This could negatively impact the quality of the review of the credit ratings subject to the changed surveillance or monitoring procedures and methodologies and could result in adjustments to those credit ratings that were not the result of thorough analysis. If the specified timeframe was too long, an NRSRO with relatively few credit ratings would have a ''safe harbor'' that allowed the firm to act more slowly to apply the changed surveillance procedures and methodologies to current credit ratings than was necessary.[995] Consequently, the final rule retains the proposed requirement that the updated surveillance or monitoring procedure or methodology must be applied to the current credit ratings to which the changed procedure or methodology applies within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated. The question of whether the NRSRO has acted within a reasonable period of time will depend on factors such as the number of credit ratings an NRSRO has outstanding that would be impacted by the change.

Another commenter stated that the Commission should clarify the manner in which changes in rating procedures and methodologies would apply to current credit ratings.[996] More specifically, the commenter explained that proposed paragraph (a)(3)(i) of Rule 17g–8 did not address whether an NRSRO applying changed procedures or methodologies to outstanding credit ratings must re-rate the transaction based upon the information available at the time of the initial rating or whether the process should include performance information received after that time.[997] The commenter also stated that the NRSRO should not apply changes in procedures or methodologies to current credit ratings without a change in the performance of the credit rating.[998] In response, the Commission notes that the final rule does not require the NRSRO to adjust the outstanding credit ratings impacted by the changed rating procedure or methodology; nor does it specify on what basis an NRSRO should adjust an outstanding credit rating.[999] Rather, it requires the NRSRO to have policies and procedures reasonably designed to ensure that changes to surveillance or monitoring procedures and methodologies are applied to current credit ratings to which the changed procedures or methodologies apply within a reasonable timeframe. The question of whether an outstanding credit rating must be adjusted after the application of the changed procedures or methodologies will depend solely on the NRSRO's procedures and methodologies. Based on those procedures and methodologies, the NRSRO may adjust an existing credit rating because of the change in the procedure or methodology, because of a change in circumstances that impacts the creditworthiness of the obligor or issuer that is subject to the credit rating, or a combination of these factors. This decision, however, will be based solely on the NRSRO's procedures and methodologies.[1000]

Paragraph (a)(4)(i) of Rule 17g–8, as proposed, would implement sections 15E(r)(2)(C), 15E(r)(3)(B), and 15E(r)(3)(D) of the Exchange Act.[1001] Section 15E(r)(2)(C) identifies the objective of ensuring that when material changes are made to rating procedures and methodologies (including changes to qualitative and quantitative data and models), the NRSRO publicly discloses the reason for the change.[1002] Section 15E(r)(3)(B) identifies the objective of ensuring that an NRSRO notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input.[1003] Section 15E(r)(3)(D) identifies the objective of ensuring that the NRSRO notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input, of the likelihood the change will result in a change in current credit ratings.[1004] The Commission proposed to implement these sections in paragraph (a)(4)(i) of Rule 17g–8, which would require an NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any ''current ratings.'' [1005]

The Commission is adopting paragraph (a)(4)(i) of Rule 17g–8 with a minor modification to make terminology throughout the rule consistent.[1006] As adopted, paragraph (a)(4)(i) requires the NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current credit ratings.[1007]

Paragraph (a)(4)(ii) of Rule 17g–8, as proposed, would implement section

[991] *See AFSCME Letter.*

[992] *See Better Markets Letter; CFA/AFR Letter.*

[993] *See Levin Letter.*

[994] *See, e.g.,* 2013 Annual Staff Report on NRSROs, p. 8.

[995] *See Harrington Letter* (raising this concern).

[996] *See FSR Letter.*

[997] *See id.*

[998] *See id.*

[999] As discussed above, in implementing section 15E(r) of the Exchange Act, the Commission has been sensitive to the limitation in section 15E(c)(2) of the Exchange Act. *See* 15 U.S.C. 78o–7(c)(2) (which, among other things, prohibits the Commission from regulating the substance of credit ratings and the procedures and methodologies by which any NRSRO determines credit ratings).

[1000] *See* 15 U.S.C. 78o–7(c)(2).

[1001] *See* paragraph (a)(4)(i) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33454.

[1002] *See* 15 U.S.C. 78o–7(r)(2)(C).

[1003] *See* 15 U.S.C. 78o–7(r)(3)(B).

[1004] *See* 15 U.S.C. 78o–7(r)(3)(D).

[1005] *See* paragraph (a)(4)(i) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1006] *See* paragraph (a)(4)(i) of Rule 17g–8. The modification adds the word ''credit'' after the word ''current'' and before the word ''ratings'' to consistently use the term ''credit ratings'' throughout the rule.

[1007] *See* paragraph (a)(4)(i) of Rule 17g–8.

15E(r)(3)(C) of the Exchange Act.[1008] This section provides that the Commission's rules shall require an NRSRO to notify users of credit ratings when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions.[1009] As proposed, paragraph (a)(4)(ii) would require the NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in the current ratings.[1010]

The Commission is adopting paragraph (a)(4)(ii) of Rule 17g–8 with a minor modification. As proposed, the rule provided, in pertinent part, that the NRSRO must publish ''significant errors'' identified in a rating procedure or methodology. The proposal was intended to notify users of the NRSRO's credit ratings when a significant error is identified.[1011] One potential reading of the text, however, was that it required publication of the actual error. This was not intended. Further, publication of the error without context—rather than notification that an error was identified—could diminish the value of the disclosure. For example, if the error was in the code of a quantitative model, the disclosure of the code containing the error without identifying that it contained an error likely would not inform users of the NRSRO's credit ratings that there was an error. Consequently, the final rule is modified to provide for the prompt publication of notice of the existence of a significant error. More specifically, the final rule requires an NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site *notice of the existence of a significant error* identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change to current credit ratings.[1012]

A number of commenters addressed paragraph (a)(4) of Rule 17g–8, as proposed.[1013] Some commenters stated that Internet Web site publication would help ensure that NRSROs communicate information pertaining to material changes in procedures and methodologies, as well as significant errors in the procedures and methodologies, to investors and other users of credit ratings in a timely manner.[1014] One commenter opposed the provision in paragraph (a)(4) of Rule 17g–8 requiring NRSROs to publish material changes and significant errors on an easily accessible portion of the NRSRO's corporate Internet Web site.[1015] The commenter argued that the statute requires more direct notification than Internet Web site publication, which could include allowing users to sign up for alerts.[1016] The Commission believes that specifying publication on an easily accessible portion of the NRSRO's Internet Web site is the most direct and cost effective way to provide an opportunity for all potentially interested parties to have access to the required disclosures.[1017] This does not preclude an NRSRO from offering additional disclosure services such as alerts or third parties from offering alert services based on the disclosures an NRSRO publishes.

One NRSRO stated that it would be helpful for the Commission to provide guidance as to when either a material change or significant error would trigger the disclosures.[1018] This commenter stated that significant errors should be disclosed if there is a reasonable likelihood that correction of the error will result in a change to current credit ratings. In contrast, another commenter stated that the Commission should not attempt to define the phrase *significant error* as any imposition of an arbitrary definition could result in situations where an NRSRO must identify errors that are minor and a correction does not result in a rating action.[1019]

The question of whether a change is material or an error is significant will depend on the facts and circumstances and, most importantly, on the impacted rating procedure or methodology (which vary across NRSROs). In general, the Commission believes that a change to a rating procedure or methodology would be material if there is a substantial likelihood that reasonable users of the NRSRO's credit ratings would find notice of the change important information in terms of assessing the rating procedure or methodology.[1020] The Commission believes that an error in a rating procedure or methodology would be significant if there is a substantial likelihood that reasonable users of the NRSRO's credit ratings would find notice of the error important information in terms of assessing the impact the error had on credit ratings determined using the rating procedure or methodology that contained the error.[1021]

Finally, paragraph (a)(5) of Rule 17g–8, as proposed, would implement section 15E(r)(3)(A) of the Exchange Act.[1022] This section provides that the Commission's rules shall require an NRSRO to notify users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1023] As proposed, paragraph (a)(5) would require the NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to ensure that the NRSRO discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1024]

[1008] *See* paragraph (a)(4)(ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33454.

[1009] *See* 15 U.S.C. 78o–7(r)(3)(C).

[1010] *See* paragraph (a)(4)(ii) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1011] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33453.

[1012] *See* paragraph (a)(4)(ii) of Rule 17g–8 (emphasis added to highlight the modification).

[1013] *See Barnard Letter; CFA/AFR Letter; DBRS Letter; Gardner Letter; Harrington Letter; ICI Letter; Levin Letter; S&P Letter.*

[1014] *See DBRS Letter; Harrington Letter; ICI Letter; S&P Letter.*

[1015] *See CFA/AFR Letter.*

[1016] *See id.*

[1017] *See DBRS Letter* (supporting Web site-based disclosure); *Harrington Letter* (same); *ICI Letter* (same).

[1018] *See DBRS Letter.*

[1019] *See S&P Letter.*

[1020] *See DBRS Letter* (suggested that a change to a rating methodology should be considered material if there is a substantial likelihood that a reasonable investor or other user of the credit ratings would consider the change to be important in evaluating the affected credit ratings).

[1021] *See id.* (stating an error should be disclosed if there is a reasonable likelihood that correction of the error will result in a change to current credit ratings).

[1022] *See* paragraph (a)(5) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33454–33455.

[1023] *See* 15 U.S.C. 78o-7(r)(3)(A).

[1024] *See* paragraph (a)(5) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543. In addition, because this would be a rating-by-rating disclosure, the Commission proposed, as discussed below in section II.G.3. of this release, that disclosure of the version of a credit rating procedure or methodology be part of the rule implementing section 15E(s) of the Exchange Act. *See* 15 U.S.C. 78o-7(s). Section 15E(s) specifies, among other things, that the Commission adopt rules requiring an NRSRO to generate a form to be included with the publication of a credit rating. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459–33460 (discussing paragraph (a)(1)(ii)(B) of Rule 17g–7, as proposed).

The Commission is adopting paragraph (a)(5) of Rule 17g–8 as proposed.[1025] Specifically, the final rule requires an NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1026]

One commenter requested clarification that the requirement to publish the version of the criteria used for a particular credit rating applies only when there is an action on the credit rating, such as an upgrade, downgrade, or withdrawal.[1027] A second commenter stated that the rule should require the NRSRO to publicly provide, along with the publication of the credit rating, disclosure about the credit rating and the methodology used to determine it.[1028]

The Commission is implementing section 15E(r)(3)(A) of the Exchange Act through paragraph (a)(5) of Rule 17g–8 and paragraph (a)(1)(ii)(B) of Rule 17g–7. Paragraph (a)(1)(ii)(B) of Rule 17g–7, as discussed below in section II.G.3. of this release, requires that the form to be included with the publication of certain rating actions include a disclosure of the version of the credit rating procedure or methodology used to determine the credit rating.[1029] The policies and procedures required by paragraph (a)(5) of Rule 17g–8 must address the NRSRO's compliance with the disclosure requirement in Rule 17g–7. In response to the comments about when the version of the credit rating procedure or methodology used to determine the credit rating must be disclosed, Rule 17g–7 specifies when the form containing the disclosure of the version of the credit rating procedure or methodology used to determine the credit rating must be published by the NRSRO: Upon the taking of one of the rating actions identified in the rule (for example, an initial credit rating or an upgrade or a downgrade of an outstanding credit rating).[1030]

A third commenter expressed concern that the proposal would provide NRSROs with a defense for developing poor opinions on creditworthiness.[1031] More specifically, the commenter stated that, based on his experience, reference to published methodologies has given at least one NRSRO a defense for having formed poor opinions on CDOs and RMBS.[1032] The commenter also questioned the underlying rationale of the rule insofar as NRSRO methodologies are already freely accessible and transparent.[1033] In response, the Commission notes that the statutory directive is clear: The rule must require each NRSRO to notify users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1034] To address the commenter's concern, the Commission would need to do the opposite and prohibit an NRSRO from notifying users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating. This would be inconsistent with the statutory requirement that the rule provide for notification.

2. Amendment to Rule 17g–2

The Commission proposed adding paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to paragraph (a) of Rule 17g–8 as a record that must be retained.[1035] The one comment letter that addressed the proposal supported it.[1036] The Commission is adding paragraph (b)(13) to Rule 17g–2 as proposed.[1037] This will provide a means for the Commission to monitor the NRSROs' compliance with paragraph (a) of Rule 17g–8. The record must be retained until three years after the date the record is replaced with an updated record in accordance with the amendment to paragraph (c) of Rule 17g–2 discussed above in section II.A.2. of this release.[1038]

3. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments and new rule relating to credit rating methodologies.[1039] The economic baseline that existed before today's amendments was one in which an NRSRO's board of directors must oversee the establishment, maintenance, and enforcement of the NRSRO's policies and procedures for determining credit ratings pursuant to Exchange Act section 15E(t)(3)(A).[1040] The baseline that existed before today's amendments and new rule also was one in which NRSROs must establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to their methodologies for determining credit ratings.[1041] NRSROs—under the baseline requirements—were not explicitly required to establish, maintain, enforce, document, and retain a record of policies and procedures relating to: (1) Board approval of the procedures and methodologies for determining credit ratings;[1042] (2) the development and modification of the procedures and methodologies for determining credit ratings;[1043] (3) applying material changes to the procedures and methodologies for determining credit ratings;[1044] (4) publishing material changes to and notices of significant errors in the procedures and methodologies for determining credit ratings;[1045] and (5) disclosing the version a procedure or methodology for determining credit ratings used with respect to a particular credit rating.[1046]

Relative to this baseline, the Commission believes that the amendments and new rule may result in a number of benefits. For example, implementing policies and procedures designed to ensure that the NRSRO's board of directors (or a body performing a similar function) oversees the establishment, maintenance, and enforcement of the NRSRO's policies and procedures for determining credit ratings in accordance with 15E(t)(3)(A) of the Exchange Act should promote the quality and consistency of the

[1025] *See* paragraph (a)(5) of Rule 17g–8.

[1026] *See id.*

[1027] *See S&P Letter.*

[1028] *See Gardner Letter.*

[1029] *See* paragraph (a)(1)(ii)(B) of Rule 17g–7.

[1030] *See id.*

[1031] *See Harrington Letter.*

[1032] *See id.*

[1033] *See id.*

[1034] *See* 15 U.S.C. 78o–7(r)(3)(A).

[1035] *See* paragraph (b)(13) of Rule 17g–2, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. *See also* section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[1036] *See DBRS Letter.*

[1037] *See* paragraph (b)(13) of Rule 17g–2.

[1038] *See* paragraphs (b)(13) and (c) of Rule 17g–2.

[1039] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1040] *See* 15 U.S.C. 78o–7(t)(3)(A).

[1041] *See* 15 U.S.C. 78o–7(c)(3)(A).

[1042] *See* paragraph (a)(1) of Rule 17g–8.

[1043] *See* paragraph (a)(2) of Rule 17g–8. As noted above, an NRSRO must establish, maintain, enforce, and document an effective internal control structure governing the implementation of their methodologies for determining credit ratings. *See* 15 U.S.C. 78o–7(t)(3)(A).

[1044] *See* paragraph (a)(3) of Rule 17g–8.

[1045] *See* paragraph (a)(4) of Rule 17g–8.

[1046] *See* paragraph (a)(5) of Rule 17g–8.

procedures and methodologies. Similarly, taking steps to ensure that the procedures and methodologies for determining credit ratings are developed and modified pursuant to the NRSRO's policies and procedures also should promote the quality and consistency of the procedures and methodologies.

Taking steps to ensure that material changes to the procedures and methodologies the NRSRO uses to determine credit ratings are applied consistently to all current and future credit ratings to which the changed procedures or methodologies apply should help ensure consistent and timely application of such changes and promote the integrity of the credit rating process. This should benefit users of credit ratings. In addition, taking steps to ensure that an NRSRO promptly publishes on an easily accessible portion of its Internet Web site information about material changes to the procedures and methodologies the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current credit ratings should benefit investors and other users of credit ratings by increasing the transparency of the NRSROs' credit rating activities and providing additional information with which to assess the quality of a given NRSRO's credit rating processes. Similarly, taking steps to ensure that an NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site notice of the existence of a significant error identified in a procedure or methodology used to determine credit ratings also should benefit investors and other users of credit ratings by increasing the transparency of the NRSROs' credit rating activities and providing additional information with which to assess the quality of a given NRSRO's credit rating processes.

The records NRSROs must keep pursuant to Rule 17g–2 will be used by Commission examiners to evaluate whether a given NRSRO's policies and procedures are reasonably designed and the NRSRO is complying with them. Compliance with these policies and procedures may increase the likelihood that NRSROs apply sound procedures and methodologies consistently to all applicable credit ratings and inform investors of these procedures and methodologies.

Relative to the baseline, the Commission anticipates that the final rule will result in costs. NRSROs will need to expend resources to develop, document, enforce, and periodically modify the policies and procedures they establish pursuant to paragraph (a) of Rule 17g–8.

As stated above, some commenters opposed the proposed rule on the basis of cost.[1047] One of these commenters stated that certain aspects of the proposals, including those regarding credit rating methodologies, would compound barriers to entry, and that many of the rules would be expensive and burdensome to implement.[1048] More specifically, this commenter stated that the Commission should take into account the dominance of very large players and expand small NRSRO exemptions designed to level the competitive field.[1049]

In response, the Commission acknowledges that these requirements will result in costs, which could create competitive barriers. However, the Commission reiterates that the final rule is designed to meet the rulemaking mandate in section 15E(r) of the Exchange Act in a manner that provides flexibility to NRSROs in terms of designing the required policies and procedures. Consequently, an NRSRO can tailor its policies and procedures to its business model, size, and the scope of its activities as well as to its methodologies and procedures for determining credit ratings, which, to some degree, may mitigate concerns about the costs of the final rule and its potential to create barriers to entry for small credit rating agencies. These costs would likely be higher for NRSROs with more complex operations in terms of the quantity of credit ratings they issue, the different types of credit ratings they issue, and the number of locations from which they determine and issue credit ratings. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (a) of Rule 17g–8 will result in total industry-wide one-time costs to NRSROs of approximately $566,000 and total industry-wide annual costs to NRSROs of approximately $142,000.[1050]

Relative to the baseline, the amendments to Rule 17g–2 prescribing retention requirements for the documentation of the policies and procedures will result in costs to NRSROs. NRSROs already have recordkeeping systems in place to comply with the recordkeeping requirements in Rule 17g–2 before today's amendments. Therefore, the recordkeeping costs of this rule will be incremental to the costs associated with these existing requirements. Specifically, the incremental costs will consist largely of updating their record retention policies and procedures and retaining and producing the additional record. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (b)(13) of Rule 17g–2 and the amendment to paragraph (c) of Rule 17g–2 will result in total industry-wide one-time costs to NRSROs of approximately $12,000 and total industry-wide annual costs to NRSROs of approximately $3,000.[1051]

The Commission believes that NRSROs will incur costs to apply material changes to ratings procedures and methodologies consistently to all current credit ratings to which the changed procedures or methodologies apply. This cost will likely vary significantly per occurrence depending on the number of credit ratings and the type of instruments affected by the change as well as the nature and extent of the change. In addition, the Commission believes that an NRSRO will incur costs when promptly publishing on an easily accessible portion of its Internet Web site information about material changes to procedures and methodologies, the likelihood such changes will result in changes to any current ratings, and notice of significant errors identified in a procedure or methodology in accordance with paragraphs (a)(4)(i) and (ii) of Rule 17g–8. Based on analysis for purposes of the PRA, the Commission estimates that paragraphs (a)(4)(i) and (ii) of Rule 17g–8 will result in costs to NRSROs of approximately $5,700 per publication on their Web site.[1052]

A possible additional cost is that the final rule potentially could decrease the quality of credit ratings in circumstances where the subjective judgment of participants in the rating process could improve the quality of ratings. In order to ensure that material changes to ratings procedures and methodologies are applied consistently to all current credit ratings to which the changed procedures or methodologies apply ''within a reasonable timeframe''

[1047] *See A.M. Best Letter; Kroll Letter.*

[1048] *See Kroll Letter.*

[1049] *See Kroll Letter.*

[1050] *See* section V.G. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.7. of this release.

[1051] *See* section V.G. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[1052] *See* section V.G. of this release (discussing implementation and annual compliance considerations). The cost per publication is determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.7. of this release.

in accordance with the new rule, an NRSRO may establish credit rating procedures and methodologies that diminish the ability of participants in the rating process to exercise subjective judgment, which could lengthen the rating process. As a result, the credit ratings may not benefit fully from the expertise of the analysts in the rating process, which could negatively impact the quality of the credit rating. This concern may be mitigated by the fact that the new rule does not require that the policies and procedures specify a specific timeframe to apply the changed procedure or methodology but rather requires that the change to be applied within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.

The amendments and new rule should have a number of effects related to efficiency, competition, and capital formation.[1053] First, these amendments could improve the quality and consistency of credit ratings as well as increasing the information available to users of credit ratings regarding rating procedures and methodologies. As a result, users of credit ratings could make more efficient investment decisions based on this higher-quality information. Market efficiency also could improve if this information is reflected in asset prices. Consequently, capital formation could improve as capital may flow to more efficient uses with the benefit of this enhanced information. Alternatively, the quality of credit ratings may decrease in certain circumstances if an NRSRO establishes credit rating procedures and methodologies that diminish the ability of participants in the rating process to exercise subjective judgment. In this case, the quality of credit ratings may decrease, which could decrease the efficiency of investment decisions made by users of credit ratings. Market efficiency and capital formation may also be adversely impacted if lower quality information is reflected in asset prices, which may impede the flow of capital to efficient uses. These amendments also will result in costs, some of which may have a component that is fixed in magnitude and does not vary with the size of the NRSRO. Therefore, the operating costs per credit rating of smaller NRSROs may increase relative to that of larger NRSROs. Consequently, the costs associated with these amendments may have a disproportionate impact on smaller NRSROs as suggested by commenters,[1054] creating adverse effects on competition. For example, one commenter suggested that these requirements would require an NRSRO to review credit rating methodologies, which would place an undue burden on smaller NRSROs.[1055] As a result of these amendments, the barriers to entry for credit rating agencies to register as an NRSRO might be higher for credit rating agencies, while some NRSROs, particularly smaller firms, may decide to withdraw from registration as an NRSRO. As discussed earlier, these costs also will depend on the complexity of operations within the NRSRO.

Commenters have proposed a number of alternatives to the final rule. One alternative would be to require that NRSROs permit users of an NRSRO's credit ratings to sign up for alerts regarding material changes and significant errors in an NRSRO's procedures and methodologies, which, according to the commenter, ''would significantly improve communication.'' [1056] As stated above, the Commission believes that publication on an easily accessible portion of the NRSRO's Internet Web site is the most direct and cost effective way to ensure that all potentially interested parties have access to the required disclosures. Therefore, this alternative without a requirement to also disclose the information on the NRSRO's Internet Web site could potentially have the result that fewer users of credit ratings are informed of changes and errors. For example, certain users of credit ratings may opt not to sign up for email notification in order to avoid receiving unwanted communications.

Another alternative would be for the Commission to establish a firm deadline for the application of revised rating methodologies or surveillance or monitoring procedures to current credit ratings to ensure that NRSROs act promptly, as suggested by commenters.[1057] As stated above, the Commission is not persuaded that prescribing a specific timeframe in which the review must take place is feasible or appropriate. For example, some NRSROs have hundreds of thousands of credit ratings outstanding in certain classes of credit ratings, while others have fewer than one thousand.[1058] In addition, there is variation across NRSROs in the level of resources available to apply these changes. For example, the number of credit analysts employed by each NRSRO ranges from fewer than ten to more than a thousand.[1059] Consequently, mandating a timeframe that is too short could negatively impact the quality of the review of the credit ratings subject to the changed surveillance or monitoring procedures and methodologies and could result in adjustments to those credit ratings that are not the result of thorough analysis. In this case, this alternative could result in costs for users of credit ratings who may make credit-based decisions using incomplete or inaccurate information. In addition, an NRSRO with relatively fewer resources to make the required changes might need to incur costs such as hiring more staff to meet the deadline. If the mandated timeframe were too long, an NRSRO with relatively greater resources could take longer than necessary to apply the changed surveillance procedures and methodologies to impacted credit ratings.[1060] In this case, this alternative could result in costs for users of credit ratings as information would be updated in a less timely fashion than will be the case under the new rule.

G. Form and Certifications to Accompany Credit Ratings

Section 932(a)(8) of the Dodd-Frank Act amended section 15E of the Exchange Act to add paragraphs (q) and (s).[1061] Section 15E(q)(2)(F) of the Exchange Act provides that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.[1062] Sections 15E(s)(1) through (4), among other things, contain provisions requiring Commission rulemaking with respect to disclosures an NRSRO must make with the publication of a credit rating.[1063] The

[1053] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1054] *See A.M. Best Letter; Kroll Letter.*

[1055] *See A.M. Best Letter.*

[1056] *See CFA/AFR Letter.*

[1057] *See Better Markets Letter; CFA/AFR Letter.*

[1058] *See* Table 2 in section I.B. of this release.

[1059] *See* Table 1 in section I.B. of this release.

[1060] *See Harrington Letter* (raising this concern).

[1061] *See* 15 U.S.C. 78o–7(q) and (s).

[1062] *See* 15 U.S.C. 78o–7(q)(2)(F).

[1063] *See* Public Law 111–203, 932(a)(8); 15 U.S.C. 78o–7(s)(1) through (4). Section 15E(s)(4) of the Exchange Act also establishes requirements and mandates rulemaking with respect to issuers and underwriters of asset-backed securities, NRSROs,

Commission proposed paragraph (a) to Rule 17g–7, in large part, to implement sections 15E(q) and 15E(s) of the Exchange Act.[1064]

Under the proposal, an NRSRO would be required to publish two items when taking a rating action: (1) A form containing information about the credit rating resulting from or subject to the rating action; and (2) any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[1065] The proposal also included provisions prescribing the format of the form; the content of the form; and an attestation requirement for the form.[1066] The Commission is adopting paragraph (a) to Rule 17g–7 with modifications in response to comments.[1067]

1. Paragraph (a) of Rule 17g–7—Prefatory Text

Section 15E(s)(1) of the Exchange Act provides that the Commission shall require, by rule, an NRSRO to prescribe a form to accompany the publication of each credit rating that discloses: (1) Information relating to the assumptions underlying the credit rating procedures and methodologies; the data that was relied on to determine the credit rating; and if applicable, how the NRSRO used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and (2) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO.[1068] Section 15E(s)(2)(C) of the Exchange Act provides that the form shall be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.[1069] Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO at the time it produces a credit rating to disclose any certifications from providers of third-party due diligence services to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by the third party.[1070]

The Commission proposed to implement sections 15E(s)(1), 15E(s)(2)(C), and 15E(s)(4)(D) of the Exchange Act, in large part, through the prefatory text of proposed paragraph (a) of Rule 17g–7.[1071] As proposed, the prefatory text provided that an NRSRO must publish two items when taking a rating action: (1) A form containing information about the credit rating resulting from or subject to the rating action;[1072] and (2) any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[1073] The first sentence of the prefatory text further provided that an NRSRO must publish the form and certification, as applicable, when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the NRSRO is registered.[1074] The second sentence of the prefatory text defined the term *rating action* for purposes of the rule to mean any of the following: The publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); a placement of an existing credit rating on credit watch or review; an affirmation of an existing credit rating; and a withdrawal of an existing credit rating.[1075] The third sentence of the prefatory text provided that the form and any applicable certifications must be published in the same medium and made available to the same persons who can receive or access the credit rating that is the result of the rating action or the subject of rating action.[1076]

The Commission is adopting the first sentence of the prefatory text of paragraph (a) of Rule 17g–7 with a modification in response to comment.[1077] As adopted, this sentence provides that except as provided in paragraph (a)(3), an NRSRO must publish the items described in paragraphs (a)(1) (the form) and (a)(2) (third-party due diligence certifications), as applicable, when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the NRSRO is registered.[1078]

The Commission is adopting the second sentence of the prefatory text of paragraph (a) of Rule 17g–7 with modifications to narrow the definition of *rating action* in response to comments.[1079] Several commenters stated generally that the proposed definition is overly broad.[1080] One NRSRO stated that a broad definition of *rating action* could limit disclosure by ''creating incentives for NRSROs to publish commentary about their credit ratings less frequently.''[1081] Commenters stated that the proposed definition of *rating action* would make it difficult for NRSROs to release their credit ratings in a timely fashion.[1082] One commenter stated that rating actions involving transaction documents that were finalized before the effective date of the rules should not be subject to the disclosure requirements.[1083] An NRSRO stated that the amount of preparation time needed to comply with the rule will likely delay the issuance of ratings, ''particularly with respect to preliminary ratings.''[1084] In contrast,

and providers of third-party due diligence services with respect to third-party due diligence services relating to asset-backed securities. *See* 15 U.S.C. 78o–7(s)(4)(A) through (D). As discussed in more detail below in section II.H. of this release, the Commission also proposed to implement section 15E(s)(4) of the Exchange Act through: (1) Rule 15Ga–2; (2) amendments to Form ABS–15G; (3) Rule 17g–10; and (4) Form ABS Due Diligence–15E. *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33465–33476.

[1064] *See* paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33456–33465.

[1065] *See* paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33456–33465.

[1066] *See* paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33456–33465.

[1067] *See* paragraph (a) of Rule 17g–7.

[1068] *See* 15 U.S.C. 78o–7(s)(1)(A) and (B).

[1069] *See* 15 U.S.C. 78o–7(s)(2)(C).

[1070] *See* 15 U.S.C. 78o–7(s)(4)(D).

[1071] *See* prefatory text of paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33456–33457. As discussed below, the Commission proposed to implement section 15E(s)(1)(A)(iii) of the Exchange Act—which relates to the use of servicer or remittance reports—in paragraph (a)(1)(ii)(G) of Rule 17g–7, as proposed, because it specifies a particular item of information that would need to be disclosed in the form. *See* 15 U.S.C. 78o–7(a)(1)(i)(G); *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461.

[1072] *See* paragraph (a)(1) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1073] *See* paragraph (a)(2) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541–33542.

[1074] *See* prefatory text to paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1075] *See* prefatory text to paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1076] *See* prefatory text to paragraph (a) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1077] *See Fitch Letter;* prefatory text of paragraph (a) of Rule 17g–7 (first sentence). The modification, as discussed below, refers to an exemption the Commission is adopting from the publication requirement for certain rating actions that relate to a non-U.S. person and transactions that occur overseas. *See* paragraph (a)(3) of Rule 17g–7.

[1078] *See* prefatory text of paragraph (a) of Rule 17g–7 (first sentence).

[1079] *See* prefatory text of paragraph (a) of Rule 17g–7 (second sentence).

[1080] *See A.M. Best Letter; ASF Letter; DBRS Letter; Deloitte Letter; FSR Letter; Moody's Letter; S&P Letter.*

[1081] *See Moody's Letter.*

[1082] *See DBRS Letter; FSR Letter.*

[1083] *See ABA Letter.*

[1084] *See S&P Letter.*

another commenter stated that including preliminary ratings on asset-backed securities ratings will ensure that investors receive the information at a time when it is ''likely to be most useful to them in making an investment decision.'' [1085]

As explained below, commenters urged the Commission to eliminate from the definition of *rating action:* Preliminary credit ratings; placements of credit ratings on watch or review; affirmations and confirmations of credit ratings; and withdrawals of credit ratings.[1086]

One NRSRO commented that placing a credit rating on review should not be considered a rating action because a review is simply an indication of the potential for a future rating action, and is not itself a rating action.[1087] Several commenters stated that some or all rating affirmations should not be included in the definition of a rating action.[1088] One NRSRO stated that including rating affirmations would ''significantly'' increase the reporting burden on NRSROs, and would produce only a record that there was no change to the rating in question.[1089] The NRSRO also suggested that if affirmations are included, they should refer only to a published announcement or written confirmation that the rating is being maintained at its current level. Another commenter stated that affirmations should be excluded unless they represent ''a comprehensive review of a transaction.'' [1090] A different commenter stated that a ''confirmation,'' which is a type of affirmation that simply indicates that a particular action will not change a credit rating, should not constitute a rating action because disclosures associated with confirmations would only cover very minor document changes and add ''little value.''[1091]

Two commenters stated that some or all withdrawals should not be included in the definition of a *rating action.*[1092] One NRSRO stated that publishing the forms for withdrawals that are ''mechanical in nature and not based on a credit assessment or analysis'' could make it more difficult for market participants to locate significant information.[1093]

The Commission is sensitive to the burdens imposed by its rules, and in considering the comments discussed above has sought to balance the need for timely and robust disclosure with concerns about the costs that would result from the proposal. As discussed below, the Commission believes it is appropriate to narrow the definition of *rating action* from the proposed definition to include those actions that are made at a time when there is limited information about the rated obligor, security, or money market instrument and to other rating actions if they are linked to the performance of credit analysis. This will reduce the burden of complying with the rule. Nonetheless, the Commission recognizes that preparing the form in response to those rating actions that trigger the disclosure requirement will take time and that this could impact how quickly an NRSRO is able to publish the credit rating that results from or is the subject of the rating action. However, the Commission has balanced this concern with the directive of the statute (that the Commission adopt a rule requiring the form to be published with a credit rating) and the benefits of the increased transparency the disclosures in the form will provide to users of the NRSRO's credit ratings.[1094] Moreover, an NRSRO should be able to draft significant portions of the form largely in tandem with the credit rating process and, therefore, the form and the final decision on the rating action generally should be completed simultaneously.

In response to the comment to eliminate preliminary credit ratings from the definition of *rating action,* the Commission notes that this type of rating action and certain initial credit ratings (that is, those assigned to a newly formed obligor or newly issued security or money market instrument) are made at a time when there is little information available about the rated obligor, security, or money market instrument. Given the timing of these rating actions, the Commission agrees with comments that it is critical that investors and other users of credit ratings have access to the information that is required to be disclosed in the form and any applicable certifications on Form ABS Due Diligence–15E.[1095] Consequently, the Commission is adopting the requirement that the form and certifications be published when the NRSRO publishes a preliminary or expected credit rating or an initial credit rating.[1096]

Some of the types of rating actions included in the proposed definition are not necessarily linked to the performance of credit analysis. In particular, placements of credit ratings on watch or review, certain types of affirmations of credit ratings, and certain types of withdrawals of credit ratings are not based on the NRSRO applying its rating procedures or methodologies and making a credit rating determination. In the case of a watch or review, the rating action precedes the application of the rating procedure or methodology, which, once completed, may result in an affirmation or an adjustment (upgrade or downgrade) to the credit rating. However, not all credit rating

[1085] *See CFA/AFR Letter.*

[1086] *See, e.g., A.M. Best Letter; ASF Letter; DBRS Letter; Deloitte Letter; FSR Letter; Moody's Letter; S&P Letter.*

[1087] *See Moody's Letter.*

[1088] *See A.M. Best Letter; ASF Letter; DBRS Letter; Deloitte Letter; FSR Letter; Moody's Letter; S&P Letter.*

[1089] *See S&P Letter.*

[1090] *See ASF Letter.*

[1091] *See FSR Letter.*

[1092] *See Deloitte Letter; Moody's Letter.*

[1093] *See Moody's Letter.*

[1094] *See, e.g., CFA/AFR Letter* (''One reason rating agencies were able to play fast and loose with their own rating methodologies is that the ratings were a sort of 'black box,' with little information made available to the users of those ratings about the assumptions that lay behind them or the data on which they were based. Dodd-Frank includes provisions to address this problem by requiring new disclosures to accompany the publication of a rating.'').

[1095] *See CFA/AFR Letter* (''Importantly, the Commission proposes to include preliminary ratings among the actions that would trigger the required disclosures. We strongly support this approach, which is essential to ensure that investors in ABS get the information at time [sic] when it is likely to be most useful to them in making an investment decision.''). As the Commission explained when adopting Rule 17g–7, the definition of *credit rating* in the note to the rule was designed to address pre-sale reports, which are typically issued by an NRSRO with respect to an asset-backed security at the time the issuer commences the offering and typically include an expected or preliminary rating and a summary of the important features of a transaction. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4503–4505 (Jan. 26, 2011). Consequently, disclosure at the time of issuance of a pre-sale report is particularly important to investors, since such reports provide them with important information prior to the point at which they make an investment decision. *See id.*

[1096] *See* prefatory text of paragraph (a) of Rule 17g–7 (second sentence). The Commission requested comment in the proposing release as to whether the disclosures required by the proposed rule in the context of a new offering should be provided no later than at least five business days in advance of the first sale of securities in the offering. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33457. In response, an NRSRO stated that requiring disclosures in a fixed timeframe is ''unrealistic'' because NRSROs often receive their information after the prospectus is filed and frequently assign ratings well after the actual closing and first sale of a transaction. *S&P Letter.* Another NRSRO and a commenter stated that the five business day requirement could potentially delay many issuances. *See DBRS Letter; FSR Letter.* In contrast, one commenter recommended that the Commission adopt the five business day requirement. *See CFA/AFR Letter.* The Commission believes at this time that the five business day requirement could raise practical issues and, therefore, is not adopting such a requirement. Consequently, the NRSRO must publish the form and any certifications at the same time the NRSRO publishes the result of the rating action.

affirmations are based on the NRSRO applying its rating procedures and methodologies.[1097] Similarly, NRSROs withdraw credit ratings for a number of reasons that are unrelated to the performance of credit analysis, including that the obligation was paid off or the obligor stopped paying to be rated.[1098]

In balancing the concerns of commenters about the burden of the rule against the need for timely and robust disclosure, the Commission, as stated above, believes it is appropriate to focus the disclosure requirement on rating actions that are based on the application of the NRSRO's procedures and methodologies for determining credit ratings. In this regard, much of the information required to be disclosed in the form under section 15E(s)(3) of the Exchange Act relates to the procedures, methodologies, and information used to determine the credit rating.[1099] For these reasons, placements of credit ratings on watch or review have been removed from the definition of *rating action.*[1100] In addition, the definition provides that an affirmation or withdrawal is a *rating action* if the affirmation or withdrawal is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the NRSRO using its procedures and methodologies for determining credit ratings.[1101]

For the foregoing reasons, the amendments have been modified from the proposal to eliminate placements of credit ratings on watch or review from the definition of *rating action* and to eliminate from the definition affirmations and withdrawals that are not based on the NRSRO applying its procedures and methodologies for determining credit ratings. Consequently, the second sentence—as adopted—provides that the term *rating action* ''means any of the following: The publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); and an affirmation or withdrawal of an existing credit rating if the affirmation or withdrawal is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the NRSRO using applicable procedures and methodologies for determining credit ratings.'' [1102]

The Commission is making another modification to the proposed amendments that will reduce the burden of the adopted rule. Specifically, one NRSRO recommended that the temporary conditional exemption for foreign transactions from the requirements in paragraph (a)(3) of Rule 17g–5 be applied to the disclosure requirements in paragraph (a) of Rule 17g–7, as proposed.[1103] The commenter stated that many foreign issuers lack the infrastructure to comply with the level of disclosure required by paragraphs (a)(1) and (a)(2) of Rule 17g–7, as proposed.[1104] The commenter stated further that, without an exemption, ''NRSROs either might be unable to issue a credit rating on non-U.S. securities or must withdraw as an NRSRO in order to continue rating certain non-U.S. securities.'' [1105]

The Commission is persuaded that at this time the disclosure requirement should not apply to rating actions involving credit ratings of obligors or issuers whose securities or money market instruments will be offered or sold in transactions that occur exclusively outside the United States. As noted above, one commenter suggested that local laws could impede the ability of the NRSRO to obtain or disclose information about the issuer in accordance with the requirements of the proposed amendments. To address these types of concerns, the Commission is adding paragraph (a)(3) to Rule 17g–7 to provide an exemption from the requirements of paragraphs (a)(1) and (a)(2) for rating actions in which: (1) The rated obligor or issuer of the rated security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); [1106] and (2) the NRSRO has a reasonable basis to conclude that a security or money market instrument issued by the rated obligor or the issuer will be offered and sold upon issuance, and that any underwriter or arranger linked to the security or money market instrument will effect transactions in the security or money market instrument after issuance, only in transactions that occur outside the United States.[1107] The wording of the exemption is modeled closely on the temporary conditional exemption from the requirements in paragraph (a)(3) of Rule 17g–5 the Commission has granted by order.[1108]

[1097] *See ASF Letter* (stating that a ''rating agency consent'' or ''rating agency confirmation'' simply confirms that a specific contractual change will not result in adverse effect on an existing rating and arguing that these ''statements do not reflect a comprehensive review of a transaction, unlike the type of review that would be undertaken in connection with an affirmation of a rating following on the placement of a rating on watch or review.'').

[1098] *See Moody's Letter* (stating that the requirement to publish a form should not apply in connection with the withdrawals of credit ratings that are mechanical in nature and not based on a credit assessment or analysis).

[1099] *See* 15 U.S.C. 78o–7(s)(3). For example, the required disclosures include: (1) The version of the methodology used to determine the credit rating; and (2) the main assumptions and principles used in constructing the applicable rating procedures and methodologies.

[1100] *See* prefatory text of paragraph (a) of Rule 17g–7 (second sentence).

[1101] *See id.* An affirmation that results from a look-back review under paragraph (c) of Rule 17g–8 would be an affirmation that is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the NRSRO using its procedures and methodologies for determining credit ratings. In particular, the NRSRO would be applying the procedures required by paragraph (c)(1) of Rule 17g–8 to promptly determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings.

[1102] *See* prefatory text of paragraph (a) of Rule 17g–7 (second sentence).

[1103] *See Fitch Letter. See Order Granting Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 62120 (May 19, 2010). *See also Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 70919 (Nov. 22, 2013) (most recent extension of the exemption).

[1104] *See Fitch Letter.*

[1105] *See id.*

[1106] 17 CFR 230.902(k).

[1107] *See* paragraph (a)(3) of Rule 17g–7. If the rating action involves a credit rating of an obligor as an entity, the NRSRO must have a reasonable basis to conclude that any security or money market instrument of the obligor will be offered and sold upon issuance, and that any underwriter or arranger linked to the security or money market instrument will effect transactions of the security or money market instrument after issuance, only in transactions that occur outside the United States. For example, if some securities or money market instruments issued by the obligor are sold in transactions that occur in the United States, the exemption does not apply to rating actions involving the credit rating assigned to the obligor as an entity. In contrast, if the rating action involves a security or money market instrument, the NRSRO need only make the required conclusion with respect to the specific issuance.

[1108] *See Order Granting Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 62120 (May 19, 2010). *See also Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 70919 (Nov. 22, 2013) (most recent extension of the exemption). In the original order, the Commission provided guidance on how an NRSRO may have a ''reasonable basis'' for the purpose of the second prong of the conditional exemption. *See Order Granting Temporary Conditional Exemption for Nationally*

Continued

As stated above, the Commission is making a corresponding modification to the first sentence of the prefatory text of paragraph (a) of Rule 17g–7, to add that an NRSRO must publish the items described in paragraphs (a)(1) and (a)(2) of Rule 17g–7 ''except as provided in paragraph (a)(3)'' of Rule 17g–7.[1109]

The Commission is adopting the third sentence of the prefatory text of paragraph (a) of Rule 17g–7 with technical modifications to improve its clarity.[1110] This sentence provides that the items described in paragraphs (a)(1) and (a)(2) must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating that is the result or subject of the rating action.[1111] In response to comments, the Commission agrees that an NRSRO may satisfy this requirement by publishing the form and any applicable certifications on its public Internet Web site if the credit rating is disseminated through the Web site as well.[1112] In addition, if the NRSRO publishes the credit rating in a press release announcing the relevant rating action in addition to publishing the credit rating on its corporate Internet Web site, the NRSRO may make the form available through a clearly and prominently labeled hyperlink on the press release to the page on its corporate Internet Web site that contains the form and any applicable certifications.[1113]

In addition, the final amendments, as proposed, require that the form and any applicable certifications on Form ABS Due Diligence–15E must be made available to the same persons who can receive or access the credit rating that is the result of the rating action.[1114] Consequently, if the NRSRO publishes credit ratings for free on its corporate Internet Web site, it must make the form and certifications similarly available.[1115] Alternatively, if the NRSRO operates under the subscriber-pay business model, it must make the form and certifications available to its subscribers.[1116]

Finally, one commenter suggested the assessment of financial penalties for each day that NRSROs do not post the form when taking a rating action.[1117] The Commission has authority to take appropriate action against an NRSRO that fails to comply with the requirements of paragraph (a) of Rule 17g–7. Further, as discussed above in section II.D.1. of this release, the Exchange Act provides a wide range of fines, penalties, and other sanctions applicable to NRSROs for violations of any section of the Exchange Act (including section 15E) and the rules under the Exchange Act (including the rules under section 15E).[1118] The Commission therefore does not believe that providing for additional penalties is necessary.

2. Paragraph (a)(1)(i) of Rule 17g–7—Format of the Form

To implement sections 15E(s)(2)(A) and (B) of the Exchange Act, the Commission proposed paragraph (a)(1)(i) of Rule 17g–7, which would describe the required format of the form to accompany the publication of a rating action.[1119] In particular, section 15E(s)(2)(A) of the Exchange Act provides that the form developed by the NRSRO shall be easy to use and helpful for users of credit ratings to understand the information contained in the report.[1120] The Commission proposed paragraph (a)(1)(i)(A) of Rule 17g–7 to implement this section of the statute.[1121] This paragraph—as proposed—mirrored the statutory text by providing that the form generated by the NRSRO would need to be easy to use and helpful for users of credit ratings to understand the information contained in the form.[1122]

Section 15E(s)(2)(B) of the Exchange Act provides that the quantitative content required to be disclosed in the form and identified in section 15E(s)(3)(B) must be directly comparable across types of securities.[1123] As discussed below, section 15E(s)(3) of the Exchange Act identifies qualitative and quantitative information that must be included in the form.[1124] The Commission proposed that the quantitative content specified in section 15E(s)(3)(B) of the Exchange Act must be disclosed in the form pursuant to paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7, as proposed.[1125] Consequently, paragraph (a)(1)(i)(B) of Rule 17g–7, as proposed, required the form generated by the NRSRO to be in a format that provides the content described in paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7 in a manner that is directly comparable across types of obligors, securities, and money market instruments.[1126]

The Commission is adopting the proposal with modifications in response to comments.[1127] The modifications are

Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment, Exchange Act Release No. 62120 (May 19, 2010) (''The question of whether an NRSRO has a 'reasonable basis' to conclude that the structured finance product will be offered and sold upon issuance, and [that] any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, in transactions that occur outside the United States will depend on the facts and circumstances of a given situation. In order to have a reasonable basis to make these conclusions, the NRSRO should discuss with any arranger linked to the structured finance product (*i.e.,* the sponsor, underwriter, and issuer) how they intend to market and sell the structured finance product and how they intend to engage in any secondary market activities (*i.e.,* re-sales) of the structured finance product. An NRSRO may choose to obtain from the arranger a representation upon which the NRSRO can reasonably rely that sales of the structured finance product will meet this condition. Factors relevant to the analysis of whether such reliance would be reasonable would include, but not be limited to: (1) Ongoing or prior failures by the arranger to adhere to its representations; or (2) a pattern of conduct by the arranger where it fails to promptly correct breaches of its representations.'').

[1109] *See* prefatory text of paragraph (a) of Rule 17g–7 (first sentence).

[1110] *See* prefatory text of paragraph (a) of Rule 17g–7 (third sentence).

[1111] *See id.* As proposed, the sentence provided: ''[t]he items described in paragraphs (a)(1) and (a)(2) of this section must be published in the same medium and made available to the same persons who can receive or access the credit rating that is the result of the rating action or that is the subject of the rating action.'' *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1112] *See S&P Letter.*

[1113] *See DBRS Letter* (''DBRS supports this part of the proposal, but asks the Commission to confirm that an NRSRO that publishes its credit ratings via an electronically disseminated press release can satisfy the disclosure requirement by hyperlinking the disclosure form and any applicable due diligence certifications to that press release.'').

[1114] *See* prefatory text of paragraph (a) of Rule 17g–7 (third sentence).

[1115] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33457.

[1116] *See id.* at 33457.

[1117] *See Gardner Letter.*

[1118] *See* 15 U.S.C. 78o–7(d); 15 U.S.C. 78u; 15 U.S.C. 78u; 15 U.S.C. 78u–2; 15 U.S.C. 78u–3; 15 U.S.C. 78ff.

[1119] *See* paragraph (a)(1) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33458.

[1120] *See* 15 U.S.C. 78o–7(s)(2)(A).

[1121] *See* paragraph (a)(1) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33458.

[1122] *See* paragraph (a)(1)(i)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1123] *See* 15 U.S.C. 78o–7(s)(3)(B).

[1124] *See* 15 U.S.C. 78o–7(s)(3).

[1125] *See* paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33458–33646.

[1126] *See* paragraph (a)(1)(i)(B) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540. While the statutory text refers only to ''securities,'' section 3(a)(60) of the Exchange Act defines the term *credit rating* to mean an ''assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.'' *See* 15 U.S.C. 78c(a)(60). Consequently, proposed paragraph (a)(1)(i)(B) of Rule 17g–7 also referred to ''obligors'' and ''money market instruments'' to ensure that it applies to all types of credit ratings and to be consistent with the Commission's rules for NRSROs, which commonly apply to credit ratings of ''obligors, securities, and money market instruments.'' *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33458, n.411.

[1127] *See* paragraph (a)(1)(i) of Rule 17g–7.

designed to respond to comments recommending that the rule prescribe a standard format for presenting the information in the form.[1128]

In particular, as proposed, the rule would require that the form, among other things, must be in a format that is easy to use and helpful for users of credit ratings to understand.[1129] However, the proposal did not prescribe a form into which NRSROs would input information or provide more specificity as to how the information in the form must be presented. Two commenters recommended that the format of the form should be more standardized.[1130] One commenter stated that standardization would simplify oversight and make the information in the form easier for investors to analyze.[1131] The other commenter suggested standard headings and prescribing an order for the presentation of the information in the form.[1132] The Commission agrees with the commenters that requiring the NRSROs to adhere to a more standardized format will assist users of the form in locating and analyzing items of information disclosed in the form. It also will facilitate the Commission's oversight of the disclosure requirements, as noted by the commenter. Consequently, paragraph (a)(1)(i) of Rule 17g–7 provides that the form must be in a format that organizes the information required to be disclosed into numbered items that are identified by the type of information being disclosed and by a reference to the paragraph in Rule 17g–7 that specifies the information required to be disclosed, and are in the order that the paragraphs specifying the information to be disclosed are codified in Rule 17g–7.[1133] In addition, as adopted, paragraph (a)(1)(i) of Rule 17g–7 contains a note providing details about this requirement—in particular, stating that a given item in the form should be identified by a title that identifies the type of information and references paragraph (a)(1)(ii)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (a)(2) of Rule 17g–7, based on the information being disclosed in the item.[1134] The note provides the example that the item on the form containing the information specified in paragraph (a)(1)(ii)(C) of Rule 17g–7 should be captioned: ''Main Assumptions and Principles Used to Construct the Rating Methodology used to Determine the Credit Rating as required by Paragraph (a)(1)(ii)(C) of Rule 17g–7.'' [1135] The note also explains that the form must organize the items of information in the following order: Items 1 through 14 must contain the information specified in paragraphs (a)(1)(ii)(A) through (N) of Rule 17g–7, respectively, and item 15 must contain the certifications specified in paragraph (a)(2) of Rule 17g–7.[1136]

Several NRSROs stated that a standardized form may discourage NRSROs from providing more transparency.[1137] Another NRSRO stated that if formatted disclosure is ultimately required, ''the Commission should provide sufficient flexibility to allow for disclosure that is meaningful in the context provided.'' [1138] The Commission believes the approach it has taken in prescribing a standardized format for presenting the information in the form without, for example, requiring that a prescribed form be filled out, strikes an appropriate balance in implementing section 15E(s)(2) of the Exchange Act between the comparability of the information provided across NRSROs and the flexibility to allow for meaningful disclosure. For example, the final amendments—while prescribing certain formatting requirements—generally permit an NRSRO to design the form that will be used to make the disclosure. Thus, an NRSRO can tailor the form to specific classes or subclasses of credit ratings to provide more targeted information.

The proposed amendments required that the form must be in a format that is easy to use and helpful for users of credit ratings to understand the information contained in the form.[1139] The proposed rule text closely mirrored section 15E(s)(2)(A) of the Exchange Act.[1140] The modifications discussed above prescribing a standard for presenting the information in the form are specifically designed to achieve the objective set forth in section 15E(s)(2)(A) and the proposed rule. However, the final amendments, as proposed, include the more general requirement that the form must be in a format that is ''easy to use and helpful for users of credit ratings to understand the information contained in the form.'' [1141] Because the presentation of the information has been prescribed, this format-related requirement will be more relevant to the narrative disclosures that are made in the items of the form. In particular, NRSROs must provide narrative disclosures that help users of credit ratings to understand the information. Several commenters stated that the form will result in boilerplate disclosure rather than more transparency.[1142] Pursuant to the final amendments, NRSROs will need to make the disclosures as specific to the particular rating action, and as relevant to investors, as possible, and strike a reasonable balance between standardizing the disclosures and tailoring them to specific rating actions. While the Commission recognizes that some of the information to be disclosed in the form may be standardized for classes or subclasses of credit ratings, NRSROs must disclose information in the form in a manner that promotes greater understanding of how a credit rating was determined. Accordingly, the form must contain plainly worded and succinct disclosures that are easy to understand and not lengthy boilerplate disclaimers.

Finally, paragraph (a)(1)(i)(C) of Rule 17g–7, as proposed, provides that the form must be in a format that provides the content described in paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7 in a manner that is directly comparable across types of obligors, securities, and money market instruments.[1143] As discussed below in section II.G.3. of this release, these paragraphs of Rule 17g–7 require the disclosure of certain types of quantitative information as mandated by section 15E(s)(3)(B) of the Exchange

[1128] *See id.*

[1129] *See* paragraph (a)(1)(i)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1130] *See CFA/AFR Letter; Levin Letter.*

[1131] *See Levin Letter.*

[1132] *See CFA/AFR Letter.*

[1133] *See* paragraph (a)(1)(i)(A) of Rule 17g–7, and the accompanying note to the paragraph. This approach, specifying the order in which the information must be presented, is consistent with the amendments to the instructions for Exhibit 1 to Form NRSRO being adopted today, which specify the order in which the Transition/Default Matrices must presented in the Exhibit. *See* paragraph (2) of the instructions for Exhibit 1 to Form NRSRO. *See also* section II.E.1.c. of this release discussing the amendments to the instructions for Exhibit 1 to Form NRSRO.

[1134] *See* note to paragraph (a)(1)(i)(A) of Rule 17g–7. *See also* paragraphs (a)(1)(ii)(A) through (N) and (a)(2) of Rule 17g–7. As discussed below in section II.G.3. of this release, paragraphs (a)(1)(ii)(A) through (N) and (a)(2) of Rule 17g–7 specify the types of information that must be disclosed in the form.

[1135] *See* note to paragraph (a)(1)(i)(A) of Rule 17g–7.

[1136] *See id.*

[1137] *See DBRS Letter; Morningstar Letter; S&P Letter.*

[1138] *See Kroll Letter.*

[1139] *See* paragraph (a)(1)(i)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR 33540.

[1140] *See* 15 U.S.C. 78o–7(s)(2)(A).

[1141] *See* paragraph (a)(1)(i)(B) of Rule 17g–7.

[1142] *See DBRS Letter; Morningstar Letter; S&P Letter.*

[1143] *See* paragraph (a)(1)(i)(C) of Rule 17g–7.

Act.[1144] One commenter stated that it would be difficult, if not impossible, to make this information ''directly comparable'' across all NRSROs.[1145] In response, the Commission notes that the final amendments require certain types of quantitative information to be comparable across types of obligors, securities, and money market instruments rated by the NRSRO (rather than across NRSROs).[1146]

3. Paragraph (a)(1)(ii) of Rule 17g–7—Content of the Form

Section 15E(s)(3) of the Exchange Act provides that the Commission shall require, by rule, that the form accompanying the publication of a credit rating contain specifically identified items of information.[1147] In particular, section 15E(s)(3)(A) identifies eight items of ''qualitative content'' [1148] and section 15E(s)(3)(B) identifies four items of ''quantitative content.'' [1149] Because the statute specified the type of information to be included in the form, the Commission proposed rule text prescribing the required contents of the form that largely mirrored the statutory text.[1150] In particular, the prefatory text of paragraph (a)(1)(ii) of Rule 17g–7, as proposed, provided that the form generated by the NRSRO must contain the information about the credit rating that is identified in paragraphs (a)(1)(ii)(A) through (N) of the rule.[1151] The order of, and information required in, these paragraphs largely mirrored the provisions of section 15E(s)(3) of the Exchange Act.[1152]

The Commission is adopting the prefatory text of paragraph (a)(1)(ii) of Rule 17g–7 without modification.[1153] The paragraph provides that the form generated by the NRSRO must contain information about the credit rating identified in paragraphs (a)(1)(ii)(A) through (N).[1154] Consequently, NRSROs are required to generate a form containing the prescribed information and publish it when taking a rating action (as defined in the prefatory text of paragraph (a) of Rule 17g–7).

Several commenters raised concerns that the proposed rule could require the disclosure of confidential or proprietary information regarding the NRSRO or an issuer.[1155] The Commission does not intend that the rule require an NRSRO to disclose confidential or proprietary information in the form. As discussed above, the format of the form must be easy to use and helpful for users of credit ratings to understand the information contained in the form about the rating action.[1156] NRSROs must provide narrative disclosures that are helpful for users of credit ratings to understand the information and, therefore, the form must contain plainly worded and succinct disclosures that are not overly detailed. An NRSRO must meet this standard through disclosures that are informative but at the same time the Commission does not expect an NRSRO to disclose confidential or proprietary information.

As noted above, commenters suggested expanding the information required to be disclosed in the form. In particular, one commenter stated that the Commission should encourage NRSROs to provide additional information if they deem it appropriate,[1157] another stated that NRSROs should provide further information that would enable investors to understand the significance of the disclosures,[1158] and a third stated that NRSROs should be required to indicate the ''projected time period during which the given rating was expected to be valid.'' [1159] One commenter stated that some disclosure requirements should be expanded to provide in greater detail information that can be used by investors and other users of credit ratings.[1160] Another commenter suggested further rulemaking to require NRSROs to disclose and explain the rationale behind proposed credit ratings to the rated entity prior to publication, provide a rated entity with the right to appeal a proposed credit rating, and give reasonable consideration to an appeal.[1161]

In contrast, other commenters raised burden concerns with respect to the breadth of the information that the proposed rule required to be included in the form. One NRSRO urged the Commission not to extend the rule beyond what the statute requires.[1162] Another NRSRO stated that although the form may be useful to investors, it must not be ''so lengthy and overburdened with detail that it loses its utility,'' and expressed a concern that the level of detail ''far surpasses what most users of credit ratings would find of practical use, while imposing unnecessary burdens on NRSROs.'' [1163] A third NRSRO stated that disclosure should be limited to asset-backed securities ratings, indicating that expanding requirements to other ratings is ''extremely overburdensome'' and provides little information that is not already publicly available.[1164]

The Commission acknowledges that section 15E(s)(3) of the Exchange Act identifies a significant amount of information that the Commission's rule must require to be disclosed in the form.[1165] This information will be helpful in providing transparency as to how an NRSRO determines credit ratings across all classes of credit ratings. This transparency should benefit users of credit ratings and could mitigate the risk of undue reliance on credit ratings by providing information about the limits of credit ratings. Further, because the statute was very specific regarding the information to be disclosed, the Commission has sought to model its rule closely on the statutory text. Accordingly, the Commission does not believe it would be appropriate to limit the disclosure requirements to rating actions involving asset-backed securities. Moreover, given the significant amount of information required to be disclosed, the Commission also does not believe it to be necessary at this time to expand the disclosure requirements as suggested by some commenters.

The Commission also wants to emphasize that the information that must be disclosed in the form must relate to the rating action that is being taken. The NRSRO need not include in the disclosure information about the credit rating that is no longer up-to–date. For example, consistent with the statutory text, the rule text sometimes

[1144] *See* paragraphs (a)(1)(ii)(K) through (M) of Rule 17g–7; 15 U.S.C. 78o–7(s)(3)(B).

[1145] *See S&P Letter.*

[1146] *See* paragraph (a)(1)(i)(C) of Rule 17g–7.

[1147] *See* 15 U.S.C. 78o–7(s)(3).

[1148] *See* 15 U.S.C. 78o–7(s)(3)(A)(i) through (vii). Section (s)(3)(A)(ix) includes a ninth catchall item: Such additional information as the Commission may require. 15 U.S.C. 78o–7(s)(3)(A)(ix).

[1149] *See* 15 U.S.C. 78o–7(s)(3)(B)(i) through (iv).

[1150] *See* paragraph (a)(1)(ii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33458–33463.

[1151] *See* paragraph (a)(1)(ii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1152] *See* paragraphs (a)(1)(ii)(A) through (M) of Rule 17g–7; 15 U.S.C. 78o–7(s)(3)(A)(i) through (vii) and (B)(i) through (iv).

[1153] *See* paragraph (a)(1)(ii) of Rule 17g–7. One NRSRO suggested that the prefatory text be modified to add the phrase ''to the extent applicable''. *See Moody's Letter.* The Commission is not making this modification because the specific disclosure provisions contain such limiters when the information to be disclosed may not be applicable in all cases. *See, e.g.,* paragraphs (a)(1)(ii)(D), (G), (J), (L), (M), (N) of Rule 17g–7.

[1154] *See* paragraph (a)(1)(ii) of Rule 17g–7.

[1155] *See, e.g., Barnard Letter; FSR Letter; Moody's Letter; Siff Letter; S&P Letter.*

[1156] *See* paragraph (a)(1)(i)(B) of Rule 17g–7.

[1157] *See ICI Letter.*

[1158] *See Better Markets Letter.*

[1159] *See Levin Letter.*

[1160] *See Better Markets Letter.*

[1161] *See Andrews Letter.*

[1162] *See DBRS Letter.*

[1163] *See S&P Letter.*

[1164] *See A.M. Best Letter.*

[1165] *See* 15 U.S.C. 78o–7(s)(3).

uses the phrase ''to determine the credit rating.'' The Commission intended this to relate to the credit rating that is determined as a consequence of the rating action that triggers the disclosure requirement (a preliminary credit rating, an initial credit rating, an upgrade or downgrade of the credit rating, or certain affirmations or withdrawals of the credit rating). The objective is to provide investors and other users of credit ratings with helpful information about the rating action being taken with respect to the credit rating of the obligor, security, or money market instrument.

Paragraph (a)(1)(ii)(A). Section 15E(s)(3)(A)(i) of the Exchange Act provides that, as required by Commission rule, an NRSRO shall disclose on the form the credit ratings produced by the NRSRO.[1166] The Commission proposed to implement this section in paragraph (a)(1)(ii)(A) of Rule 17g–7.[1167] This paragraph, as proposed, would require the NRSRO to include in the form the symbol, number, or score in the rating scale used by the NRSRO to denote the credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the credit rating and the identity of the obligor, security, or money market instrument.[1168]

The Commission is adopting paragraph (a)(1)(ii)(A) of Rule 17g–7 with one modification from the proposal.[1169] The paragraph provides that the form must contain the symbol, number, or score in the rating scale used by the NRSRO to denote credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the credit rating and, as applicable, the identity of the obligor or the identity of the security or money market instrument and, in a modification from the proposal, must also contain, a description of the security or money market instrument.[1170]

The Commission stated in the proposing release that the identity of a security or money market instrument must be the name of the security or money market instrument, if applicable, and a description of the security or money market instrument.[1171] In the proposing release, the Commission provided an example of how an NRSRO could identify a bond: ''senior unsecured debt issued by Company XYZ maturing in 2015.''[1172] Consistent with the discussion in the proposing release, the Commission has modified the rule text from the proposal to add that, in the case of a credit rating of a security or money market instrument, the NRSRO must include in the form ''the identity and a description of the security or money market instrument.''[1173]

Two NRSROs commented on the requirement to identify the relevant obligor.[1174] In the proposing release, the Commission stated its preliminary belief that the obligor's identity would be its legal name and any other name used in its business.[1175] One NRSRO stated that it could be ''enormously burdensome'' for an NRSRO to learn and disclose all the business names that an obligor may use, and the additional information would add ''little benefit'' to those who use the form.''[1176] The other NRSRO stated that entry of legal names in its database has been problematic due to the inconsistent use of abbreviations.[1177] Both NRSROs suggested that NRSROs should be permitted to determine the clearest way to identify obligors.[1178] The Commission agrees with the commenters that an NRSRO should be permitted to determine the clearest way to identify an obligor. An NRSRO must disclose a name that clearly identifies the obligor.[1179]

Paragraph (a)(1)(ii)(B). Section 15E(r)(3)(A) of the Exchange Act provides that the Commission shall prescribe rules with respect to the procedures and methodologies used by NRSROs that require NRSROs to notify users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1180] As discussed above in section II.F.1. of this release, the Commission proposed to implement this provision in Rules 17g–8 and 17g–7.[1181] With respect to Rule 17g–7, proposed paragraph (a)(1)(ii)(B) would require an NRSRO to disclose on the form the version of the procedure or methodology used to determine the credit rating.[1182]

The Commission is adopting paragraph (a)(1)(ii)(B) of Rule 17g–7 as proposed.[1183] The paragraph provides that the NRSRO must include in the form the version of the procedure or methodology used to determine the credit rating.[1184]

Two NRSROs commented on paragraph (a)(1)(ii)(B) of Rule 17g–7, as proposed.[1185] One NRSRO stated that disclosing the version of the procedure or methodology used to determine a credit rating could be accomplished by identifying the name of the procedure or methodology, the date the procedure was implemented, and a hyperlink to further information about the procedure or methodology.[1186] The Commission agrees.[1187]

A second NRSRO stated that the actual benefit to investors is slight because the required content can be accessed through the NRSRO's public Internet Web site.[1188] As the Commission stated in the proposing release, section 15E(s)(1)(B) of the Exchange Act provides that the Commission shall require, by rule, each NRSRO to prescribe a form to accompany the publication of a credit rating that discloses information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO.[1189]

[1166] *See* 15 U.S.C. 78o–7(s)(3)(A)(i).

[1167] *See* paragraph (a)(1)(ii)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459.

[1168] *See* paragraph (a)(1)(ii)(A) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR 33540.

[1169] *See* paragraph (a)(1)(ii)(A) of Rule 17g–7.

[1170] *Id.*

[1171] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459.

[1172] *Id.*

[1173] *See* paragraph (a)(1)(ii)(A) of Rule 17g–7.

[1174] *See DBRS Letter; S&P Letter.*

[1175] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459.

[1176] *See DBRS Letter.*

[1177] *See S&P Letter.*

[1178] *See DBRS Letter; S&P Letter.*

[1179] As discussed above in section II.G.2. of this release, the format of the form must be easy to use and helpful for users of credit ratings to understand the information contained in the form. *See* paragraph (a)(1)(i) of Rule 17g–7.

[1180] *See* 15 U.S.C. 78o–7(r)(3)(A).

[1181] *See Nationally Recognized Statistical Rating Organizations,* 76 FR 33454–33455, 33459.

[1182] *See* paragraph (a)(1)(ii)(B) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33540.

[1183] *See* paragraph (a)(1)(ii)(B) of Rule 17g–7.

[1184] *Id.*

[1185] *See DBRS Letter; S&P Letter.*

[1186] *See DBRS Letter.*

[1187] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459 (''The Commission preliminarily believes that this disclosure could be made by identifying the name of the procedure or methodology (including any number used to denote the version), the date the procedure was implemented, and an Internet URL where further information about the procedure or methodology can be obtained.''). In the proposing release, the Commission provided an example of the disclosure. *Id.* at 33459 (''For example, a disclosure could resemble: 'RMBS Rating Methodology 3.0, implemented February 12, 2011. For further information go to [insert Web site address].'''). The Commission continues to believe this provides a useful example that NRSROs could use in making the required disclosure.

[1188] *See S&P Letter.*

[1189] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33459; 15 U.S.C. 78o–7(s)(1)(B).

Disclosing in the form the version of the procedure or methodology used to determine the credit rating will promote this goal. For example, credit rating methodologies that are predominantly quantitative may rely on models to produce credit ratings. These models are periodically updated and released as newer or different versions of the previous model. Disclosing in the form the version of a model used to produce a credit rating *with the credit rating* is expected to help investors and other users of credit ratings better understand the credit rating and how the determination of the credit rating may differ from the determination of credit ratings of similar products using an earlier version of the model.

Paragraph (a)(1)(ii)(C). Section 15E(s)(3)(A)(ii) of the Exchange Act provides that, as required by Commission rule, an NRSRO shall disclose on the form the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products.[1190] The Commission proposed to implement this section through paragraph (a)(1)(ii)(C) of Rule 17g–7, which mirrored the statutory text.[1191] The Commission is adopting paragraph (a)(1)(ii)(C) of Rule 17g–7 as proposed.[1192] The paragraph provides that the NRSRO must include in the form the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs, and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets.[1193]

Three commenters addressed paragraph (a)(1)(ii)(C) of Rule 17g–7, as proposed.[1194] One NRSRO stated that the Commission should harmonize this requirement with those of similar disclosures required in other jurisdictions, including the European Union.[1195] The commenter, however, did not provide explicit suggestions as to how the rule text could be modified to provide for such harmonization. Consequently, the Commission is not modifying the text on this basis. Two commenters stated that the Commission should not require the disclosure of confidential or proprietary information belonging to either the NRSRO or the issuer, such as non-public financial information of an issuer.[1196] The Commission does not intend that NRSROs will be required to disclose confidential or proprietary information to meet the requirements of paragraph (a)(1)(ii)(C) of Rule 17g–7. As discussed earlier with respect to the format of the form, NRSROs must provide narrative disclosures that are helpful for users of credit ratings to understand the information. Accordingly, the form must contain plainly worded and succinct disclosures. However, the Commission does not expect the disclosures to include confidential or proprietary information.

Paragraph (a)(1)(ii)(D). Section 15E(s)(3)(A)(iii) of the Exchange Act provides that, as required by Commission rule, an NRSRO shall disclose on the form the potential limitations of the credit ratings and the types of risks excluded from the credit ratings that the NRSRO does not comment on, including liquidity, market, and other risks.[1197] The Commission proposed to implement this section through paragraph (a)(1)(ii)(D) of Rule 17g–7, which mirrored the statutory text.[1198]

The Commission is adopting paragraph (a)(1)(ii)(D) of Rule 17g–7 as proposed.[1199] The paragraph provides that the NRSRO must include in the form the potential limitations of the credit rating, including the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks.[1200]

Two commenters addressed paragraph (a)(1)(ii)(D) of Rule 17g–7, as proposed.[1201] One NRSRO supported the rule text as proposed,[1202] and another commenter stated that the disclosure should include more than a listing of the risks that are not assessed as part of the rating.[1203] The Commission agrees with both commenters and notes that the rule as proposed and adopted requires the NRSRO to disclose the potential limitations of the credit rating, *including* the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks. Consequently, the risks excluded from the credit rating are only a part of the required disclosure. For example, the NRSRO also must disclose the limitations of the credit rating with respect to the risks the NRSRO does comment on, including credit risk.

Paragraph (a)(1)(ii)(E). Section 15E(s)(3)(A)(iv) of the Exchange provides that, as required by Commission rule, an NRSRO shall disclose on the form information on the uncertainty of the credit rating, including: (1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including any limits on the scope of historical data and any limits in accessibility to certain documents or other types of information that would have better informed the credit rating.[1204] The Commission proposed to implement this section through paragraph (a)(1)(ii)(E) of Rule 17g–7, which mirrored the statutory text.[1205]

The Commission is adopting paragraph (a)(1)(ii)(E) of Rule 17g–7 as proposed.[1206] The paragraph provides that the form must contain information on the uncertainty of the credit rating, including: (1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including any limits on the scope of historical data and any limits on accessibility to certain documents or other types of information that would have better informed the credit rating.[1207]

[1190] *See* 15 U.S.C. 78o–7(s)(3)(A)(ii).

[1191] *See* paragraph (a)(1)(ii)(C) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33460, 33540. This paragraph, as proposed, would require the NRSRO to include in the form the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs, and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets.

[1192] *See* paragraph (a)(1)(ii)(C) of Rule 17g–7.

[1193] *Id.*

[1194] *See Barnard Letter; S&P Letter; Siff Letter.*

[1195] *See S&P Letter.*

[1196] *See Barnard Letter; Siff Letter.*

[1197] *See* 15 U.S.C. 78o–7(s)(3)(A)(iii).

[1198] *See* paragraph (a)(1)(ii)(D) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33460, 33540. This paragraph, as proposed, would require the NRSRO to include in the form the potential limitations of the credit rating, including the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks.

[1199] *See* paragraph (a)(1)(ii)(D) of Rule 17g–7.

[1200] *Id.*

[1201] *See CFA/AFR Letter; S&P Letter.*

[1202] *See S&P Letter.*

[1203] *See CFA/AFR Letter.*

[1204] *See* 15 U.S.C. 78o–7(s)(3)(A)(iv).

[1205] *See* paragraph (a)(1)(ii)(E) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33460, 33540.

[1206] *See* paragraph (a)(1)(ii)(E) of Rule 17g–7.

[1207] *Id.*

Two commenters addressed paragraph (a)(1)(ii)(E) of Rule 17g–7, as proposed.[1208] One commenter stated that the Commission should require an NRSRO to address specifically the heightened uncertainty associated with ratings of offerings that do not have an extensive track record, complex or customized securities, or areas where the credit rating agency has limited data on which to base a rating.[1209] The Commission agrees and believes the rule as proposed and adopted requires disclosure on the matters identified by the commenter in that it requires disclosures regarding limits on the scope of historical data and limits on the accessibility to certain documents or other types of information that would have better informed the credit rating.

One NRSRO stated that requiring NRSROs to provide overly detailed information regarding '''reliability,' 'accuracy' and 'quality''' of data, could result in extremely lengthy disclosures due to the number of types of data.[1210] The NRSRO further stated that the Commission should harmonize this requirement with other jurisdictions' requirements by requiring only a statement about ''(i) whether essential data was available; (ii) whether such data was believed to be reliable; and (iii) any limitations on access to data for that transaction that differed from typical circumstances.'' [1211] As discussed above, NRSROs must provide narrative disclosures that are helpful for users of credit ratings to understand the information and, therefore, the form must contain plainly worded and succinct disclosures that are not unnecessarily detailed. As for the suggestion to harmonize the rule with other jurisdictions' requirements, the text suggested by the commenter generally seems consistent with the proposed rule. Consequently, the Commission is not persuaded that it is necessary to modify the proposed rule in response to this comment.[1212]

Paragraph (a)(1)(ii)(F). Section 15E(s)(3)(A)(v) of the Exchange Act provides that, as required by Commission rule, an NRSRO shall disclose on the form whether and to what extent third-party due diligence services have been used by the NRSRO, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party.[1213] The Commission proposed to implement this section through paragraph (a)(1)(ii)(F), which largely mirrored the statutory text.[1214]

Several commenters addressed paragraph (a)(1)(ii)(F) of Rule 17g–7, as proposed.[1215] The Commission is adopting paragraph (a)(1)(ii)(F) of Rule 17g–7 with modifications in response to comments.[1216]

Two commenters stated that the rule should be confined in scope to credit ratings on asset-backed securities.[1217] Two NRSROs stated that unless the person providing third-party due diligence services was engaged by the NRSRO, disclosure would be more appropriately made by the party that hired the due diligence provider.[1218] One NRSRO stated that ''[i]ssuers and underwriters, not NRSROs, should pass through the third party's description of the information reviewed and the third party's findings and conclusions,'' but, if the NRSROs must disclose the information, the Commission should clarify that the disclosure requirement can be met by the NRSRO ''passing through the certification that the third party provides to the NRSRO.'' [1219] In addition, one commenter stated that the final amendments should require that NRSROs ''expressly restate'' specific findings and conclusions from third-party due diligence reports to prevent them from being ''mischaracterized or taken out of context.'' [1220] Another commenter suggested that the words ''a description of the findings or conclusions'' should be revised to ''a summary of the findings and conclusions,'' because a ''summary'' better aligns with the requirement in proposed Form ABS Due Diligence–15E.[1221] The commenter further stated that what should be provided is a summary of the findings and conclusions, not the findings and conclusions themselves, and ''there is no reason why the summary would not be substantially similar in each context.'' [1222] One NRSRO stated that publishing the certification of the third-party due diligence provider with the form as required by paragraph (a)(2) of Rule 17g–7, as proposed, makes its use by the NRSRO ''self-evident.'' [1223]

The Commission is adopting the requirement that the form must contain information relating to due diligence services performed by a third party to implement section 15E(s)(3)(A)(v) of the Exchange Act.[1224] This information will help investors and other users of credit ratings to understand how the NRSRO determined the credit rating. In response to the comments that paragraph (a)(1)(ii)(F) should be limited to rating actions involving asset-backed securities, the Commission interprets the text of the rule referring to ''due diligence services of a third party'' as meaning the type of due diligence services that are within the scope of Rule 17g–10, as adopted, and Form ABS Due Diligence–15E (which apply to third-party due diligence services only in connection with asset-backed securities).[1225] Consequently, paragraph (a)(1)(ii)(F) is limited to rating actions involving Exchange Act-ABS.[1226]

In response to comments, the Commission is modifying the rule from the proposal to permit the NRSRO to provide a cross-reference to a Form ABS Due Diligence–15E that is published with the form to meet part of the disclosure requirement in paragraph (a)(1)(ii)(F).[1227] The Commission is persuaded by commenters that if an NRSRO used due diligence services of a third party it would be redundant, and potentially confusing, for the NRSRO to provide a description of the information that the third party reviewed in

[1208] *See CFA/AFR Letter; S&P Letter.*

[1209] *See CFA/AFR Letter.*

[1210] *See S&P Letter.*

[1211] *See id.*

[1212] *See* 15 U.S.C. 78o–7(s)(3)(A)(iv).

[1213] *See* 15 U.S.C. 78o–7(s)(3)(A)(v).

[1214] *See* paragraph (a)(1)(ii)(F) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33460–33461, 33540. This paragraph, as proposed, would require the NRSRO to include in the form whether and to what extent third-party due diligence services were used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party.

[1215] *See ASF Letter; DBRS Letter; Deloitte Letter; Moody's Letter; PWC Letter; S&P Letter.*

[1216] *See* paragraph (a)(1)(ii)(F) of Rule 17g–7.

[1217] *See Moody's Letter; PWC Letter.*

[1218] *See Moody's Letter; S&P Letter.*

[1219] *See Moody's Letter.*

[1220] *See Deloitte Letter.*

[1221] *See ASF Letter.*

[1222] *See id.*

[1223] *See DBRS Letter.*

[1224] *See* 15 U.S.C. 78o–7(s)(3)(A)(v).

[1225] *See* paragraph (d)(1) of Rule 17g–10 defining the term *due diligence services* to mean, in pertinent part, ''a review of the assets underlying an asset-backed security, as defined in section 3(a)(79) of the [Exchange] Act . . .'' In addition, section 15E(s)(4) of the Exchange Act is titled ''Due Diligence Services for Asset-Backed Securities.'' *See* 15 U.S.C. 78o–7(s)(4). Moreover, section 15E(s)(4)(A) provides that ''[t]he issuer or underwriter of any *asset-backed security* shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.'' *See* 15 U.S.C. 78o–7(s)(4)(A) (emphasis added). Consequently, as proposed, paragraph (a)(1)(ii)(F)—which refers to *due diligence services*—was intended to address due diligence services in the context of an asset-backed security.

[1226] As stated above in section I.B.1. of this release, the term *Exchange Act-ABS* as used throughout this release refers to an *asset-backed security* as defined in section 3(a)(79) of the Exchange Act. 15 U.S.C. 78c(a)(79).

[1227] *See* paragraph (a)(1)(ii)(F)(*2*) of Rule 17g–7.

conducting the due diligence services and a description of the findings or conclusions of the third party if that information is in a Form ABS Due Diligence–15E published with the form.[1228]

In addition, as noted above, a commenter proposed modifying the rule to replace the phrase ''a description of the findings or conclusions'' to ''a summary of the findings and conclusions,'' because the commenter believed that a ''summary'' better aligns with the requirement in proposed Form ABS Due Diligence–15E and that, in each case, the rules should require a summary of the findings and conclusions (as opposed to the findings and conclusions themselves).[1229] Item 5 of Form ABS Due Diligence–15E requires the third party to provide a ''summary of the findings and conclusions that resulted from the due diligence services.'' [1230] The Commission agrees with the commenter and has therefore modified the proposal to replace the words ''description of the findings or conclusions of such third party'' with the words ''summary of the findings and conclusions of the third party.'' [1231] However, if an NRSRO chooses to provide a summary of the findings and conclusions, the level of detail in the summary should be comparable to the level of detail a provider of third-party due diligence services provides in Form ABS Due Diligence–15E, as the summary in the form can be a substitute for the NRSRO providing a summary.[1232]

For these reasons, the final amendments provide that the form must contain whether and to what extent the NRSRO used due diligence services of a third party in taking the rating action, and, if the NRSRO used such services, either: (1) A description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party; or (2) a cross-reference to a Form ABS Due Diligence–15E executed by the third party that is published with the form, provided the cross-referenced Form ABS Due Diligence–15E contains a description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party.[1233]

The Commission is not persuaded by the comment that publishing the certification of the third-party due diligence provider with the form as required by paragraph (a)(2) of Rule 17g–7, as proposed, makes its use by the NRSRO ''self-evident.'' [1234] As discussed below in section II.G.5. of this release, section 15E(s)(4)(B) of the Exchange Act requires a third party providing due diligence services to an NRSRO, issuer, or underwriter with respect to an asset-backed security to provide a written certification to any NRSRO that produces a credit rating to which the due diligence services relate.[1235] Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO that receives a certification to disclose the certification to the public at the time at which the NRSRO produces a rating.[1236] Paragraph (a)(2) of Rule 17g–7, as amended, implements section 15E(s)(4)(D) by requiring the NRSRO to publish with the form any certifications it receives. However, the NRSRO's receipt of the certification pursuant to section 15E(s)(4)(B) and publication of the certification pursuant to paragraph (a)(2) of Rule 17g–7, as amended, is not predicated on the NRSRO having used the due diligence services in determining the credit rating. Consequently, the final amendments retain the requirement for the NRSRO to include in the form whether and to what extent the NRSRO used due diligence services of a third party in taking the rating action.[1237]

Paragraph (a)(1)(ii)(G). Section 15E(s)(1)(A)(iii) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form information relating to, if applicable, how the NRSRO used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating.[1238] The Commission proposed to implement this section through paragraph (a)(1)(ii)(G) of Rule 17g–7, which mirrored the statutory text.[1239]

One commenter addressed paragraph (a)(1)(ii)(G) of Rule 17g–7, as proposed, by noting its support of the rule text as proposed.[1240] The Commission is adopting paragraph (a)(1)(ii)(E) of Rule 17g–7 as proposed.[1241] The paragraph provides that the NRSRO must include in the form, if applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating.[1242]

Paragraph (a)(1)(ii)(H). Section 15E(s)(3)(A)(vi) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating.[1243] The Commission proposed to implement this section through paragraph (a)(1)(ii)(H) of Rule 17g–7, which mirrored the statutory text.[1244] The Commission is adopting paragraph (a)(1)(ii)(H) of Rule 17g–7 with a modification in response to comments.[1245]

One NRSRO stated that the requirement may result in ''effectively overloading'' investors with information and essentially ''reducing rather than enhancing'' the disclosure's value.[1246] This commenter and another commenter expressed concerns that some data may be confidential or provided to the NRSRO under terms restricting public disclosure.[1247] One commenter suggested that the Commission clarify that the requirement for a ''description of the data relied upon'' requires only a description of the general type of data and not of specific data, since specific data can be obtained

[1228] As discussed below in section II.H.3.c. of this release, Item 4 of Form ABS Due Diligence–15E requires the third party to provide a description of the due diligence performed that addresses the information that was reviewed and Item 5 requires the third party to provide a summary of the findings and conclusions of the review.

[1229] *See ASF Letter.*

[1230] *See* Item 5 of Form ABS Due Diligence–15E.

[1231] *See* paragraph (a)(1)(ii)(F)(*1*) of Rule 17g–7.

[1232] The Commission, however, does not believe the rule as proposed (which required ''a description of the findings or conclusions'') and the rule as adopted (which requires a ''summary of the findings and conclusions'') contain standards that differ in any significant way. Under either standard, the NRSRO need not repeat the actual findings and conclusions but rather must provide a higher level disclosure about them.

[1233] *See* paragraph (a)(1)(ii)(F) of Rule 17g–7.

[1234] *See DBRS Letter.*

[1235] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1236] *See* 15 U.S.C. 78o–7(s)(4)(D).

[1237] *See* paragraph (a)(1)(ii)(F) of Rule 17g–7.

[1238] *See* 15 U.S.C. 78o–7(s)(1)(A)(iii).

[1239] *See* paragraph (a)(1)(ii)(G) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461, 33540. This paragraph, as proposed, would require the NRSRO to include in the form, if applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating.

[1240] *See S&P Letter.*

[1241] *See* paragraph (a)(1)(ii)(G) of Rule 17g–7. One commenter addressed this proposal and supported it. *See S&P Letter.*

[1242] *See* paragraph (a)(1)(ii)(G) of Rule 17g–7.

[1243] *See* 15 U.S.C. 78o–7(s)(3)(A)(vi).

[1244] *See* paragraph (a)(1)(ii)(H) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461, 33540–33541. This paragraph, as proposed, would require the NRSRO to include in the form a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating.

[1245] *See* paragraph (a)(1)(ii)(H) of Rule 17g–7.

[1246] *See S&P Letter.*

[1247] *See FSR Letter; S&P Letter.*

from the relevant offering documents.[1248]

In response to these comments, the Commission notes, as stated above, that section 15E(s)(3)(A)(vi) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating.[1249] Paragraph (a)(1)(ii)(H) of Rule 17g–7, as proposed, was designed to implement the statute. Moreover, as discussed above, the form must disclose information that can be used by investors and other users of credit ratings to better understand credit ratings [1250] and, therefore, the form must contain plainly worded and succinct disclosures that are not overly detailed. In this regard, the Commission did not intend to require that the form repeat verbatim all the data that were relied upon to determine the credit rating. Instead, it intended the form to include a ''description'' to help users of the credit rating to understand the types of data the NRSRO relied on. To make this more clear and address the commenter's concern, the Commission has modified the final amendments to require the NRSRO to include in the form a description of the *types* of data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating.[1251]

Paragraph (a)(1)(ii)(I). Section 15E(s)(3)(A)(vii) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form a statement containing an overall assessment of the quality of information available and considered in producing a rating for the obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar issuances.[1252] The Commission proposed to implement this section through paragraph (a)(1)(ii)(I) of Rule 17g–7, which largely mirrored the statutory text.[1253]

The Commission is adopting paragraph (a)(1)(ii)(I) of Rule 17g–7 as proposed.[1254] The paragraph provides that the NRSRO must include in the form a statement containing an overall assessment of the quality of information available and considered in determining the credit rating for the obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments.[1255]

One NRSRO stated that the requirement to disclose an overall assessment of the quality of information used in its rating ''would present practical, and possibly contractual difficulties,'' and that the Commission should harmonize this requirement with other jurisdictions' requirements by requiring a statement about ''(i) whether essential data was available; (ii) whether such data was believed to be reliable; and (iii) any limitations on access to data for that transaction that differed from typical circumstances.'' [1256] The commenter did not explain how the proposed requirement would present contractual difficulties but, as discussed above, the Commission does not intend the disclosure provisions in the rule to require NRSROs to disclose confidential or proprietary information. In terms of practical issues, as discussed above, the NRSROs must provide narrative disclosures in the form that are helpful for users of credit ratings to understand the information and, therefore, the form must contain plainly worded and succinct disclosures that are not overly detailed. Thus, the practical issue of having to make highly detailed disclosures is not implicated by the rule as proposed and adopted. As for the suggestion to harmonize the rule with other jurisdictions, the text suggested by the commenter generally seems aimed at requiring relatively similar disclosures though it does not explicitly require an assessment of the overall quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments. Consequently, the Commission is not persuaded that it is necessary to implement the statute in a manner that deviates from the proposed rule.[1257]

Paragraph (a)(1)(ii)(J). Proposed paragraph (a)(1)(ii)(J) of Rule 17g–7 [1258] would implement, in part, section 15E(s)(3)(A)(viii) of the Exchange Act, which provides that the Commission shall require, by rule, that the NRSRO disclose on the form information relating to conflicts of interest of the NRSRO.[1259] The Commission proposed to identify three specific items of information that, at a minimum, an NRSRO would need to disclose in the form relating to conflicts of interest.[1260]

First, proposed paragraph (a)(1)(ii)(J)(*1*) would require the NRSRO to include a classification of the credit rating as either *solicited sell-side, solicited buy-side,* or *unsolicited.*[1261] The proposal defined *solicited sell-side* to mean that the credit rating was paid for by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated.[1262] The proposal defined *solicited buy-side* to mean that the credit rating was paid for by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated.[1263] The proposal defined an *unsolicited* credit rating to mean the NRSRO was not paid to determine the credit rating.[1264] The Commission is

[1248] *See FSR Letter.*

[1249] *See* 15 U.S.C. 78o–7(s)(3)(A)(vi).

[1250] See 15 U.S.C. 78o–7(s)(1)(B).

[1251] *See* paragraph (a)(1)(ii)(H) of Rule 17g–7 (emphasis added to highlight the modification).

[1252] *See* 15 U.S.C. 78o–7(s)(3)(A)(vii).

[1253] *See* paragraph (a)(1)(ii)(I) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461, 33541. This paragraph, as proposed, would require the NRSRO to include in the form a statement containing an overall assessment of the quality of information available and considered in determining the credit rating for the obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments. The statute refers to ratings of ''similar issuances.'' However, a credit rating of an obligor commonly means the rating of the obligor as an entity rather than a rating of securities or money market instruments issued by the obligor. Consequently, the rating of an obligor may not relate to an ''issuance'' of a particular security or money market instrument. Therefore, paragraph (a)(1)(ii)(I) of Rule 17g–7, as proposed, substituted the phrase ''similar obligors, securities, or money market instruments'' for the phrase ''similar issuances'' in the statutory text.

[1254] *See* paragraph (a)(1)(ii)(I) of Rule 17g–7.

[1255] *Id.*

[1256] *See S&P Letter.*

[1257] *See* 15 U.S.C. 78o–7(s)(3)(A)(vii).

[1258] *See* paragraph (a)(1)(ii)(J) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1259] *See* 15 U.S.C. 78o–7(s)(3)(A)(viii).

[1260] *See* paragraph (a)(1)(ii)(J) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461–33462, 33541.

[1261] *See* paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1262] *See* paragraph (a)(1)(ii)(J)(*1*)(*i*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1263] *See* paragraph (a)(1)(ii)(J)(*1*)(*ii*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1264] *See* paragraph (a)(1)(ii)(J)(*1*)(*iii*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541. The Commission further explained in the proposing release that the intent was to include credit ratings funded by selling subscriptions to access the credit ratings (so-called ''subscriber-paid credit ratings''). *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461–33462. However, if a subscriber paid the NRSRO to determine a credit rating for a specific obligor, security, or money market instrument, the credit rating would need to be classified as either *solicited sell-side,* if the subscriber also was the obligor, issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated, or *solicited buy-side* if the subscriber was not the obligor, issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated. *Id.*

adopting paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7 with modifications in response to comments about these definitions.[1265]

One NRSRO stated that equating the concept of solicitation with payment would result in confusion in the market, and that the definition should be harmonized with that of other jurisdictions, where an *unsolicited credit rating* is defined as one that is initiated by the credit rating agency and not requested by the issuer.[1266] The Commission is persuaded that requiring the NRSRO to classify the credit rating using one of these terms could be confusing given other views as to what constitutes a *solicited* or *unsolicited* credit rating. Further, disclosing the conflict through a classification may not be as helpful as simply having the NRSRO include a statement in the form as to whether another person paid for the credit rating. For these reasons, the final amendments have been modified to exclude the specific terms proposed and instead require the NRSRO to include in the form, as applicable, a statement that the NRSRO was: (1) Paid to determine the credit rating by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated; (2) paid to determine the credit rating by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated; or (3) not paid to determine the credit rating.[1267]

The second type of conflict disclosure was specified in proposed paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7.[1268] Pursuant to this paragraph, if the credit rating was classified as either *solicited sell-side* or *solicited buy-side,* the NRSRO would be required to disclose whether the NRSRO provided services other than determining credit ratings to the person that paid for the credit rating during the most recently ended fiscal year.[1269] The Commission is adopting paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7 with modifications in response to comments.[1270]

A commenter stated that the disclosure about other services provided by an NRSRO does not provide any basis to conclude that a rating may be compromised.[1271] Another commenter strongly opposed the requirement due to the difficulty of shielding analysts from such information so as to promote independence in the credit rating process.[1272] A third commenter supported the proposed requirement and added that the Commission should also require NRSROs to disclose the revenue they received from a particular issuer.[1273]

The Commission does not agree with the commenter that being paid for other services does not present a potential conflict. As the Commission stated in the proposing release, clients paying an NRSRO for services in addition to determining credit ratings may pose an increased risk of exerting undue influence on the NRSRO with respect to its determination of credit ratings.[1274] The Commission has adopted rules that address this conflict.[1275] The proposed disclosure requirement about paying for other services was intended to complement these requirements.[1276]

The Commission acknowledges the concern raised by the commenter about the objective of shielding analysts from information that could compromise their independence.[1277] Nonetheless, the Commission believes that the proposed disclosure that the NRSRO was paid for other services is appropriate because it will provide users of credit ratings with relevant information about this conflict even when balanced against the concern that an analyst reading the report will learn that the NRSRO was paid for other services. If the NRSRO was required to disclose the amount of revenue received (as suggested by the third commenter), this concern that the analyst might be influenced by the disclosure would be increased.[1278]

For all of these reasons, the Commission is adopting the requirement that the NRSRO must include a disclosure in the form if it was paid for other services.[1279] The Commission modified the final amendments to correspond to the modifications discussed above with respect to eliminating the proposed classification of the credit rating as either *solicited* or *unsolicited.* Specifically, the final amendments require the NRSRO, if applicable, to include in the form a statement that the NRSRO also was paid for services other than determining credit ratings during the most recently ended fiscal year by the person that paid the NRSRO to determine the credit rating.[1280]

The third type of conflict disclosure was specified in (a)(1)(ii)(J)(*3*) and related to rating actions resulting from look-back reviews.[1281] As discussed above in section II.C.1. of this release, the proposal would require the disclosure of information about a conflict of interest influencing a credit rating action discovered as a result of a look-back review conducted pursuant to section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of Rule 17g–8. Also, as discussed above in section II.C.1. of this release, the Commission is adopting paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7 with modifications in response to comments that eliminate the required disclosure that would have accompanied the placement of the credit rating on credit watch, modify the required disclosure with respect to estimating the impact of the conflict, and make certain related and technical modifications.[1282]

Paragraph (a)(1)(ii)(K). Section 15E(s)(3)(B)(i) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that might lead to a change in the credit rating; and (2) the magnitude of the

[1265] *See* paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7.

[1266] *See Moody's Letter.*

[1267] *See* paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7. For the purpose of these disclosures, the Commission does not consider a subscriber to an NRSRO's credit ratings to be a person who paid for the credit rating simply because the subscriber paid a fee to access the credit ratings of the NRSRO. However, the NRSRO would need to state that it was paid to determine the credit rating if, for example, the subscriber paid for the credit rating because it was the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated, or the subscriber paid for determination of the credit rating because the subscriber was an investor or potential investor in the security or money market instrument and hired the NRSRO to rate the security or money market instrument.

[1268] *See* paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1269] *See* paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7, as proposed.

[1270] *See* paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7.

[1271] *See S&P Letter.*

[1272] *See Moody's Letter.*

[1273] *See CFR/AFR Letter.*

[1274] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461–33462. In this regard, the Commission notes that section 939H of the Dodd-Frank Act contains a sense of Congress that the Commission should exercise rulemaking authority under section 15E(h)(2)(B) of the Exchange Act to prevent improper conflicts of interest arising from employees of NRSROs providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services. *See* Public Law 111–203, 939H. *See also* 2013 Staff Report on Credit Rating Agency Independence (a report on the potential conflict of interest that arises from a credit rating agency providing other services).

[1275] *See* 2013 Staff Report on Credit Rating Agency Independence, pp. 9–13 (summarizing and describing the relevant rules).

[1276] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33461–33462.

[1277] *See Moody's Letter.*

[1278] *See CFR/AFR Letter.*

[1279] *See* paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7.

[1280] *Id.*

[1281] *See* paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1282] *See* paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7.

change that a user can expect under different market conditions.[1283] The Commission proposed to implement this section through paragraph (a)(1)(ii)(K) of Rule 17g–7, which largely mirrored the statutory text.[1284] The Commission is adopting paragraph (a)(1)(ii)(K) of Rule 17g–7 with modifications in response to comment.[1285]

Three commenters addressed paragraph (a)(1)(ii)(K) of Rule 17g–7, as proposed.[1286] An NRSRO suggested that the Commission modify the rule to require the disclosure of any factors that are ''reasonably likely to'' (rather than ''might'') lead to a change in the credit rating.[1287] A second NRSRO stated that ''each NRSRO should decide for itself what conditions merit discussion in light of the characteristics of the rated instrument and whatever other information the NRSRO believes it is appropriate to take into account.'' [1288] A third commenter stated that the Commission should require the NRSROs to be very specific about the events and the magnitude of those events that would cause ratings to be in ''error'' and provided a five percent drop in housing prices as an example.[1289]

The Commission agrees with the modifications suggested by the first commenter. The word ''might'' as used in the proposed rule text is imprecise and could lead to disclosures that seek to identify any conceivable factor that could lead to the change in the credit rating no matter how remote the possibility. This could diminish the usefulness of the disclosure by including information that is not highly relevant to understanding the credit rating and generally making the disclosure too long.

Regarding the second comment, the magnitude of the change that could occur under different market conditions will depend on an NRSRO's procedures and methodologies for determining credit ratings that apply to the credit rating that is subject to the rating action.[1290] Consequently, the required disclosure—as proposed and adopted—will be based on those procedures and methodologies and how they account for different market conditions. In other words, the NRSRO will need to ''decide for itself'' the potential market conditions that could cause a change in the credit rating given its rating procedures and methodologies. However, to make this clear, the Commission is modifying the rule to specify that the different market conditions are those that are determined by the NRSRO to be relevant to the rating.[1291]

Finally, the Commission generally agrees with the third commenter that the disclosure by the NRSRO must specify the factors (for example, market conditions) that would lead to a change in the credit rating. As discussed above, the NRSRO must disclose factors that might lead to a change in the credit rating. In doing so, the NRSRO must explain the factors.

For these reasons, the final amendments require the NRSRO to include in the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that are reasonably likely to lead to a change in the credit rating; and (2) the magnitude of the change that could occur under different market conditions determined by the NRSRO to be relevant to the rating.[1292]

Paragraph (a)(1)(ii)(L). Section 15E(s)(3)(B)(ii) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form information on the content of the credit rating, including: (1) The historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.[1293] The Commission proposed to implement this section through paragraph (a)(1)(ii)(L) of Rule 17g–7, which mirrored the statutory text.[1294]

The Commission is adopting paragraph (a)(1)(ii)(L) of Rule 17g–7 as proposed.[1295] The paragraph provides that the NRSRO must include in the form information on the content of the credit rating, including: (1) If applicable, the historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.[1296]

Two NRSROs addressed paragraph (a)(1)(ii)(L) of Rule 17g–7, as proposed.[1297] One stated that it supports the disclosure elements specified in this paragraph.[1298] The other commenter stated that the proposal is sufficiently explicit, but indicated that its credit ratings do not connote a ''particular'' expectation of the probability of default.[1299] The Commission recognizes that credit ratings generally are intended to indicate the relative degree of credit risk of an obligor or debt instrument rather than reflect a measure of a specific default probability or loss expectation.[1300] The Commission does not expect NRSROs to alter the meanings of their credit ratings or rating procedures and methodologies to conform to the disclosure requirement. Rather, the Commission expects NRSROs to provide ''information'' to the extent it is consistent with their procedures and methodologies for determining credit ratings, on the expected probability of default and expected loss in the event of default. This information could consist of, for example, historical default and loss statistics, respectively, for the class or subclass of the credit rating.

Paragraph (a)(1)(ii)(M). Section 15E(s)(3)(B)(iii) of the Exchange Act provides that the Commission shall require, by rule, that the NRSRO disclose on the form information on the sensitivity of the credit rating to assumptions made by the NRSRO, including: (1) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the five assumptions identified impacts a credit rating.[1301] The Commission proposed to implement this section through paragraph (a)(1)(ii)(M) of Rule 17g–7, which mirrored the statutory

[1283] *See* 15 U.S.C. 78o–7(s)(3)(B)(i).

[1284] *See* paragraph (a)(1)(ii)(K) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33462, 33541. This paragraph, as proposed, would require the NRSRO to include in the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that might lead to a change in the credit rating; and (2) the magnitude of the change that could occur under different market conditions.

[1285] *See* paragraph (a)(1)(ii)(K) of Rule 17g–7.

[1286] *See CFR/AFR Letter; DBRS Letter; S&P Letter.*

[1287] *See DBRS Letter.*

[1288] *See S&P Letter.*

[1289] *CFR/AFR Letter.*

[1290] *See, e.g.,* 2012 Staff Report on Credit Rating Standardization, pp. 25–29 (discussing the feasibility and desirability of standardizing the market stress conditions under which ratings are evaluated).

[1291] *See* paragraph (a)(1)(ii)(K)(*2*) of Rule 17g–7.

[1292] *Id.*

[1293] *See* 15 U.S.C. 78o–7(s)(3)(B)(ii).

[1294] *See* paragraph (a)(1)(ii)(L) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33462, 33541. This paragraph, as proposed, would require the NRSRO to include in the form information on the content of the credit rating, including: (1) If applicable, the historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.

[1295] *See* paragraph (a)(1)(ii)(L) of Rule 17g–7.

[1296] *Id.*

[1297] *See Kroll Letter; S&P Letter.*

[1298] *See Kroll Letter.*

[1299] *See S&P Letter.*

[1300] *See* 2012 Staff Report on Credit Rating Standardization, pp. 29–34 (discussing the feasibility and desirability of requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress).

[1301] *See* 15 U.S.C. 78o–7(s)(3)(B)(iii).

text.[1302] The Commission is adopting paragraph (a)(1)(ii)(M) of Rule 17g–7 with modifications in response to comments.[1303]

Several commenters addressed paragraph (a)(1)(ii)(M) of Rule 17g–7, as proposed.[1304] An NRSRO stated that the disclosure of assumptions will tend to become a ''mechanical exercise'' where disclosure is ''sufficiently vague so as to be unimpeachable,'' but will not be useful.[1305] Another NRSRO stated that it should be permissible to disclose fewer than five assumptions if fewer than five significant assumptions exist.[1306] Two other NRSROs stated that it may be difficult to identify five single assumptions[1307] because, according to one NRSRO, many assumptions are ''cross-dependent,'' and different assumptions may ''play out differently in various economic scenarios.'' [1308] Another commenter stated that the Commission should also require NRSROs to disclose the sensitivity of the credit rating to several assumptions changing at the same time and the dependencies assumed between the assumptions.[1309]

The Commission agrees with the commenter that an NRSRO should not disclose five assumptions if there are fewer than five assumptions that would have an impact on the credit rating if proven false or inaccurate. Otherwise, the disclosure could contain information that is potentially misleading by, for example, creating the impression the assumption is important when it is not. Consequently, the final amendments are modified to include a provision that the NRSRO need only disclose information on the assumptions that would have an impact on the credit rating if there are fewer than five such assumptions.[1310] Specifically, the final amendments require the NRSRO to include in the form information on the sensitivity of the credit rating to assumptions made by the NRSRO, including: (1) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on the credit rating if the assumptions were proven false or inaccurate, provided that, if the NRSRO has made fewer than five such assumptions, it need only disclose information on the assumptions that would have an impact on the credit rating; and (2) an analysis, using specific examples, of how each of the assumptions impacts the credit rating.[1311]

In response to the comment that this disclosure will become ''mechanical'' and not useful, the Commission—as stated above—expects NRSROs to make the disclosures as specific to the particular rating action, and as relevant to investors, as possible, and to strike a reasonable balance between standardizing the disclosures and tailoring them to specific rating actions. With respect to the comments on isolating the assumptions and the co-dependencies between assumptions, the Commission understands that certain assumptions may be co-dependent. The NRSRO should provide an explanation of this co-dependency in the disclosure of the assumptions to the extent it is relevant to understanding how they would impact the credit rating.

Paragraph (a)(1)(ii)(N). Paragraph (a)(1)(ii)(N) of Rule 17g–7, as proposed, would contain the disclosure requirements in paragraphs (a) and (b) of Rule 17g–7 before today's amendments.[1312] Specifically, this paragraph would provide that if the credit rating is issued with respect to an asset-backed security, as that term is defined in section 3(a)(79) of the Exchange Act, the NRSRO must include in the form a description of: (1) The representations, warranties, and enforcement mechanisms available to investors; and (2) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities, each time there was a rating action with respect to an asset-backed security.[1313] The Commission is adopting paragraph (a)(1)(ii)(N) of Rule 17g–7 with modifications in response to comments.[1314]

Several commenters addressed paragraph (a)(1)(ii)(N) of Rule 17g–7, as proposed.[1315] Two NRSROs objected to the frequency of the required disclosures under the proposed paragraph.[1316] One NRSRO stated that, while the disclosures are relevant at the time an initial credit rating is published, the disclosures may not be relevant at later times because the representations, warranties, and enforcement mechanisms likely will not change in the course of a rated security's existence.[1317] Another NRSRO stated that requiring the disclosures with each rating action ''unacceptably'' expands the disclosure requirement in Rule 17g–7 before today's amendments, which required the disclosures when a rating report is published, noting that some rating actions ''would not necessarily be accompanied by the issuance of a credit rating report.'' [1318]

One NRSRO stated that the disclosures required by Rule 17g–7 before today's amendments are ''enormously costly to the NRSROs'' and are ''of very little value to investors'' according to feedback from institutional clients and an analysis of the NRSRO's Internet Web site usage data.[1319] This NRSRO suggested that the rule be modified to require disclosures that ''relate to the asset pool underlying the ABS transaction'' and which ''the issuer has disclosed in the prospectus, private placement memorandum or other offering document for that transaction.'' [1320] Similarly, one commenter stated that the required disclosures should be limited to representations, warranties, and enforcement mechanisms that ''appear in the prospectus or other offering document for [the applicable] security'' because otherwise the information

[1302] *See* paragraph (a)(1)(ii)(M) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541. This paragraph, as proposed, would require the NRSRO to include in the form information on the sensitivity of the credit rating to assumptions made by the NRSRO, including: (1) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a credit rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the five assumptions impacts a rating.

[1303] *See* paragraph (a)(1)(ii)(M) of Rule 17g–7.

[1304] *See Barnard Letter; CFA/AFR Letter; DBRS Letter; Kroll Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[1305] *See Kroll Letter.*

[1306] *See Moody's Letter.*

[1307] *See Morningstar Letter; S&P Letter.*

[1308] *See S&P Letter.*

[1309] *See Barnard Letter.*

[1310] *See* paragraph (a)(1)(ii)(M)(*1*) of Rule 17g–7. For the reasons stated above, the Commission believes this modification is necessary or appropriate in the public interest, and is consistent with the protection of investors. *See* 15 U.S.C. 78mm (providing the Commission with general exemptive authority).

[1311] *See* paragraph (a)(1)(ii)(M) of Rule 17g–7.

[1312] *See* paragraph (a)(1)(ii)(N) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33463, 33541; 17 CFR 240.17g–7.

[1313] *See* paragraph (a)(1)(ii)(N) of Rule 17g–7, as proposed.

[1314] *See* paragraph (a)(1)(ii)(N) of Rule 17g–7.

[1315] *See Mills Letter; DBRS II Letter; Kroll Letter; S&P Letter.*

[1316] *See Kroll Letter; S&P Letter.*

[1317] *See Kroll Letter.*

[1318] *See S&P Letter.*

[1319] *See DBRS II Letter. See also DBRS PRA Letter; Kroll PRA Letter; Moody's PRA Letter.*

[1320] *See DBRS II Letter.* In support of its suggestion, the NRSRO cited the Senate Committee on Banking, Housing, and Urban Affairs, Committee Report No. 111–176, April 30, 2010 (''Senate Banking Committee Report''), stating that the deficiencies in the securitization process that the applicable provision of the Dodd-Frank Act was designed to address ''included the fact that 'investors in asset-backed securities could not assess the risks of the underlying assets, particularly when those assets were resecuritized into complex instruments like collateralized debt obligations.'" *DBRS II Letter* (quoting Senate Banking Committee Report at 35–37).

would not be material to an investor's ability to make an informed decision.[1321] Finally, an NRSRO suggested that the benchmarks for the representations, warranties, and enforcement mechanisms should be displayed in ''a dedicated area of the NRSROs' Web sites'' instead of in the form.[1322]

The Commission has modified the final amendments in response to some of these comments and consistent with the Commission's objective of making the information in the form disclosed with a credit rating helpful to investors and other users of credit ratings in understanding how the credit rating was determined. The first significant modification is to narrow the disclosure requirement so that it addresses the representations, warranties, and enforcement mechanisms available to investors which were disclosed in the prospectus, private placement memorandum, or other offering documents for the asset-backed security and that relate to the asset pool underlying the asset-backed security. The Commission agrees with commenters that this is highly relevant information for investors. Therefore, focusing the disclosure requirement in this way may make the required disclosure more relevant and useful to investors and other users of credit ratings than the disclosures required under Rule 17g–7 before today's amendments. Specifically, paragraph (a)(1)(ii)(N) of Rule 17g–7 requires an NRSRO, if the credit rating is assigned to an asset-backed security as defined in section 3(a)(79) of the Exchange Act, to disclose in the form information on: (1) The representations, warranties, and enforcement mechanisms available to investors *which were disclosed in the prospectus, private placement memorandum, or other offering documents for the asset-backed security and that relate to the asset pool underlying the asset-backed security;* and (2) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.[1323]

The second significant modification is to reduce the frequency of the disclosure. As commenters stated, the proposal—by incorporating the requirements of Rule 17g–7 before today's amendments into the new form disclosure requirements—would increase the number of times an NRSRO would need to disclose the information about representations, warranties, and enforcement mechanisms. The Commission believes that the critical time for disclosing this information is when investors are making investment decisions about a new issuance, which would have no performance history. The Commission also believes the disclosure would be useful if there is a material change in the representations, warranties, or enforcement mechanisms after issuance because the change could be relevant to investment decisions made in the secondary market for the security. Finally, because Rule 17g–7 became effective on September 26, 2011, the final amendments provide that the requirement to make the disclosure after a material change is triggered only if the rating action involves an asset-backed security that was initially rated by the NRSRO on or after September 26, 2011. This will further limit the burden associated with the rule. It also will address the practical issue of an NRSRO having to make a disclosure involving historical information that it may not have collected and retained because it was not required to make the disclosure about the representations, warranties, or enforcement mechanisms when it initially rated the asset-backed security. For these reasons, the final amendments require the information to be disclosed if the rating action is a preliminary credit rating or an initial credit rating or if the rating action is the first one taken after a material change in the representations, warranties, or enforcement mechanisms and the rating action involves an asset-backed security that was initially rated by the NRSRO on or after September 26, 2011.[1324]

4. Paragraph (a)(1)(iii) of Rule 17g–7—Attestation

Section 15E(q)(2)(F) of the Exchange Act provides that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.[1325] While section 15E(q) relates to the disclosure of information about the performance of credit ratings, the Commission proposed that this attestation provision would more appropriately be implemented with respect to all disclosures that must be made when a specific rating action is published.[1326] Accordingly, the Commission proposed that the attestation be included in the form accompanying a credit rating.[1327]

As proposed, an NRSRO would be required to attach to the form with each rating action a signed statement by a person within the NRSRO stating that the person has responsibility for the credit rating and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the risks and merits of the obligor, security, or money market instrument.[1328] Thus, the proposed rule text mirrored the statutory text in terms of the representations that would be included in the attestation.[1329]

The Commission received several comments that addressed the proposal.[1330] One commenter stated that the ''strong'' attestation requirement is a ''valuable enhancement'' because it promotes increased accountability and ''more meaningful disclosures.''[1331] One NRSRO endorsed the attestation requirement substantially as proposed.[1332] Two NRSROs were concerned that the attestation requirement would result in an employee or officer being personally liable for a rating action.[1333] One

[1321] *See Mills Letter.*

[1322] *See DBRS II Letter.*

[1323] *See* paragraph (a)(1)(ii)(N)(*1*) of Rule 17g–7. As noted above, one NRSRO suggested that the benchmarks for the representations, warranties, and enforcement mechanisms should be displayed in ''a dedicated area of the NRSROs' Web sites'' instead of in the form. *See DBRS II Letter.* In response, the Commission notes that the final amendments require the NRSRO disclose in the form information on the representations, warranties, and enforcement mechanisms available to investors which were disclosed in the prospectus, private placement memorandum, or other offering documents for the asset-backed security and that relate to the asset pool underlying the asset-backed security, and how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities. The Commission does not intend the rule to preclude including an Internet address where the benchmarks can be found on the NRSRO's Web site, provided the disclosure in the form meets the requirement in the rule. Moreover, to the extent the benchmarks are lengthy, this approach could make the form easier to use.

[1324] *See* paragraph (a)(1)(ii)(N)(*2*) of Rule 17g–7.

[1325] *See* 15 U.S.C. 78o–7(q)(2)(F).

[1326] *See* paragraph (a)(1)(iii) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR 33464–33465, 33541.

[1327] *See* 15 U.S.C. 78o–7(s); 15 U.S.C. 78o–7(q).

[1328] *See* paragraphs (a)(1)(iii)(A) through (C) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33541.

[1329] *See* 15 U.S.C. 78o–7(q)(2)(F).

[1330] *See A.M. Best Letter; Better Markets Letter; DBRS Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[1331] *See Better Markets Letter.*

[1332] *See DBRS Letter.*

[1333] *See A.M. Best Letter; Morningstar Letter.* While the Commission understands the commenters' concerns about potential liability, the

Continued

NRSRO stated that a ratings committee already attests to the rating's independence by signing its internal rating forms and stated ''[t]hus, such an attestation is already part and parcel of the ratings package that is . . . available to Commission staff during their annual exams, or at any other time.'' [1334] One NRSRO suggested that rather than an attestation, the NRSRO should be required to disclose the name of the chair of the rating committee because doing so is an implicit attestation that the credit rating was determined in accordance with the NRSRO's rating procedures and methodologies.[1335]

The Commission is adopting paragraph (a)(1)(iii) of Rule 17g–7 with one modification in response to comments. Specifically, one NRSRO suggested that the wording of the proposed attestation—because it used the phrase ''risks and merits''—could inadvertently lead users of credit ratings to believe that credit ratings address other types of risk, such as liquidity risk, market value risk, or price volatility.[1336] The commenter suggested the phrase ''credit risk'' be used instead.

The Commission agrees. Credit ratings are assessments of creditworthiness.[1337] Consequently, the attestation should reference credit risk so as not to be misleading. In addition, the NRSRO should have the flexibility to designate the individual who will execute the certification, as more than one individual within the NRSRO may have responsibility for the rating action.[1338] For these reasons, the final amendments provide that the NRSRO must attach to the form a signed statement by a person within the NRSRO stating that the person has responsibility for the rating action and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the *credit risk* of the obligor, security, or money market instrument.[1339]

The Commission does not believe the alternatives suggested by commenters—relying on internal records or disclosure of the identity of the rating committee chair—would adequately implement the statute. As discussed above, section 15E(q)(2)(F) of the Exchange Act provides that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.[1340] Consequently, the attestation must be included with the credit rating the NRSRO issues rather than being documented in an internal record. Further, the Commission believes that having an individual attest to the information disclosed in the form will promote analytical independence. In particular, the individual executing the attestation will want to ensure that it contains no untrue or inaccurate statements. Consequently, the individual will have an incentive to take steps to verify that the credit rating was not influenced by any other business activities, was based solely on the merits of the instruments being rated, and was an independent evaluation of the risks and merits of the instrument. Moreover, if the individual does not believe such an attestation can be truthfully made, the individual will have a reason to refuse to make the attestation. This could prevent the NRSRO from taking a rating action that, for example, was inappropriately influenced by conflicts of interest arising from business considerations.

The Commission is not persuaded that disclosing the name of the rating chair would provide an implicit attestation that that no part of the credit rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument. Moreover, as discussed above, having an individual execute the attestation will promote analytical independence. Accordingly, the final amendments (as was proposed) require that the form include an attestation executed by an individual responsible for the rating action.

Finally, one NRSRO stated that every NRSRO should be able to determine who within the NRSRO should be responsible for making the proposed attestation.[1341] The Commission agrees with the commenter that the NRSRO has flexibility to select the appropriate person within the NRSRO to execute the attestation, provided the person has responsibility for the credit rating. For example, the analyst or another member of the rating committee could execute the attestation.

5. Paragraph (a)(2) of Rule 17g–7—Third-Party Due Diligence Certification

As discussed in more detail below in section II.H. of this release, section 15E(s)(4)(B) of the Exchange Act requires a third party providing due diligence services to an NRSRO, issuer, or underwriter with respect to an Exchange Act-ABS to provide a written certification to any NRSRO that produces a credit rating to which the due diligence services relate.[1342] Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt a rule requiring an NRSRO that receives a certification from a provider of third-party due diligence services to disclose the certification to the public in a manner that allows the public to determine the adequacy and level of the due diligence services provided by the third party.[1343] The Commission proposed to implement section 15E(s)(4)(D) through paragraph (a)(2) of Rule 17g–7, as proposed.[1344] As proposed, paragraph (a)(2) identified the second item of information an NRSRO would need to publish with a credit rating when taking a rating action: Any written certification related to the credit rating received from a third-party provider of due diligence services pursuant to section 15E(s)(4)(B) of the Exchange Act.[1345] The proposed approach was intended to provide disclosure of the certification to the public in a manner that allows the

Commission believes the attestation requirement is an important provision that will promote analytic independence. The Commission does not believe it would be necessary or appropriate in the public interest, or consistent with the protection of investors, to refrain from implementing section 15E(q)(2)(F) of the Exchange Act, which, as discussed above, requires rulemaking establishing an attestation requirement. *See* 15 U.S.C. 78mm. Further, the Commission notes that, consistent with all other provisions of the Exchange Act and rules that impose an obligation on an entity, there is a potential for secondary liability for an individual that aids and abets, or causes, a violation.

[1334] *See A.M. Best Letter.*

[1335] *See S&P Letter.*

[1336] *See Moody's Letter.*

[1337] *See* 15 U.S.C. 78o–7(c)(60) (defining a *credit rating* to mean ''an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments'').

[1338] For example, if the rating action was determined through a rating committee, each of the individuals on the committee could be designated by the NRSRO as having responsibility for the rating action.

[1339] *See* paragraph (a)(1)(iii) of Rule 17g–7 (emphasis added to highlight the modification).

[1340] *See* 15 U.S.C. 78o–7(q)(2)(F).

[1341] *See DBRS Letter.*

[1342] *See* 15 U.S.C. 78o–7(s)(4)(B). As stated above in section I.B.1. of this release, the term *Exchange Act-ABS* as used throughout this release refers to an *asset-backed security* as defined in section 3(a)(79) of the Exchange Act. 15 U.S.C. 78c(a)(79).

[1343] *See* 15 U.S.C. 78o–7(s)(4)(D).

[1344] *See* paragraph (a)(2) of Rule 17g–7, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33465, 33541.

[1345] *See* paragraph (a)(2) of Rule 17g–7, as proposed.

public to determine the adequacy and level of the due diligence services provided.[1346]

The Commission received a number of comment letters regarding proposed paragraph (a)(2) of Rule 17g–7.[1347] An NRSRO stated that requiring the NRSRO to deliver ''information and commentary generated by other market participants'' may lead to confusion about ''the appropriate role of NRSROs,'' [1348] and another NRSRO stated that the proposed requirements may cause NRSROs to ''include in their rating disclosure form information that they believe is not from a reliable source and that they did not use in their rating analysis.'' [1349] The second NRSRO also stated that ''NRSROs do not typically engage third-party due diligence providers'' and ''obtaining and disclosing this certification should be the obligation of the issuer.''[1350] On the other hand, two commenters expressed their support for requiring NRSROs to disclose information related to third-party due diligence reviews.[1351] Another commenter stated that only the NRSRO is in a position to know which reports it used in issuing a credit rating.[1352] A fourth commenter stated that the due diligence providers have a ''limited role'' in the transaction and that ''the onus for making the certification publicly available should rest solely with the NRSRO.'' [1353]

The Commission is adopting paragraph (a)(2) of Rule 17g–7 with modifications designed to address comments made in the context of proposed Rule 17g–10.[1354] Specifically, the final amendments are modified to explicitly reference Form ABS Due Diligence–15E.[1355] In addition, the final amendments are modified to correspond to modifications to Rule 17g–10 (discussed below) to provide that an NRSRO must publish with a rating action any executed Form ABS Due Diligence–15E containing information about the security or money market instrument subject to the rating action that is received by the NRSRO or obtained by the NRSRO through an Internet Web site maintained by the issuer, sponsor, or underwriter of the security or money market instrument pursuant to paragraph (a)(3) of Rule 17g–5. As discussed below in section II.H.2.c. of this release, the Commission is modifying Rule 17g–10 from the proposal to provide that a person employed to provide third-party due diligence services can meet its statutory obligation to provide the written certification relating to those services to any NRSRO that produces a credit rating to which such services relate by promptly responding to a written request from an NRSRO for the executed Form ABS Due Diligence–15E *and* promptly delivering the Form ABS Due Diligence–15E to the issuer, sponsor, or underwriter of the security or money market instrument that maintains the relevant Internet Web site pursuant to Rule 17g–5.[1356] Further, the Commission is amending Rule 17g–5 to provide for the issuer, sponsor, or underwriter to represent that it will promptly post the Form ABS Due Diligence–15E to the Internet Web site it maintains under paragraph (a)(3) of Rule 17g–5.[1357]

As discussed above, two NRSROs raised concerns about requiring the NRSRO to disclose the due diligence certifications.[1358] The Commission notes that section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt a rule requiring an NRSRO that receives a certification from a provider of third-party due diligence services to disclose the certification to the public in a manner that allows the public to determine the adequacy and level of the due diligence services provided by the third party.[1359] Moreover, the Commission believes that the information contained in Form ABS Due Diligence–15E will be useful to investors and to other users of the NRSRO's credit ratings. Therefore, disclosing the information in the form that will accompany the credit rating will associate the information with the credit rating. This will make it easier for investors and other users of credit ratings to locate the information and it will promote their use of the information in evaluating the credit rating and asset-backed security that is the subject of the rating action. For these reasons, the Commission does not believe it would be necessary or appropriate in the public interest, or consistent with the protection of investors to exempt NRSROs from the requirement to include the due diligence certifications with their forms.[1360]

6. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments relating to the forms and certifications that an NRSRO must publish when taking certain rating actions.[1361] The baseline that existed before today's amendments was one in which NRSROs were not required by Commission rules to publish specified information when taking a rating action. However, today's amendments contain requirements for the disclosure of certain types of information with the publication of certain rating actions that an applicant or NRSRO was required, before these amendments, to report generally with respect to all of its credit ratings on Form NRSRO. For example, before today's amendments, the instructions for Exhibit 2 to Form NRSRO required the disclosure of a general description of the procedures and methodologies used by the NRSRO to determine credit ratings. This description must address, among other items, the quantitative and qualitative models and metrics and the public and non-public sources of information, including data and analysis provided by third-party vendors, used to determine credit ratings. This information was not, however, required to be disclosed at the level of individual rating actions, so users of credit ratings interested in a particular rating action may not have known, for example, the ''version of the procedure or methodology used'' or the ''types of data . . . that were relied on'' to determine the credit rating in question, as required to be disclosed with the publication of certain credit rating actions under the amendments.

Before today's amendments, some NRSROs provided, but were not required by the Commission to provide, additional disclosures on their public Web sites with respect to all of their credit ratings, such as a description of

[1346] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33465.

[1347] *See ASF Letter; CII Letter; Clayton Letter; Levin Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[1348] *See Moody's Letter.*

[1349] *See S&P Letter.*

[1350] *Id.*

[1351] *See CII Letter; Levin Letter.*

[1352] *See ASF Letter.*

[1353] *See Clayton Letter.*

[1354] *See* paragraph (a)(2) of Rule 17g–7. *See also* section II.H.2. of this release (discussing the ''safe harbor'' provision that incorporates the use of the Internet Web site maintained by the issuer, sponsor, or underwriter of the security or money market instrument pursuant to paragraph (a)(3) of Rule 17g–5).

[1355] *See* paragraph (a)(2) of Rule 17g–7. As proposed, the paragraph referred to ''any certification.''

[1356] *See* paragraph (c) of Rule 17g–10.

[1357] *See* paragraph (a)(3)(iii)(E) of Rule 17g–5.

[1358] *See Moody's Letter; S&P Letter.*

[1359] 15 U.S.C. 15E(s)(4)(D).

[1360] *See* 15 U.S.C. 78mm (providing the Commission with exemptive authority).

[1361] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today. The economic effects related to the certification of third-party due diligence providers are discussed below in more detail in section II.H.4. of this release.

the intended informational content of their credit ratings and a general discussion of the uncertainty and risk factors to which their credit ratings are subject. Also, in some public press releases and reports to subscribers issued in connection with rating actions, NRSROs have discussed certain risk factors specific to a given rating action or provided information or Web addresses directing interested persons to the descriptions of methodologies that are relevant for that particular rating action, though such disclosures were not required.

Relative to this baseline, the amendments being adopted today may benefit users of credit ratings because the forms may provide new information specific to a given rating action or may clearly direct users of credit ratings to information that may already have been available. Specifically, as discussed above, the information provided in the forms will include, among other things: (1) Information about the content of the credit rating; (2) the main assumptions and principles and the version of the methodology used to determine the credit rating; (3) a description of the types of data that were relied on and whether due diligence services and servicer or remittance reports were used for the purpose of determining the credit rating; (4) information relating to potential conflicts of interest; and (5) information about the potential limitations, uncertainty, sensitivity to assumptions, and potential volatility of the credit rating.[1362]

The disclosure of this information and the other required content of the forms may benefit users of credit ratings by allowing them to better understand how credit ratings are produced and the information content of credit ratings, including how these factors vary across NRSROs. Also, the information disclosed in the form—particularly information about the potential limitations, uncertainty and potential volatility of the credit rating, the sensitivity of the credit rating to assumptions made by the NRSRO, and information regarding the due diligence services used in rating Exchange Act-ABS—may discourage undue reliance on credit ratings by investors and other users of credit ratings in making investment and other credit-based decisions. The disclosures, and particularly the attestation requirement, also may encourage enhanced integrity in the production of credit ratings.

If the forms increase the ability of users of credit ratings to compare the assumptions, data, and due diligence relied on by different NRSROs, the adopted rules and amendments may have beneficial competitive effects by enhancing the reputation of NRSROs that users of credit ratings view as being more thorough or as providing more informative credit ratings on the basis of these reviews. Also, to the extent that the forms allow investors to more accurately interpret the information conveyed by credit ratings, they may result in more efficient investment decisions and higher overall market efficiency.[1363] However, the benefits of the forms may be limited to the extent that standardized language and a high level of narrative in the forms limit the amount of useful information that can readily be acquired from the disclosures or the extent to which the information may be easily compared across NRSROs.

The amendments will result in compliance costs to NRSROs. The Commission believes that NRSROs will be able to develop disclosures that are standardized to some degree for particular types of credit ratings and, when they publish individual rating actions, to tailor those disclosures appropriately to each such rating action. NRSROs will therefore bear one-time costs to develop a template for the form and to produce any disclosures that can be standardized across and within various credit rating classes, asset classes, and types of rating actions. As part of this process, NRSROs will likely identify the required disclosure items that, based on their individual credit rating methodologies and procedures, may share common elements across these various subgroups. For example, some or all of the disclosure required by paragraph (a)(1)(ii)(C) of Rule 17g–7 (with respect to the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating) can likely be standardized across credit ratings generated using the same procedures and methodologies. NRSROs may then have to draft, review, and finalize any such common components of these disclosures.

NRSROs will bear additional one-time costs to establish systems, protocols, and procedures for generating and publishing the form, attestation, and certifications when required. These systems, protocols, and procedures may include processes by which the latest versions of any standardized components of the disclosures will be stored, retrieved, and input into the form when required. NRSROs may also have to consider how the other newly required information will be generated, including how analyses constructed in the process of applying their credit rating procedures and methodologies can be translated into some of the required disclosure and whether additional analyses may be required, as well as at what stage and by which staff the generation of this information will be undertaken. NRSROs also will need to establish systems, protocols, and procedures to ensure that the form is populated with the required information (including that any certifications received from a provider of third-party due diligence services are attached to the form) and that the form, attestation, and certifications are published with the associated credit rating.

The amendments also will result in ongoing costs to NRSROs. At the time of any rating action that triggers the requirement, an NRSRO must produce disclosures for the particular rating action and compile these into the form. This process may include retrieving any applicable standardized components of the disclosure, revising this content if necessary to tailor it to the particular rating action, and generating and including any additional tailored content that is specific to the particular rating action. Some of the tailored components of the disclosure may be relatively straightforward because they are primarily factual in nature, such as the assigned credit rating, the identity of the obligor, security, or instrument, the version of the procedure or methodology used to determine the credit rating, and the required information relating to conflicts of interest. Other tailored components of the disclosure may require more consideration and the application of analysis that was produced in the course of producing the credit rating or the completion of additional analysis. Examples of required disclosure items that may require more consideration or analysis include the explanation or measure of the potential volatility of the credit rating and the information on the sensitivity of the credit rating to assumptions made by the NRSRO required by paragraphs (a)(1)(ii)(K) and (a)(1)(ii)(M) of Rule 17g–7.

NRSROs also will bear ongoing costs to review the form, include any relevant hyperlinks, attach applicable attestations and certifications to the form, and to publish the form as required. Also, NRSROs will periodically need to update the

[1362] *See* paragraph (a)(1)(ii) of Rule 17g–7 (prescribing the information that must be disclosed in the form).

[1363] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

standardized components of the disclosures (for example, when methodologies are revised). The Commission's estimates of the total costs of these compliance efforts—which are based on analyses for purposes of the PRA—are provided below.

The Commission received comments identifying costs and burdens, including significant administrative, recordkeeping, technological, and compliance costs, including costs associated with time spent by rating analysts and other NRSRO employees in complying with the proposed amendments.[1364] Commenters also expressed concerns about the potential for the publication of confidential or proprietary information.[1365] As stated above, the Commission is sensitive to the costs resulting from its rules. In this regard, the Commission has modified the amendments from the proposal in a number of ways to mitigate burdens. The Commission narrowed the scope of rating actions that will trigger the disclosure requirement and provided an exemption for certain rating actions involving foreign obligors or foreign-issued securities or money market instruments. The Commission also significantly reduced the reporting requirements relating to representations, warranties, and enforcement mechanisms. All of these modifications were made in response to concerns about burdens raised by commenters. The Commission also has clarified the type of information that is required to be included in the form, which may address concerns about burdens as well as concerns about the disclosure of confidential information raised by commenters.

One NRSRO commented that the Commission, in the proposing release, had underestimated the burden associated with the form because the proposed disclosure items would not be able to be standardized across rating actions or asset class types and would require an individual analysis of the rated transaction.[1366] While the Commission encourages NRSROs to make the disclosures as specific to the particular rating action and as relevant to investors as possible, it also believes, as discussed above, that NRSROs will be able to develop disclosures that are standardized to some degree for particular types of credit ratings and, when they publish individual rating actions, to tailor those disclosures appropriately to each such rating action.

Compliance costs should vary across NRSROs due to differences in the number of sectors (such as asset classes, industries, and geographies) rated—which may affect the number of standardized disclosures that will be created—and the number of rating actions each year subject to the requirements, as well as the frequency with which the NRSROs change their approaches to producing credit ratings or the sectors for which they produce credit ratings, and any differences in the complexity of rating procedures and methodologies that may impact the complexity of the forms. However, based on analysis for purposes of the PRA, the Commission estimates that the amendments to paragraph (a) of Rule 17g–7 will result in total industry-wide one-time costs to NRSROs of approximately $15,613,000 and total industry-wide annual costs to NRSROs of approximately $196,783,000.[1367]

Given that some of the compliance costs associated with creating and revising standardized disclosures may not scale proportionately with size, and that costs should also vary across NRSROs for the other reasons listed above, these amendments may negatively affect competition through the disproportionate burden on small NRSROs and, for example, NRSROs with procedures and methodologies that would result in more complex disclosure.[1368] The amendments also may result in other costs. The Commission received comments from NRSROs expressing concerns about potential delays in the issuance of ratings.[1369] The Commission is sensitive to concerns that, in some instances, the need to draft and review these additional disclosures may delay NRSROs in publishing preliminary and initial credit ratings, may result in NRSROs taking fewer rating actions, may result in NRSROs taking more time to take rating actions in response to changing conditions, and may particularly extend the amount of time required for NRSROs to take steps which would require the NRSRO to revise the standardized language prepared for the disclosures for certain asset classes or other sectors, such as making appropriate changes to credit rating methodologies. Commenters also predicted a decline in the transparency of credit ratings over time due to the increased standardization of disclosure, and raised concerns that very extensive disclosures could overwhelm users of credit ratings or obfuscate key points.[1370] As mentioned above, though section 15E(s)(3) identifies specific qualitative and quantitative information that must be included in the form, the Commission has modified the amendments from the proposals in a number of ways to mitigate burdens, which may reduce the likelihood or extent of such impacts. However, any such effects may reduce the information readily available to users of credit ratings and thus reduce the efficiency of their investment decisions and potentially the efficiency of the overall market.[1371]

The Commission considered the costs and benefits of reasonable alternatives to the amendments. Section 15E(s)(3) of the Exchange Act identifies a significant amount of information that the Commission's rule must require to be disclosed in the form. Because the statute is specific about the type of information to be included in the form, and the information thus detailed by the statute is quite comprehensive, the rule text prescribing the required contents of the form largely mirrors the statutory text. However, the Commission has applied some discretion with respect to the format of the form and which rating actions must be accompanied by the forms and certifications. One alternative to the approach in the amendments would be to prescribe a specific form in which NRSROs would input the information required by the amendments. Requiring NRSROs to use a standardized form could assist users of the form in locating and analyzing items of information disclosed. On the other hand, a standardized form with line items and fields to input information could cause NRSROs to provide disclosures that are less thorough or tailored to their individual approaches, which could reduce transparency. The Commission believes the approach it has taken in requiring that the content of the forms be disclosed in numbered items that are presented in a consistent

[1364] *See Kroll Letter; Morningstar Letter; S&P Letter.*

[1365] *See Barnard Letter; Siff Letter.*

[1366] *See Morningstar Letter.*

[1367] *See* section V.H. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.6. of this release.

[1368] *See* section IV.D.6. of this release for the Commission's estimates of the different components of the compliance burden and a further discussion of how they may vary across NRSROs. *See also* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1369] *See S&P Letter; DBRS Letter.*

[1370] *See A.M. Best Letter; DBRS Letter; Kroll Letter; Morningstar Letter.*

[1371] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

order across NRSROs, without, for example, requiring that a prescribed form be filled out, strikes an appropriate balance in implementing section 15E(s)(2) of the Exchange Act between the comparability of the information provided and the flexibility to allow for meaningful disclosure.

Other alternatives would be, as the Commission proposed, to require the forms to be disclosed even with affirmations or withdrawals that are not based on the NRSRO applying its procedures and methodologies for determining credit ratings or, as the Commission proposed, to require broader disclosures of representations, warranties, and enforcement mechanisms. However, the additional information that these alternatives would make available to users of credit ratings would likely not be significant, while, as raised by several commenters,[1372] the burden to create these additional disclosures could be substantial.

H. Third-Party Due Diligence for Asset-Backed Securities

Section 932(a)(8) of the Dodd-Frank Act amended section 15E of the Exchange Act to add paragraph (s)(4), ''Due diligence services for asset-backed securities,'' which contains four provisions regarding due diligence services relating to an Exchange Act-ABS.[1373] Specifically, section 15E(s)(4)(A) requires the issuer or underwriter of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[1374] Section 15E(s)(4)(B) requires that in any case in which third-party due diligence services are employed by an NRSRO, issuer, or underwriter, the person providing the due diligence services shall provide written certification in a format provided in section 15E(s)(4)(C) to any NRSRO that produces a rating to which such services relate.[1375] Section 15E(s)(4)(C) requires the Commission to establish the appropriate format and content for the written certifications required under section 15E(s)(4)(B) to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate credit rating.[1376] Finally, as discussed above in section II.G.5. of this release, section 15E(s)(4)(D) of the Exchange Act directs the Commission to adopt rules requiring an NRSRO, at the time at which it produces a credit rating, to disclose the certification required by section 15E(s)(4)(B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.[1377]

The Commission proposed amendments to Rule 314 of Regulation S–T and Form ABS–15G, and proposed Rule 15Ga–2 to implement section 15E(s)(4)(A) of the Exchange Act.[1378] The Commission proposed amendments to Rule 17g–7 and proposed Rule 17g–10 and related Form ABS Due Diligence–15E to implement sections 15E(s)(4)(B), (C), and (D) of the Exchange Act.[1379] The proposals, comments received on the proposals, and final rules are discussed below.

1. New Rule 15Ga–2 and Amendments to Form ABS–15G

The Commission re-proposed rules to implement section 15E(s)(4)(A) of the Exchange Act, which requires that an issuer or underwriter of any Exchange Act-ABS make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[1380] In October 2010, the Commission proposed to implement section 15E(s)(4)(A) of the Exchange Act as part of a set of rules proposed to implement section 945 of the Dodd-Frank Act.[1381] After reviewing the comments to that proposal regarding issuer review of assets in offerings of asset-backed securities,[1382] the Commission was persuaded that section 15E(s)(4)(A) of the Exchange Act, when considered in the context of sections 15E(s)(4)(B), (C), and (D),[1383] should be interpreted more narrowly than in the proposal.[1384] Therefore, the Commission re-proposed Rule 15Ga–2 to require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G [1385] containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[1386] The Commission also proposed that if Form ABS–15G was furnished by the issuer, it must be signed by the senior officer of the depositor in charge of securitization, and if Form ABS–15G was furnished by the underwriter, then it must be signed by a duly authorized officer of the underwriter.[1387]

In addition, the Commission proposed that an issuer or underwriter would not need to furnish Form ABS–15G if it obtains a representation from an NRSRO engaged to produce a credit rating for the Exchange Act-ABS that the NRSRO will publicly disclose the findings and conclusions of the third-party due diligence report obtained by the issuer or underwriter.[1388] As proposed, the NRSRO's representation must state that it will make the disclosure with the publication of the credit rating five business days prior to the first sale in the offering in the form generated pursuant to proposed paragraph (a)(1) of Rule 17g–7.[1389] In this context, the Commission stated in the proposing release that the term *publicly disclose*

[1372] As discussed above, commenters raised concerns regarding the rating actions that would trigger the disclosure requirement. *See A.M. Best Letter; ASF Letter; DBRS Letter; Deloitte Letter; FSR Letter; Moody's Letter; S&P Letter.* Commenters also raised concerns regarding the disclosures of representations, warranties and enforcement mechanisms. *See DBRS II Letter. See also DBRS PRA Letter; Kroll PRA Letter; Moody's PRA Letter.*

[1373] *See* Public Law 111–203, 932(a)(8); 15 U.S.C. 78o–7(s)(4). As stated above in section I.B.1. of this release, the term *Exchange Act-ABS* as used throughout this release refers to an *asset-backed security* as defined in section 3(a)(79) of the Exchange Act. 15 U.S.C. 78c(a)(79).

[1374] *See* 15 U.S.C. 78o–7(s)(4)(A).

[1375] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1376] *See* 15 U.S.C. 78o–7(s)(4)(C).

[1377] *See* 15 U.S.C. 78o–7(s)(4)(D).

[1378] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466–33471.

[1379] *See id.* at 33465, 33471–33476.

[1380] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466–33471.

[1381] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Securities Act Release No. 9150 (Oct. 13, 2010), 75 FR 64182 (Oct. 19, 2010).

[1382] *See, e.g.,* comment letters from the American Bar Association (stating that ''[section] 15E(s)(4)(A) was not intended to be applied to all manner of third-party due diligence reports that may be obtained by an issuer or underwriter, but instead was intended to be applied more narrowly, to any third-party due diligence report prepared for an ABS issuer or underwriter specifically for the purpose of sharing it with a given NRSRO'') and the National Association of Bond Lawyers. The comment letters are available at *http://www.sec.gov/comments/s7-26-10/s72610.shtml.*

[1383] *See* 15 U.S.C 78o–7(s)(4)(A) through (D), which relate to due diligence performed by third parties with respect to Exchange Act-ABS.

[1384] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Securities Act Release No. 9176 (Jan. 20, 2011), 76 FR 4231 (Jan. 25, 2011).

[1385] As discussed below, Form ABS–15G is being amended today to incorporate Rule 15Ga–2. Form ABS–15G was originally adopted for the purpose of providing disclosures required by the new disclosure requirements of Rule 15Ga–1 (17 CFR 240.15Ga–1). *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4499–4501.

[1386] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466–33470, 33538. The Commission stated in the proposing release that the term *issuer* would mean the depositor or sponsor that participates in the issuance of Exchange Act-ABS, which was consistent with proposed Rule 17g–10, but did not include a definition of *issuer* within proposed Rule 15Ga–2. The Commission proposed to define the term *third-party due diligence report* to mean any report containing findings and conclusions relating to *due diligence services* as defined in paragraph (c)(1) of Rule 17g–10, as proposed. *See id.* at 33467, n.532.

[1387] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466–33470.

[1388] *See id.* at 33466–33470, 33538.

[1389] *See id.*

means to make the findings and conclusions readily available to any users of credit ratings.[1390] Consequently, an NRSRO that agreed to make the findings and conclusions available only to its subscribers or prospective investors in the Exchange Act-ABS would not satisfy this proposed requirement. The Commission recognized, however, that there may be instances where, notwithstanding an issuer's or underwriter's reasonable reliance on a representation by an NRSRO, the NRSRO fails to make the required information publicly available in the form pursuant to proposed paragraph (a)(1) of Rule 17g–7 five business days prior to the first sale in the offering.[1391] Therefore, the Commission proposed to require that if the NRSRO failed to make the information publicly available, an issuer or underwriter must furnish, two business days prior to the first sale in the offering, Form ABS–15G with the information required by proposed Rule 15Ga–2.[1392]

The Commission did not propose to require that disclosure about a third-party due diligence report for registered Exchange Act-ABS transactions required by proposed Rule 15Ga–2 be provided in the prospectus because such information only pertains to the findings and conclusions of a third-party due diligence report relevant to the determination of a credit rating.[1393] Under Rule 193,[1394] on the other hand, if an issuer were to use the third-party due diligence report in connection with its review of disclosure in the prospectus about the pool assets as required under Rule 193, it would be required to include the findings and conclusions in the prospectus [1395] and, if the issuer attributed the findings and conclusions to the third party, that third party's consent to be named as an expert in the registration statement would need to be obtained.[1396]

The Commission also proposed that Rule 15Ga–2 would apply to issuers and underwriters of both registered and unregistered offerings of Exchange Act-ABS.[1397] Accordingly, if a municipal entity that sponsors or issues Exchange Act-ABS (''municipal Exchange Act-ABS'') or an underwriter of municipal Exchange Act-ABS obtained a third-party due diligence report, as defined by the proposed rule, and the municipal Exchange Act-ABS is to be rated by an NRSRO, the proposal noted that Rule 15Ga–2 would apply.[1398] The Commission proposed to permit municipal securitizers of Exchange Act-ABS, or underwriters in the offering, to provide the information required by Form ABS–15G on the Electronic Municipal Market Access system (''EMMA'').[1399]

Commenters generally supported the overarching principle of proposed Rule 15Ga–2 but were mixed about the specifics of how the rule should be implemented.[1400] As a result, the Commission is adopting Rule 15Ga–2 and revised Form ABS–15G with some revisions to address comments and to make clarifying changes.[1401] Commenters generally agreed that Rule 15Ga–2 should only apply to an Exchange Act-ABS that is to be rated by an NRSRO.[1402] The Commission continues to believe for the reasons stated in the proposing release that section 15E(s)(4)(A) of the Exchange Act should be interpreted to relate only to Exchange Act-ABS that are rated.[1403] Therefore, the Commission is adopting, generally as proposed, the requirement that an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO must furnish a Form ABS–15G containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter, with modifications to provide limited exclusions for issuers and underwriters of Exchange Act-ABS in certain offshore transactions and municipal issuer offerings, as discussed further below.[1404] Rule 15Ga–2 applies to Exchange Act-ABS transactions that are rated by an NRSRO regardless of who pays for the credit rating, and regardless of whether the Exchange Act-ABS is sold in a registered or unregistered transaction, as described in more detail below. Several commenters suggested that the issuer's or underwriter's requirement under Rule 15Ga–2 should apply only to third-party due diligence reports that were provided to an NRSRO.[1405] The Commission is not, however, limiting the applicability of Rule 15Ga–2 as these commenters suggest. The Commission does not believe it is appropriate to limit the applicability of Rule 15Ga–2 in this manner because most, if not all, third-party due diligence reports will be made available to NRSROs pursuant to Rule 17g–10.[1406] In the instance a third-party due diligence report that is obtained by the issuer or underwriter is not provided to an NRSRO under Rule 17g–10, the

[1390] *See id.* at 33468, n.534.

[1391] *See id.* at 33468. Under the proposal, an NRSRO's failure to disclose the certification would be a violation of the requirement in proposed paragraph (a)(2) of Rule 17g–7. *See id.* at 33540–33541.

[1392] *See id.* at 33468, 33538.

[1393] *See id.* at 33469.

[1394] *See* 17 CFR 230.193. Rule 193 implemented section 945 of the Dodd-Frank Act by requiring that any issuer registering the offer and sale of an Exchange Act-ABS perform a review of the assets underlying the asset-backed security.

[1395] *See* 17 CFR 229.1111.

[1396] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 76 FR 4238.

[1397] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33469.

[1398] *See id.* at 33469.

[1399] *See id.* at 33469, 33538.

[1400] *See, e.g., CRE Letter* (stating that it ''does not oppose the concept of third-party asset review and disclosure'' but stated that the proposed rule and form needed ''certain clarifications and modifications regarding disclosure requirements and logistics''); *Deloitte Letter* (stating that it ''support[s] the goals of transparency and accountability underlying Section 932, but [believes] it is essential that the Commission clarify certain aspects of the proposed rule'').

[1401] The modifications to proposed Form ABS–15G are technical rather than substantive and include: (1) Re-ordering the information supplied on the cover page to reflect the differences between Rule 15Ga–1 filings and Rule 15Ga–2 furnishings; (2) changing ''file'' to ''furnish'' wherever it relates to Rule 15Ga–2 requirements; (3) removing references to the proposed NRSRO representation allowance that is not being adopted; (4) revising the language in Item 2.02 to reflect that Rule 15Ga–2 refers to third-party due diligence reports obtained by the underwriter rather than third parties managed by the underwriter; and (5) adding ''Depositor'' as an option to the signature block. *See* Form ABS–15G.

[1402] *See, e.g., ABA Letter; ASF Letter; CRE Letter; DBRS Letter; Deloitte Letter.*

[1403] As explained in the proposing release, the Commission continues to believe that section 15E(s)(4)(A) should be interpreted in the context of the accompanying provisions of section 15E(s)(4) to relate to a particular type of report that is relevant to the determination of a credit rating by an NRSRO. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33467–33469. This is in contrast with the October 2010 proposal, where Rule 15Ga–2 was not limited to transactions rated by NRSROs. *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 75 FR at 64183.

[1404] As discussed below in section II.H.2. of this release, the term *issuer* as defined for purposes of Rule 17g–10, includes the sponsor or depositor that participates in the issuance of Exchange Act-ABS. *See* paragraph (d)(2) of Rule 17g–10.

[1405] *See, e.g., Deloitte Letter; DBRS Letter.* Some commenters further suggested that Rule 15Ga–2 should only apply if the third-party due diligence report is actually used by the NRSRO. *See ABA Letter* (suggesting an additional recommendation that ''Rule 15Ga–2 should not apply to an Exchange Act-ABS transaction in which the only rating that is issued is a rating that is paid for by a party other than the issuer, sponsor or underwriter''); *ASF Letter; CRE Letter* (stating that the third-party due diligence report should be material to the credit rating of the ABS in order for Rule 15Ga–2 to apply).

[1406] As discussed below in sections II.H.2. and II.H.3. of this release, Rule 17g–10 (which defines terms such as *due diligence services*) requires third-party due diligence providers to use new Form ABS Due Diligence–15E to make the written certification to be provided to the NRSRO under section 15E(s)(4)(B) of the Exchange Act. The form elicits information about the due diligence performed including a description of the work performed, a summary of the findings and conclusions of the third party, and the identification of any relevant NRSRO due diligence criteria that the third party intended to meet in performing the due diligence.

Commission believes it is important for these reports to be made publicly available by the issuer or underwriter in accordance with Rule 15Ga–2 in order for users of credit ratings to evaluate the level of due diligence obtained by the issuer or underwriter as compared to the due diligence services used by an NRSRO rating the securities. Similarly, the Commission is not persuaded to adopt the more restrictive interpretation suggested by some commenters that Rule 15Ga–2 should only apply when a third-party due diligence report is both provided to an NRSRO and used by that NRSRO in its credit rating determination. The Commission understands there may be instances when the NRSRO may not actually use that third-party due diligence report in determining a credit rating; however, it is not clear that an issuer or underwriter would be able to determine whether a third-party due diligence report was actually used by the NRSRO.[1407] Moreover, by not limiting Rule 15Ga–2 in this way, users of credit ratings will be able to determine if there are differences between the information provided to NRSROs, as disclosed under Rules 17g–7 and 17g–10, and the information obtained by the issuer or underwriter, as disclosed in accordance with Rule 15Ga–2, and evaluate the significance, if any, of those differences.

A few commenters suggested that section 15E(s)(4)(A) should not apply to privately offered, unregistered Exchange Act-ABS,[1408] while one commenter suggested that the findings and conclusions of third-party due diligence providers should not be made publicly available on EDGAR for private or confidential transactions.[1409] After considering these comments, the Commission continues to believe that section 15E(s)(4)(A) of the Exchange Act should be interpreted to apply to issuers and underwriters of both registered and unregistered offerings of Exchange Act-ABS. The Commission is not persuaded that Congress' use of the term *underwriters* was meant to limit the applicability of section 15E(s)(4)(A) to registered offerings, as the definition of *underwriter* in the Exchange Act is not explicitly limited to registered offerings.[1410] Moreover, section 15E(s)(4)(A) uses the Exchange Act definition of *asset-backed securities,* which is much broader than the definition of *asset-backed security* in Regulation AB.[1411] The definition of *asset-backed security* in section 3(a)(79) of the Exchange Act expressly includes securities that are almost exclusively offered in unregistered offerings, such as CDOs.[1412] In other contexts where the Commission has adopted or proposed rules that apply to Exchange Act-ABS, those rules have been applied to both registered and unregistered offerings of asset-backed securities.[1413] Moreover, the Commission believes there are sound policy reasons why both registered and unregistered Exchange Act-ABS offerings should be covered by section 15(E)(s)(4)(A) of the Exchange Act. The Commission believes that the benefits of making the findings and conclusions of third-party due diligence reports publicly available, which would include providing more information about the contents of these reports,[1414] equally apply to registered or unregistered offerings since both types of offerings can be the subject of a credit rating.[1415] The Commission continues to believe that, since section 15E(s)(4) relates to oversight of NRSROs and the ratings process and such oversight is not limited to registered offerings, it is not appropriate to exempt any particular issuers or underwriters who offer securities to U.S. investors if they receive a credit rating for the securities.[1416]

Commenters were also concerned that requiring issuers and underwriters to make information available for private placements would violate rules prohibiting general solicitation.[1417] The Commission continues to believe, as explained in the proposing release,[1418] that issuers and underwriters can disclose information required by Rule 15Ga–2 without jeopardizing their reliance on private offering exemptions and safe harbors under the Securities Act, provided the only information made publicly available on Form ABS–15G is required by the rule, and the issuer does not otherwise use Form ABS–15G to offer or sell securities in a manner that conditions the market for offers or sales of its securities. Moreover, issuers are now permitted to engage in general solicitation or general advertising if they are offering and selling securities pursuant to Rule 506(c) or Rule 144A under the Securities Act, provided that all purchasers of the securities are accredited investors and the issuer has taken reasonable steps to verify that such purchasers are accredited investors, for Rule 506(c) offerings, or qualified institutional buyers, for Rule 144A offerings.[1419]

Commenters suggested that Rule 15Ga–2 should exclude offshore transactions.[1420] The Commission agrees that, in light of the practical and legal considerations raised by commenters, certain offshore transactions should be exempted and is adopting revisions to provide that Rule 15Ga–2 as well as section 15E(s)(4)(A) will not apply to certain offshore offerings of Exchange Act-ABS,[1421] consistent with revisions being adopted

[1407] *See, e.g., ASF Letter* (stating that the ''issuer or underwriter would not or may not know whether: (a) An engaged NRSRO elected to disregard a report provided to it, (b) an engaged NRSRO accessed and considered a report provided to a different engaged NRSRO via its Rule 17g–5 Web site, (c) an engaged NRSRO directly retained a [third-party due diligence services] [p]rovider, or (d) a non-engaged NRSRO accessed and considered a report provided to an engaged NRSRO via its Rule 17g–5 Web site.'').

[1408] *See ABA Letter* (commenting that the use of the terms *underwriter* and *publicly available* in section 932 of the Dodd-Frank Act makes the requirement fundamentally inconsistent with private placements). *See also ASF Letter* (suggesting that (1) Congress may have intended to exclude unregistered offerings by the use of the term *underwriter* and (2) ''[i]n the unregistered context, the timing related rationale for the issuer and underwriter's disclosure duty under Rule 15Ga–2 is entirely inapplicable'').

[1409] *See S&P Letter.* This commenter does not indicate if ''private or confidential transactions'' means something other than unregistered offerings.

[1410] *See* section 3(c)(20) of the Exchange Act (15 USC 78c(a)(20)) which refers to the definition of *underwriter* set forth in the Investment Advisers Act of 1940. *See also* section 202(a)(20) of the Investment Advisers Act of 1940 (15 USC 80b-2(a)(20)).

[1411] *See* Item 1101(c) of Regulation AB.

[1412] *See* 15 U.S.C. 78c(a)(79).

[1413] *See, e.g., Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489.

[1414] As discussed below, the Commission believes this information would necessarily include the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria along with the basis for including any loans not meeting those criteria. *See* instruction to paragraph (a) of Rule 15Ga–2.

[1415] As noted above, one commenter suggested the rule should not apply to ''private or confidential transactions.'' To the extent such transactions are rated, the Commission believes the disclosures required by Rule 15Ga–2 would be equally beneficial to an assessment of the resulting credit ratings.

[1416] As discussed below, issuers and underwriters of municipal Exchange Act-ABS are being excluded from the requirements of Rule 15Ga–2 but will continue to be subject to the statutory obligation under section 15E(s)(4)(A) to make the findings and conclusions of any third-party due diligence reports they obtain publicly available.

[1417] *See, e.g., ABA Letter.*

[1418] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33469.

[1419] *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings,* Securities Act Release No. 9415 (July 10, 2013), 78 FR 44771 (July 24, 2013).

[1420] *See ABA Letter* (indicating that the application of Rule 15Ga–2 to offshore transactions invokes the same issues identified in connection with the extra-territorial application of paragraph (a)(3) of Rule 17g–5 and may conflict with foreign securities laws, stock exchange rules, and other applicable laws, rules, and regulations); *DBRS Letter.*

[1421] *See* paragraph (e) of Rule 15Ga–2.

in Rule 17g–7.[1422] Under this exemption, the requirements of Rule 15Ga–2 and section 15E(s)(4)(A) will not apply to an offering of Exchange Act-ABS if: (1) The offering is not required to be, and is not, registered under the Securities Act; (2) the issuer of the rated security is not a U.S. person (as defined under Securities Act Rule 902(k)); [1423] and (3) the security issued by the issuer will be offered and sold upon issuance, and that any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States.[1424]

Several commenters provided views on the proposed timeframe for furnishing Form ABS–15G. One commenter noted that the proposed five business day timeframe parallels a requirement in the proposed revisions to asset-backed securities regulations (''Regulation AB II'') [1425] and suggested that, in the event the timeframe is shortened in the adopted Regulation AB II rules, then a corresponding change under Rule 15Ga–2 should be made.[1426] This commenter also suggested that Rule 15Ga–2 should not impose a deadline for furnishing Form ABS–15G in an unregistered offering that differs from the time an NRSRO is required to publish its report under Rule 17g–7.[1427] Another commenter stated that the proposed five business day delay prior to the first sale in an offering under Regulation AB II would be unnecessarily long in many circumstances.[1428] Another commenter, however, stated that the proposed five business day timeframe prior to a first sale would not be sufficient time for an NRSRO to review most issuances of asset-backed securities,[1429] while one commenter supported the proposed five business day timeframe.[1430] After considering the comments, the Commission has decided to adopt, as proposed, the requirement that an issuer or underwriter must furnish Form ABS–15G at least five business days prior to the first sale in the offering.[1431] The Commission believes that the proposed five business day time period strikes an appropriate balance between issuers' and underwriters' timing concerns and allows users of credit ratings, including investors, NRSROs, and other market participants, in combination with the disclosure mandated by Rules 17g–7 and 17g–10, adequate time to evaluate the extent to which the rating process has incorporated the findings and conclusions of third-party due diligence reports obtained and disclosed by the issuer and underwriter.[1432] The Commission believes that adopting a deadline to furnish Form ABS–15G that matches the deadlines for an NRSRO to publish its reports under Rule 17g–7 or Rule 17g–10 would not provide enough certainty about how far in advance of sale a user of a credit rating could expect the information, because NRSROs are required to make this information available when they take a rating action, which could vary among NRSROs and Exchange Act-ABS issuances. The Commission also believes that the timeframe for Rule 15Ga–2 should not be tied to the timeframe under Regulation AB II, as they serve different purposes.[1433] Finally, for the same reasons noted above, the Commission does not believe it is appropriate to differentiate between registered and unregistered offerings under this rule, so the Commission is adopting the five business-day requirement regardless of whether the transaction is registered or exempt.

The Commission is adopting, as proposed, the requirement that a Form ABS–15G furnished by the issuer must be signed by the senior officer of the depositor in charge of securitization, and a Form ABS–15G furnished by the underwriter must be signed by a duly authorized officer of the underwriter. The Commission agrees with the commenter that suggested [1434] that a single Form ABS–15G may be furnished when the issuer and/or one or more underwriters have obtained the same third-party due diligence report and has revised the final rule to clarify this point.[1435] For example, if the issuer and an underwriter obtain the same third-party due diligence report related to a particular asset-backed security and the issuer timely furnishes a Form ABS–15G for that report, the underwriter has no obligation to furnish a Form ABS–15G for the same third-party due diligence report. Similarly, if a transaction has more than one underwriter, and two or more of those underwriters obtain the same third-party due diligence report related to a particular asset-backed security, only one of those underwriters must timely furnish Form ABS–15G for that report. Commenters also requested clarification that a requirement to provide the findings and conclusions of third-party due diligence reports would apply only to the initial credit rating and not to any subsequent upgrades, downgrades, or other rating actions.[1436] The Commission agrees that once the information has been disclosed in connection with an initial credit rating, it does not need to be furnished again in connection with any subsequent rating actions. Accordingly, as clarified

[1422] As discussed above in section II.G.1. of this release, paragraph (a)(3) of Rule 17g–7 provides an exemption from the requirement that NRSROs publish a form and any required third-party due diligence certifications when taking a rating action if the rated obligor or issuer of the rated security is not a U.S. person and if the NRSRO has a reasonable basis to conclude that the security will be offered and sold upon issuance and that any underwriter or arranger linked to the security will effect transactions in the security after issuance only in transactions outside the United States. *See* paragraph (a)(3) of Rule 17g–7. While one commenter requested that the Commission adopt an exemption for foreign transactions in Rule 15Ga–2 similar to that proposed in the credit risk retention rules, the Commission believes it is more appropriate for this exemption to be aligned with the exemption in Rule 17g–7 so that there is a consistent approach to determining when the Commission's NRSRO rules apply to offshore transactions. *See ABA Letter.*

[1423] 17 CFR 230.902(k).

[1424] *See* paragraph (a)(3) of Rule 17g–7.

[1425] *See Asset-Backed Securities,* Securities Act Release No. 9117 (Apr. 7, 2010), 75 FR 23328 (May 3, 2010) (proposing release); *Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities,* Securities Act Release No. 9244 (July 26, 2011), 76 FR 47948 (Aug. 5, 2011).

[1426] *See ASF Letter* (noting that the timeframes for Rule 15Ga–2 and Regulation AB II should match because they both directly relate to the timing of finalizing the composition of the asset pool).

[1427] *See id.* As noted above, this commenter also suggested that Rule 15Ga–2 should not apply to unregistered offerings.

[1428] *See FSR Letter* (also stating that tying the disclosure of third-party due diligence information in the forms to accompany a credit rating prior to the first sale in an offering may not be practical and may create an impediment to prompt market access for many issuers).

[1429] *See S&P Letter.*

[1430] *See CFA/AFR Letter.*

[1431] *See* paragraph (a) of Rule 15Ga–2. One commenter requested that the meaning of the term *first sale in the offering* be clarified in the final rule. *See ABA Letter.* As with other regulations adopted by the Commission, the date of first sale in the offering is the date at which the purchaser makes an investment decision and commits to purchase the securities offered. *See, e.g., Electronic Filing and Revision of Form D,* Securities Act Release No. 8891 (Feb. 6, 2008), 73 FR 10599 (Feb. 27, 2008). *See also* instruction to paragraph (a) of Rule 15Ga–2.

[1432] As stated above, the findings and conclusions that are made public under Rule 15Ga–2 include all third-party due diligence reports that are obtained by the issuer or underwriter, which is more than what an NRSRO may receive under Rule 17g–10 or may use and disclose under Rule 17g–7. Users of credit ratings would have five business days before the first sale to compare the totality of third-party due diligence information with what was provided to, and used by, an NRSRO, as disclosed under Rules 17g–7 and 17g–10.

[1433] As discussed in this section, the disclosure made under Rule 15Ga–2 is for the benefit of the users of credit ratings including investors looking to make an investment decision. Accordingly, the timing of the publication of third-party due diligence report findings and conclusions, which may be available far in advance of the first sale in the offering, serves a different purpose than delivery of preliminary offering materials under Regulation AB II.

[1434] *See ABA Letter.*

[1435] *See* paragraph (b) of Rule 15Ga–2.

[1436] *See ABA Letter; DBRS Letter.*

in the instructions to the final rule, Form ABS–15G does not need to be furnished for any subsequent updates to a credit rating issued by an NRSRO.

While one commenter supported the Commission's proposed approach of defining the third-party due diligence reports covered by the rule,[1437] a number of other commenters wanted the definitions of *third-party due diligence report* and *due diligence services* (defined in proposed Rule 17g–10,[1438] which is the basis for the term *third-party due diligence report* in Rule 15Ga–2) to be narrowed in a variety of ways. After considering these comments, the Commission is adopting, as proposed, the definition of *third-party due diligence report* to mean any report containing findings and conclusions of any *due diligence services* (as defined in Rule 17g–10) performed by a third party.[1439] One commenter suggested that, in the definition of *third-party due diligence report,* the phrase ''final report'' replace the phrase ''any report.'' [1440] The Commission is not, however, replacing the phrase ''any report'' with the phrase ''final report,'' as suggested by some commenters, in part because ''any report'' was specified by Congress in the Dodd-Frank Act. Moreover, the Commission believes all third-party due diligence reports obtained by the issuer or underwriter, including interim reports, related to an offering of asset-backed securities should be made publicly available in order for users of credit ratings to more thoroughly evaluate the level of due diligence obtained by the issuer or underwriter as compared to the due diligence services used by an NRSRO rating the Exchange Act-ABS. One commenter requested that the Commission revise the phrase ''containing the findings and conclusions'' to ''containing a summary of the findings and conclusions,'' noting that providing a summary is more appropriate than providing the findings and conclusions themselves, and that there is no reason why the summary would not be substantially similar in each context.[1441] The Commission is not adopting this alternative for several reasons. First, the Commission notes that Congress specified in the Dodd-Frank Act that ''the findings and conclusions'' must be made publicly available, which the Commission believes would be most appropriately interpreted as precluding a summary. Moreover, the Commission believes it is important for the third-party due diligence provider's findings and conclusions themselves to be made public rather than an issuer or underwriter's summary of those findings and conclusions because a summary runs the risk of excluding information that could be important to a user of credit ratings.[1442] Specifically, the Commission believes that disclosure of the findings and conclusions necessarily requires disclosure of the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria along with the basis for including any loans not meeting those criteria.[1443] The Commission is also revising the rule to clarify that the term *issuer* is defined in Rule 17g–10.[1444]

Several commenters objected to the proposal that an issuer or underwriter would not be required to furnish Form ABS–15G if it reasonably relies upon the representation from an NRSRO rating the transaction that the NRSRO will publicly disclose the required information five business days prior to the first sale in the offering.[1445] One commenter supported this part of the proposal, noting that it could reduce duplicative disclosures.[1446] After considering these comments, the Commission is not adopting this part of the proposal. While the Commission would like to avoid duplicative disclosure wherever possible, it has determined that the representation may be difficult to implement in practice. NRSROs generally opposed this proposal,[1447] and a number of NRSROs, as well as a trade organization with NRSRO members, noted that it is unlikely that any NRSRO would make such a representation,[1448] making it unlikely that much duplicative disclosure would actually be avoided. One commenter thought that there could be a potential for discrepancies in the representations made by NRSROs that operate under the subscriber-pay business model and the issuer-pay model. This commenter noted that these NRSROs could be in compliance with Rule 17g–7, as proposed to be amended, without actually making the findings and conclusions of a third-party due diligence report publicly available.[1449] As explained in the proposing release, an NRSRO that operates under the

[1437] *See CFA/AFR Letter* (stating that they ''share the view, cited by the Commission, that the variation for reviews of different types of offerings is likely to be significant and that this area therefore is better served by principles-based standards than by prescriptive rules''). However, this commenter did object to the Commission's decision to withdraw the approach proposed in the October 2010 proposal, where issuers and underwriters of registered Exchange Act-ABS would have been required to make third-party due diligence disclosures in the prospectus. The commenter suggested that the revised approach is unnecessarily complex and should be simplified.

[1438] A summary of comments addressing the definition of *due diligence services* is provided in section II.H.2. of this release.

[1439] *See* paragraph (d) of Rule 15Ga–2; *see also* paragraph (d)(1) of Rule 17g–10 (defining the term *due diligence services*). Although the Commission is not modifying the definition of *third-party due diligence report,* it is making some changes to, and providing guidance on some aspects of, the definition of *due diligence services* in Rule 17g–10. For example, as discussed below in section II.H.2. of this release, the Commission is: (1) Modifying the first prong of the definition of *due diligence services* by replacing the phrase ''quality and integrity'' of the data with the word ''accuracy;'' (2) providing guidance that the ''catchall'' provision of the definition of *due diligence services* relates to reviews of the assets underlying the Exchange Act-ABS (as opposed to the reviews of the Exchange Act-ABS itself); and (3) providing guidance that it would not object to the inclusion of the description of the requirements and limitations resulting from relevant professional standards generally described within the reports being included in the disclosure.

[1440] *See Clayton Letter.*

[1441] *See ABA Letter.*

[1442] As noted above, the Commission believes users of credit ratings should be able to compare the totality of third-party due diligence information with what was provided to, and used by, an NRSRO, as disclosed under Rules 17g–7 and 17g–10.

[1443] *See* instruction to paragraph (a) of Rule 15Ga–2. This is the same disclosure standard for findings and conclusions that is required under Item 1111(a)(7)(ii) of Regulation AB. *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 76 FR 4238.

[1444] *See* paragraph (d) of Rule 15Ga–2 and paragraph (d)(2) of Rule 17g–10. As explained above, the proposing release did not include a definition of *issuer* in Rule 15Ga–2 but indicated that the term would be interpreted in a manner consistent with the definition in Rule 17g–10. For clarity and consistency, the Commission has revised the rule text to expressly refer to the definition in Rule 17g–10.

[1445] *See CRE Letter; DBRS Letter; Moody's Letter; Morningstar Letter; S&P Letter.*

[1446] *See Deloitte Letter.*

[1447] *See, e.g., Moody's Letter* (strongly opposing the exemption because the commenter believes: (1) It is contrary to the express intent of Congress to promote greater transparency and accountability among Exchange Act-ABS issuers; (2) it is contrary to the efforts of Congress, the Commission and others to clarify the limited role of credit rating agencies in the financial markets; (3) it is unlikely to reduce the potential for multiple, inconsistent disclosures about the due diligence services; and (4) it will create incentives for issuers and underwriters to select NRSROs who are willing to make these representations). *See also S&P Letter* (stating that issuers and underwriters should bear this obligation because NRSRO disclosure of the required information could confuse investors regarding who is providing the required information).

[1448] *See CRE Letter* (suggesting that the rule allow NRSROs and underwriters to rely on disclosure made by issuers); *Morningstar Letter; S&P Letter.*

[1449] *See ASF Letter.* As discussed above in section II.G.1. of this release, Rule 17g–7, as proposed to be amended, required, in part, that NRSROs must, when taking a rating action, publish and make available to the same persons who can receive or access the credit rating that is the result or the subject of the rating action, a form and any written certification received by the NRSRO from a provider of third-party due diligence services under section 15E(s)(4)(B) of the Exchange Act. The form would include, among other things, a description of the findings or conclusions of any third-party due diligence services used by the NRSRO.

subscriber-pay model (rather than the issuer-pay model) and only makes the third-party due diligence findings and conclusions available to its subscribers would not be able to make a representation to an issuer or underwriter that it is making the required information publicly available.[1450] Consequently, this may give issuer-paid NRSROs a competitive advantage over subscriber-paid NRSROs. Further, the disclosure of the findings and conclusions in the third-party due diligence report made by an NRSRO would need to be as comprehensive as what is required for issuers and underwriters under Rule 15Ga–2 in order to make such a representation. Because Rule 17g–7 only requires that an NRSRO disclose a description of the findings and conclusions, NRSROs, issuers, and underwriters would have to make judgments as to whether the disclosure made in accordance with Rule 17g–7 meets the standard for disclosure of the findings and conclusions under Rule 15Ga–2, as set forth in the instruction to paragraph (a) of Rule 15Ga–2, before an NRSRO could make, or an issuer or underwriter could rely, on such a representation. In addition, if issuers and underwriters were allowed to rely on such a representation in order to not furnish Form ABS–15G, there would be no central location where users of credit ratings could obtain the findings and conclusions of all third-party due diligence reports on Exchange Act-ABS. Finally, allowing issuers and underwriters to rely on a representation may have resulted in gaps in the information that is disclosed on Form ABS–15G.[1451] These results would impair the intended benefits of the rule. Based on the totality of comments and the implications of allowing issuers and underwriters to rely on a representation from an NRSRO in lieu of furnishing Form ABS–15G, the Commission has determined that the potential benefit of eliminating redundant disclosure by allowing the representation does not justify the uncertainty and costs that it may create.

As stated above, the Commission continues to believe that there is no need to separately require that disclosure provided in connection with Rule 15Ga–2 about any third-party due diligence report be provided in the prospectus for a registered offering.[1452] The Commission considered one commenter's suggestion that a separate database be created where all third-party due diligence report findings and conclusions could be centralized.[1453] The Commission, however, believes that the EDGAR system is the more appropriate place for issuers and underwriters to make this information publicly available. When information is electronically filed with the Commission on the EDGAR system, investors, market participants, and Commission staff can access the information from a single, permanent, and centralized location. Creating a new system may be duplicative and may result in additional costs for issuers and underwriters beyond those that would be incurred by using the EDGAR system without providing a significant improvement in making the information available to users of credit ratings. The additional costs incurred by issuers and underwriters of registered Exchange Act-ABS offerings by having to furnish Form ABS–15G on the EDGAR system should be incremental,[1454] as they are already required to file other forms and documents on EDGAR. Issuers and underwriters of unregistered Exchange Act-ABS offerings, however, may incur higher costs compared to those conducting registered offerings if they need to adjust their systems or engage outside counsel to prepare and furnish Form ABS–15G on EDGAR.[1455]

Commenters noted that issuers of registered offerings may incorporate third-party reviews into their registration statement disclosure in order to comply with the review of the underlying assets required by Rule 193. One of these commenters suggested that when disclosures under both Rule 193 and Rule 15Ga–2 might otherwise be required, the Rule 193 disclosures should suffice for both purposes.[1456] Another commenter encouraged the Commission to enhance the efficiency of this new regulatory framework by including an exception that where disclosures about third-party due diligence services comply with Rule 193, those same services would not be subject to Rule 15Ga–2.[1457] After considering these comments, the Commission has revised Rule 15Ga–2 to reflect that if the disclosure required by Rule 15Ga–2 has been made in the prospectus (including an attribution to the third party that provided the due diligence report),[1458] and the prospectus is publicly available at the time Form ABS–15G is furnished by the issuer or underwriter, the issuer or underwriter may refer to that section of the prospectus in Form ABS–15G rather than providing the findings and conclusions directly in Form ABS–15G.[1459] This does not, however, exempt an issuer or underwriter from the requirements of Rule 15Ga–2, including its duty to furnish Form ABS–15G. The Commission continues to believe that, in addition to disclosures made by the NRSROs, Form ABS–15G is the most appropriate place to find information about a particular type of report that is relevant to the determination of a credit rating by an NRSRO.

Two comments submitted in response to the proposing release related to the impact on municipal issuers and underwriters. One commenter cautioned the Commission against imposing the new Exchange Act-ABS disclosure requirements on the municipal securities market until the completion of the reports on municipal securities mandated by the Dodd-Frank Act.[1460] The Commission notes that the reports required by sections 976 and 977 of the Dodd-Frank Act have been completed by the GAO and have not resulted in any legislative changes to disclosure requirements applicable to municipal issuers at this time.[1461] This commenter

[1450] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33468, n.534.

[1451] *See, e.g., Moody's Letter; S&P Letter.*

[1452] Whether the findings and conclusions of a third-party are part of the Rule 193 review and, therefore, included in the prospectus disclosure is dictated by the requirements of Rule 193 and Item 1111 of Regulation AB. *See* 17 CFR 230.193; 17 CFR 229.1111.

[1453] *See CFA/AFR Letter.*

[1454] *See* section IV.D.10. of this release (discussing the PRA burden resulting from this requirement).

[1455] The Commission notes, however, that issuers and underwriters of unregistered Exchange Act-ABS offerings who already file Form ABS–15G on EDGAR in accordance with Rule 15Ga–1 should not incur these additional costs.

[1456] *See CRE Letter.*

[1457] *See Deloitte Letter* (noting that when issuers hire third parties to conduct the Rule 193 due diligence review, the disclosures required under Rule 193 will be substantially similar to the disclosures made about the same findings and conclusions in the context of the rules adopted under section 932).

[1458] The Commission does not intend for all third parties from whom the issuer obtains a third-party due diligence report, as defined in Rule 15Ga–2, to be named in the registration statement and consent to being named as an expert solely because an issuer furnishes Form ABS–15G. If the issuer's prospectus disclosure attributes the findings and conclusions of the Rule 193 review to the third party from whom it obtains a third-party due diligence report, however, the third-party would be required to be named in the registration statement and consent to being named as an expert in accordance with Rule 436 under the Securities Act. *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 76 FR 4231.

[1459] *See* paragraph (c) of Rule 15Ga–2.

[1460] *See ICI Letter.*

[1461] *See http://www.gao.gov/assets/590/587714.pdf.* The Commission also issued a comprehensive report on the municipal securities market in July 2012. *See Commission Report on the Municipal Securities Market, available at http://www.sec.gov/news/studies/2012/munireport073112.pdf* (''2012 Report on the Municipal Securities Market'').

recommended that the Commission exempt municipal securities from the proposed disclosure requirements to avoid creating confusion for investors and issuers in case different classes of municipal securities are subject to different requirements in the future.[1462] Another commenter supported the proposal to allow municipal securitizers or underwriters of municipal Exchange Act-ABS to provide the required information on EMMA.[1463]

The Commission also has considered the comments objecting to requiring municipal issuers and underwriters to comply with Rule 15Ga–2, which were submitted in response to the October 2010 proposal.[1464] A number of these commenters expressed the view that sections 15B(d)(1) and 15B(d)(2) of the Exchange Act, known collectively as the ''Tower Amendment,'' [1465] expressly prohibit the Commission and the Municipal Securities Rulemaking Board (''MSRB'') from requiring an issuer of municipal securities to make any specific disclosure filing with the Commission or MSRB prior to the sale of these securities to investors.[1466] After considering these comments, the Commission has determined that issuers and underwriters of municipal Exchange Act-ABS should be excluded from the requirements of Rule 15Ga–2. The Commission notes that, in reaching this determination, it does not find it necessary to determine whether the Tower Amendment applies in this situation and no inference should be drawn from this determination regarding the Commission's analysis of the Tower Amendment. In light of the fact that municipal issuers and underwriters will remain subject to the statutory requirement in section 15E(s)(4)(A) of the Exchange Act to make the findings and conclusions of any third-party due diligence reports publicly available, and given the Commission's historical approach of not requiring municipal issuers to file disclosures with the Commission in connection with the issuance of securities, the Commission is persuaded that, as a policy matter, it is unnecessary to apply Rule 15Ga–2 to municipal issuers and underwriters.[1467]

Under the exclusion, the requirements of Rule 15Ga–2 will not apply to issuers and underwriters of an offering of Exchange Act-ABS if: (1) The issuer of the rated security is a municipal issuer; and (2) the offering is not required to be registered under the Securities Act. A *municipal issuer* is defined as an *issuer* (as that term is defined in paragraph (d)(2) of Rule 17g–10) that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory, or the District of Columbia, or any public instrumentality of one or more States, Territories, or the District of Columbia. The exclusion further provides, as discussed below, that issuers and underwriters of municipal Exchange Act-ABS remain subject to the requirements of section 15E(s)(4)(A) of the Exchange Act.[1468]

Although the Commission is excluding issuers and underwriters of municipal Exchange Act-ABS from the application of Rule 15Ga–2, the Commission continues to believe that section 15E(s)(4)(A) of the Exchange Act should be interpreted to apply to such entities. By its terms, section 15E(s)(4)(A) applies to issuers and underwriters of ''any asset-backed security,'' and the Commission believes the intended benefits of greater transparency with respect to the credit rating process apply equally to credit ratings of municipal Exchange Act-ABS.[1469] The Commission also notes that section 15E(s)(4)(A) requires issuers and underwriters to make the specified information publicly available and does not mandate filing with the Commission, which was the specific concern the Tower Amendment sought to address. Consequently, although municipal issuers and underwriters will not be required to furnish Form ABS–15G pursuant to Rule 15Ga–2, they are subject to the statutory requirement under section 15E(s)(4)(A) to make publicly available the findings and conclusions of any third-party due diligence report they obtain. Municipal issuers and underwriters may make such information available through any means reasonably accessible to the public, including, for example, by posting the information on an issuer or underwriter sponsored Internet Web site, by voluntarily furnishing Form ABS–15G on EDGAR, or by voluntarily submitting a Form ABS–15G on EMMA.

Since the Commission is excluding issuers and underwriters of municipal Exchange Act-ABS from the application of Rule 15Ga–2, it is not adopting the proposed revisions to Rule 314, which would have permitted municipal issuers of Exchange Act-ABS, or underwriters in the offering, to provide the information required by Form ABS–15G on EMMA, as proposed. Notwithstanding the foregoing, as noted above, an issuer or underwriter of municipal Exchange Act-ABS could choose to satisfy its obligation to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter, as required by section 15E(s)(4)(A) of the Exchange Act, by voluntarily submitting a Form ABS–15G on EMMA.[1470]

2. New Rule 17g–10

As stated above, section 15E(s)(4)(A) of the Exchange Act requires the issuer or underwriter of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[1471] Section 15E(s)(4)(B) of the Exchange Act requires that in any case in which third-party due diligence services are employed by an NRSRO, issuer, or underwriter, the person providing the due diligence services shall provide, to any NRSRO that produces a credit rating to which such services relate, written certification, in a format as provided in section 15E(s)(4)(C).[1472] Section 15E(s)(4)(C) of the Exchange Act provides that the Commission shall establish the appropriate format and content for the written certifications required under section 15E(s)(4)(B) to ensure that providers of due diligence services have conducted a thorough

[1462] *See ICI Letter.*

[1463] *See DBRS Letter.*

[1464] *Issuer Review of Assets in Offerings of Asset-Backed Securities,* 75 FR 64182.

[1465] 15 USC 78o–4. *See also* 2012 Report on the Municipal Securities Market, at 27–28.

[1466] *See, e.g.,* letter from Group of 14 Municipal Organizations dated Nov. 15, 2010, National Association of Bond Lawyers dated Nov. 19, 2010; letter from National Association of Local Housing Finance Agencies dated Nov. 15, 2010; letter from Treasurer of the State of Connecticut dated Nov. 15, 2010; letter from National Council of State Housing Agencies dated Nov. 15, 2010; and letter from Robert W. Scott dated Nov. 19, 2010 (each letter submitted in response to the October 2010 proposal).

[1467] Municipal securitizers continue to be subject to Rule 15Ga–1. As the Commission noted at the time Rule 15Ga–1 was adopted, section 943 of the Dodd-Frank Act, pursuant to which Rule 15Ga–1 was adopted, is a stand-alone statutory provision that does not expressly provide the Commission with authority to provide exemptions for particular classes of securitizers, including municipal securitizers. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4493.

[1468] *See* paragraph (f) of Rule 15Ga–2.

[1469] As discussed above, the Commission believes that section 15E(s)(4)(A) of the Exchange Act should be interpreted to apply to issuers and underwriters of both registered and unregistered offerings of Exchange Act-ABS.

[1470] The Commission adopted Rule 314 to permit municipal securitizers to satisfy the obligation to furnish the information required by Rule 15Ga–1 by filing the information on EMMA. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489. Accordingly, EMMA will be prepared to accept Form ABS–15G in connection with this requirement.

[1471] *See* 15 U.S.C. 78o–7(s)(4)(A).

[1472] *See* 15 U.S.C. 78o–7(s)(4)(B).

review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.[1473] The Commission proposed to implement these sections through Rule 17g-10 and Form ABS Due Diligence–15E.[1474] As proposed, Rule 17g-10 would require a provider of third-party due diligence services to provide the written certification required by section 15E(s)(4)(B) of Exchange Act on Form ABS Due Diligence–15E.

The Commission is adopting Rule 17g-10 with modifications from the proposal in response to comments.[1475] As discussed below, the modifications add a ''safe harbor'' for the third-party due diligence provider in order to satisfy its obligations under section 15E(s)(4)(B) of the Exchange Act, clarify the proposed definition of *due diligence services,* and make certain technical modifications.[1476]

As proposed, paragraph (a) of Rule 17g–10 provided that the written certification that a person employed to provide third-party due diligence services is required to provide to an NRSRO pursuant to section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence–15E.[1477] The Commission did not receive comments on paragraph (a) as proposed and is adopting the paragraph with one technical modification.[1478] As adopted, the paragraph provides that the written certification that a person employed to provide third-party due diligence services is required to provide to an NRSRO pursuant to section 15E(s)(4)(B) must be on Form ABS Due Diligence–15E.[1479]

Paragraph (b) of Rule 17g–10, as proposed, provided that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[1480] The proposed requirement was designed to ensure that the person executing the certification on behalf of the provider of third-party due diligence services has responsibilities that will make the person aware of the basis of the information being provided in the form.[1481] The Commission did not receive comments on paragraph (b) and is adopting the paragraph as proposed.[1482]

As discussed above, the Commission did not receive comments specifically addressing paragraphs (a) and (b) of Rule 17g–10, as proposed.[1483] However, the Commission did receive comments raising concerns about how a third-party due diligence provider can meet the requirement in section 15E(s)(4)(B) of the Exchange Act, which—as discussed above—provides that in any case in which third-party due diligence services are employed by an NRSRO, issuer, or underwriter, the person providing the due diligence services shall provide, to any NRSRO that produces a rating to which such services relate, written certification in a format as provided in section 15E(s)(4)(C) of the Exchange Act.[1484]

Commenters stated that the third-party due diligence provider or NRSRO may not know the identities of the NRSROs producing credit ratings to which the due diligence services relate.[1485] One of these commenters stated that the proposed requirements ''unfairly place a heavy burden on the third-party due diligence provider to determine which NRSRO is rating the transaction'' because this information ''lies with the issuer.''[1486]

The Commission anticipated this concern and, consequently, in the proposing release the Commission asked a number of questions regarding how a third-party due diligence provider could comply with section 15E(s)(4)(B) of Exchange Act and whether the Commission should take steps to implement the statutory requirement.[1487] One of the potential approaches identified by the Commission in the proposing release was to use the Web site referred to in paragraph (a)(3)(iii) of Rule 17g–5 maintained by issuers, sponsors, or underwriters of structured finance products (''Rule 17g–5 Web site''), as the mechanism for providing the written certification to all NRSROs producing a credit rating to which the due diligence services relate.[1488]

Commenters responded that the Rule 17g–5 Web site would be an appropriate mechanism to provide the certification to the NRSROs.[1489] One of these commenters stated that using the Rule 17g–5 Web site would be ''the most efficient way'' to provide the certification and that it would be a better approach than applying a ''reasonableness test'' in terms of assessing whether the third-party due diligence provider submitted the certification to all NRSROs that are required to receive the certification.[1490] Another commenter stated that the proposed requirements should ''accommodate situations'' in which an NRSRO obtains the written certification indirectly from, for example, a Rule 17g–5 Web site.[1491] An NRSRO stated that using the Rule 17g–5 Web sites as a ''delivery mechanism for the Rule 17g–10 certification'' would ensure that ''certifications are supplied to all affected NRSROs at roughly the same time.''[1492]

Another alternative suggested by the Commission was to establish a centralized database administered by the Commission (such as the Commission's EDGAR system) or by market participants to be used for the purpose of providing the written certifications in accordance with section 15E(s)(4)(B) of the Exchange Act.[1493] An NRSRO and another commenter stated that creating a new centralized database or similar alternative for distributing the

[1473] *See* 15 U.S.C. 78o–7(s)(4)(C).

[1474] *See Nationally Recognized Statistical Rating Organizations,* 76 FR 33471–33476. Form ABS Due Diligence–15E is discussed below in section II.H.3. of this release.

[1475] *See* Rule 17g–10.

[1476] *See id.*

[1477] *See* paragraph (a) of Rule 17g-10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1478] *See* paragraph (a) of Rule 17g–10. The modification corrects an incorrect reference to Form ABS Due Diligence–15E in the proposal by replacing the phrase ''(§ 240b.400 of this chapter)'' with the phrase ''(§ 249b.500 of this chapter)''.

[1479] *See* paragraph (a) of Rule 17g–10. Form ABS Due Diligence–15E is discussed below in section II.H.3. of this release.

[1480] *See* paragraph (b) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1481] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471.

[1482] *See* paragraph (b) of Rule 17g–10.

[1483] As discussed below in section II.H.3. of this release, the Commission did receive comments in response to the proposed format of the Form ABS Due Diligence–15E. Those comments and the Commission's response to the commenters are discussed in section II.H.3. of this release.

[1484] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1485] *See Clayton Letter; Deloitte Letter; S&P Letter.*

[1486] *See Clayton Letter.*

[1487] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466.

[1488] *See id. See also* 17 CFR 240.17g–5(a)(3). Among other things, paragraph (a)(3) of Rule 17g–5 requires an NRSRO, among other things, to maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating, and to provide free and unlimited access to any NRSRO that, among other things, certifies it will access the Web site solely for the purpose of determining and monitoring credit ratings. Paragraph (a)(3)(iii) of Rule 17g–5 requires an NRSRO to obtain from the issuer, sponsor, or underwriter of the structured product a written representation that can reasonably be relied upon that the arranger will, among other things, maintain on a password-protected Internet Web site the information it provides to the NRSRO and will provide access to the Web site to an NRSRO that, among other things, certifies it will access the Web site solely for the purpose of determining and monitoring credit ratings.

[1489] *See ASF Letter; Clayton Letter; DBRS Letter.*

[1490] *See Clayton Letter.*

[1491] *See ASF Letter.*

[1492] *See DBRS Letter.*

[1493] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466.

due diligence certification would be costly.[1494]

Commenters suggested other alternatives.[1495] One commenter stated that the due diligence provider should be required to deliver the certification ''promptly upon receipt of a written request from an NRSRO'' for use by the NRSRO ''in preparing its published report under Rule 17g–7.'' [1496] Another commenter stated that the party engaging the due diligence provider should be required to obtain the certification from the service provider and that the service provider should ''be able to rely on the engaging party to transmit the form'' to the required NRSROs.[1497]

In the proposing release, the Commission sought comment on how soon after it completes its review the provider of third-party due diligence services should provide the written certification to all NRSROs required to receive the certification, and the Commission provided examples of potential timeframes (within twenty-four hours, two business days, or ten business days).[1498] One commenter stated that the due diligence provider should be required to deliver the certification ''promptly upon receipt of a written request from an NRSRO.'' [1499] Another commenter suggested that the certification be provided five business days after the service provider finishes reviewing the data in connection with its due diligence report.[1500] One NRSRO stated that the certification should be provided ''within two business days following completion of the due diligence review'' and added that ''all required NRSROs should be in receipt of the certification at the same time.'' [1501] Another NRSRO stated that the certification should be provided ''within one business day after the service provider completes its review.'' [1502]

The Commission is persuaded that the final rule should provide a means for providers of third-party due diligence services to be certain that they have met their obligation under section 15E(s)(4)(B) of the Exchange Act to provide Form ABS Due Diligence–15E to any NRSRO that produces a credit rating to which the due diligence services relate.[1503] The Commission also is persuaded that the most efficient means of providing certainty to the providers of third-party due diligence services that they have met their obligations under section 15E(s)(4)(B) is to require the third party to provide Form ABS Due Diligence–15E to any NRSRO that specifically requests the form and to post the form on the Rule 17g–5 Web site maintained by the issuer, sponsor, or underwriter of the Exchange Act-ABS.[1504]

This will provide access to the form to an NRSRO that is producing a credit rating for the Exchange Act-ABS but is unaware that the third party is conducting the due diligence services because, for example, the NRSRO is using the Rule 17g–5 Web site to determine an unsolicited credit rating. In addition, the third party will not be burdened with the task of trying to identify every NRSRO that is producing a credit rating to which the due diligence services relate. For these reasons, the Commission believes it is appropriate to modify Rule 17g–10 from the proposal to add a ''safe harbor'' provision that incorporates the Rule 17g–5 Web sites.

Further, as discussed above, commenters suggested relatively short timeframes for providing the written certification to the NRSROs producing a credit rating to which the due diligence services relate. The Commission agrees that the written certification should be provided soon after the provider of third-party due diligence services completes its review. As discussed below, the certification will provide information that can be used by the NRSRO in determining a credit rating for the Exchange Act-ABS. Consequently, the Commission believes the certification should be provided to the appropriate NRSROs as soon as the third party completes the review so that NRSROs can consider it in determining a credit rating for the Exchange Act-ABS before the security is issued and purchased by investors. However, prescribing a specific timeframe (such as within twenty-four hours or two days) may result in situations—depending on the circumstances—where the certification could have been provided sooner than required (for example, within minutes of it being finalized) or where practical issues would prevent it from being submitted within the required timeframe. Therefore, the Commission believes the ''safe harbor'' for the written certification should incorporate a ''promptly'' standard.

For all the foregoing reasons, the Commission is establishing a ''safe harbor'' provision in paragraph (c) of Rule 17g–10 pursuant to which a person employed to provide third-party due diligence services will be deemed to have satisfied its obligations under section 15E(s)(4)(B) of the Exchange Act if the person promptly delivers an executed Form ABS Due Diligence–15E after completion of the due diligence services to: (1) An NRSRO that provided a written request for the form prior to the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; (2) an NRSRO that provides a written request for the form after the completion of the due diligence services stating that the services relate to a credit rating the NRSRO is producing; and (3) the issuer or underwriter of the asset-backed security for which the due diligence services relate that maintains the Rule 17g–5 Web site with respect to the asset-backed security.[1505] Consequently, the third-party provider of due diligence services can fulfill its obligations under the statute by responding promptly to specific requests that Form ABS Due Diligence–15E be delivered to a particular NRSRO and by promptly delivering the form to the issuer or underwriter of the Exchange Act-ABS that maintains the Rule 17g–5 Web site. This establishes a process that can provide certainty to the third party that it has met its obligation under section 15E(s)(4)(B) of the Exchange Act.

The Commission is making a corresponding amendment to Rule 17g–5 that is designed to provide for the

[1494] *See Clayton Letter* (''[W]e do not believe that it is cost-effective for the Commission or the ABS community to have the industry adopt a new system for distributing the Form ABS Due Diligence–15E information nor do we believe it is cost-effective for such parties to have to utilize a for-profit centralized database service for such purposes, especially in light of the amount of time and resources that have already been directed to the development of the Rule 17g–5 system of distribution. And as we described above, the Rule 17g–5 system more fairly allocates responsibility for dissemination of the information among the issuer, underwriter and NRSRO.''); *DBRS Letter* (''Mandating the creation of a new centralized database or any other costly alternative is not warranted under the circumstances.'').

[1495] *See ASF Letter; Deliotte Letter.*

[1496] *See ASF Letter.*

[1497] *See Deloitte Letter.*

[1498] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33466.

[1499] *See ASF Letter.*

[1500] *See Clayton Letter.*

[1501] *See S&P Letter.*

[1502] *See DBRS Letter.*

[1503] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1504] *See, e.g., DBRS Letter* (''DBRS believes that the most efficient and cost-effective approach is to utilize existing regulations as much as possible. As it stands today, issuers and underwriters who hire an NRSRO to rate a structured finance product such as an Exchange Act-ABS are required to make available to other NRSROs all information the issuer or underwriter 'contracts with a third party to provide to' the hired NRSRO. Thus, if the issuer or underwriter contracts with a third-party service provider to supply a hired NRSRO with a due diligence report, a copy of that report would already be made available to other NRSROs pursuant to Rule 17g–5(a)(3).'').

[1505] *See* paragraphs (c)(1) through (3) of Rule 17g–10.

prompt posting of Form ABS Due Diligence–15E to the Rule 17g–5 Web site so that other NRSROs can have access to it contemporaneously with an NRSRO that knew the third party was performing due diligence and requested that the form be delivered upon completion of the services.[1506] Specifically, the Commission is adding paragraph (a)(3)(iii)(E) to Rule 17g–5 to require that an NRSRO hired to rate a structured finance product must obtain an additional representation that can reasonably be relied upon from the issuer, sponsor, or underwriter of the product: Namely, that the issuer, sponsor, or underwriter will post to the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E containing information about the security delivered by a person employed to provide third-party due diligence services with respect to the structured finance product.[1507]

Paragraph (c) of Rule 17g–10, as proposed, contained definitions of *due diligence services, issuer, originator,* and *securitizer* for purposes of section 15E(s)(4)(B) of the Exchange Act and Rule 17g–10. As proposed, paragraph (c)(1) defined the term *due diligence services.*[1508] Under the proposed definition, an entity would be deemed to have provided due diligence services if it engaged in a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any one of the five types of activities identified in proposed paragraphs (c)(1)(i) through (v) of Rule 17g–10.[1509]

Paragraph (c)(1)(i) of Rule 17g–10, as proposed, would identify the first category of *due diligence services* as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the quality or integrity of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets.[1510] Paragraph (c)(1)(ii), as proposed, would identify the second category of *due diligence services* as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the origination of the assets conformed to stated underwriting or credit extension guidelines, standards, criteria, or other requirements.[1511] Paragraph (c)(1)(iii), as proposed, would identify the third category of *due diligence services* as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the value of collateral securing such assets.[1512] Paragraph (c)(1)(iv), as proposed, would identify the fourth category of *due diligence services* as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the originator of the assets complied with federal, state, or local laws or regulations.[1513]

Paragraph (c)(1)(v) of Rule 17g–10, as proposed, would identify the fifth category of *due diligence services*—the catchall—as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the Exchange Act-ABS will pay interest and principal according to its terms and conditions.[1514] The proposed catchall was intended to apply to due diligence services used for pools of other asset classes (for example, commercial loans, corporate loans, student loans, or credit card receivables) to the extent that providers of third-party due diligence services currently provide or in the future begin providing due diligence services with respect to other asset classes and those services, because of the different nature of the assets, do not fall into one of the other four categories.[1515]

Paragraph (c)(2), as proposed, defined the term *issuer* as including a sponsor, as defined in 17 CFR 229.1011, or depositor, as defined in 17 CFR 229.1011, that participates in the issuance of an Exchange Act-ABS.[1516] Paragraphs (c)(3) and (c)(4), as proposed, provided that the terms *originator* and *securitizer,* respectively, have the same meanings as in section 15G of the Exchange Act.[1517] Defining these two terms was intended to provide greater clarity as to the proposed meaning of *due diligence services.*[1518]

The definitions of *due diligence services, issuer, originator,* and *securitizer* in Rule 17g–10, as adopted, are contained in paragraph (d) (rather than paragraph (c), as proposed) because of the addition of the new ''safe harbor'' provision in paragraph (c) as discussed above.[1519] The definitions are being adopted substantially as proposed with modifications, in part, in response to comments.[1520]

Commenters focused on the definition of *due diligence services* because the requirement to provide the written certification under section 15E(s)(4)(B) of the Exchange Act is triggered when a third party is employed to provide these services with respect to an

[1506] *See, e.g., DBRS Letter* (''By adding a note to paragraph (a)(3)(iii)(C) [of Rule 17g–5], the Commission could confirm that where an issuer or underwriter contracts for the delivery of a due diligence report to the hired NRSRO, the posted information must include the related Rule 17g–10 certification.'').

[1507] *See* paragraph (a)(3)(iii)(E) of Rule 17g–5. The Commission also is amending paragraphs (a)(3)(i) and (a)(3)(iii)(A) of Rule 17g–5 to add references to new paragraph (a)(3)(iii)(E).

[1508] *See* paragraph (c)(1) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1509] *See* paragraphs (c)(1)(i) through (v) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33472, 33544.

[1510] *See* paragraph (c)(1)(i) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1511] *See* paragraph (c)(1)(ii) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1512] *See* paragraph (c)(1)(iii) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1513] *See* paragraph (c)(1)(iv) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1514] *See* paragraph (c)(1)(v) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1515] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33472. In the proposing release, the Commission stated that the first four prongs of the definition of due diligence services addressed reviews that persons commonly understood as due diligence providers conducted with respect to RMBS. *Id.*

[1516] *See* paragraph (c)(2) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544. As explained in the proposing release, the Commission interprets the term *issuer* to refer to the depositor of an asset-backed security. *See id.* at 33467, n.532, 33473, n.594. This treatment is consistent with the Commission's historical regulatory approach to that term, including the Securities Act and the rules promulgated under the Securities Act and the Exchange Act. *See, e.g.,* 17 CFR 230.191; 17 CFR 240.3b–19.

[1517] *See* paragraphs (c)(3) through (4) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544. Section 15G(a)(4) of the Exchange Act defines the term *originator* to mean ''a person who—(A) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (B) sells an asset directly or indirectly to a securitizer.'' *See* 15 U.S.C. 78o–9(a)(4). Section 15G(a)(3) of the Exchange Act defines the term *securitizer* to mean: ''(A) an issuer of an asset-backed security; or (B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.'' *See* 15 U.S.C. 78o–9(a)(3).

[1518] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33473.

[1519] *See* paragraphs (d)(1) through (4) of Rule 17g–10.

[1520] *See* paragraphs (d)(1) through (4) of Rule 17g–10. In addition to the modifications discussed below, the final rule is modified from the proposal in the following ways. First, the citation to the definition of *asset-backed security* in the Exchange Act is corrected in the prefatory text of paragraph (d) and in paragraphs (d)(1) and (3). Second, the word ''such'' in third prong of the definition of *due diligence services* (paragraph (d)(1)(iii)) has been replaced with the word ''the''. Third, references in the definition of *issuer* in paragraph (d)(2) have been corrected by replacing in two places the phrase ''§ 229.1011'' with the phrase ''§ 229.1101''. These modifications are not intended to substantively change the meaning of the terms as compared to the proposed definitions.

Exchange Act-ABS.[1521] A commenter that provides due diligence services recommended modifying the first prong of the definition by replacing the phrase ''quality and integrity'' of the data with the word ''accuracy'' because that would ''more accurately reflects the role of the due diligence provider and the nature of its objective review.'' [1522] The Commission believes that this change will more accurately describe the nature of the work undertaken by a provider of third-party due diligence services, as suggested by the commenter. Consequently, the Commission is making the modification.[1523]

Commenters were concerned that the definition of *due diligence services* could be interpreted to include services that have not traditionally been viewed as third-party due diligence services. In this regard, several commenters focused on the fifth prong of the definition: The catchall.[1524] As proposed, this prong included within the definition a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the Exchange Act-ABS will pay interest and principal according to its terms and conditions.[1525] Some commenters recommended eliminating this catchall provision.[1526] Two commenters recommended it be narrowed.[1527] One of these commenters stated that the provision should only include ''factors or characteristics that were material to determining the credit rating.'' [1528] The other commenter stated that the provision should be limited to ''factors that materially impact the likelihood that the assets themselves would pay interest and principal according to their terms and conditions.'' [1529]

The Commission is not persuaded that the catchall provision should be eliminated. As the Commission explained in the proposing release, the first four prongs of the definition were based on the Commission's understanding of the types of reviews undertaken with respect to the pools of mortgage loans underlying issuances of RMBS because due diligence services traditionally have been performed with respect to RMBS.[1530] The first four prongs also may cover due diligence services performed with respect to other types of Exchange Act-ABS. However, there also may be reviews now or in the future that are more tailored to the different nature of the assets underlying these other types of Exchange Act-ABS. The proposed catchall was designed to apply to due diligence services provided with respect to the assets (for example, commercial loans, corporate loans, student loans, or credit card receivables) underlying other types of Exchange Act-ABS to the extent not covered by the first four prongs of the definition. For these reasons, the Commission believes it is appropriate to retain the catchall prong of the definition and, therefore, is adopting it as proposed.[1531]

One commenter stated that, if the catchall provision is not eliminated, ''the final rule should limit the provision's application to other factors that materially impact the likelihood that [the underlying] assets themselves would pay interest and principal according to their terms and conditions'' so that the ''focus of the diligence services will be on the assets themselves, not the issuer's ability to pay as is set forth in the proposed definition.'' [1532] The Commission agrees that due diligence services typically focus on the assets underlying an Exchange Act-ABS. Indeed, the prefatory text of paragraph (d)(1) of Rule 17g–10 provides that the term *due diligence services* means a review of the assets *underlying* an Exchange Act-ABS for the purpose of making findings with respect to certain matters.[1533] Moreover, the catchall provision includes within the definition of *due diligence services* a review of any other factor or characteristic of the assets underlying an Exchange Act-ABS that would be material to the likelihood that the issuer will pay interest and principal in accordance with applicable terms and conditions.[1534] Consequently, in response to the commenter, the Commission confirms that a review must be of the assets underlying the Exchange Act-ABS in order to fall within the definition of *due diligence services.* However, the performance of the underlying assets (for example, their ability to pay principal and interest) ultimately will impact whether the Exchange Act-ABS itself will be able to pay interest and principal because the payments received on the underlying assets are passed through to the holders of the Exchange Act-ABS. Moreover, a review of the underlying assets that is relevant to whether the Exchange Act-ABS will pay interest and principal according to its terms is the type of information that would be useful to an NRSRO that is assessing the creditworthiness of Exchange Act-ABS. The catchall provision is designed to account for such reviews to the extent they are not addressed in the other prongs of the definition of *due diligence services.*[1535]

While the catchall provision is not being eliminated, the definition of *due diligence services* in Rule 17g–10 (including the catchall prong) is not intended to bring within the definition's scope activities that are performed today in connection with the issuance of an Exchange Act-ABS that are not commonly understood as being third-party due diligence services. Rather, it is designed to cover reviews of the assets underlying an Exchange Act-ABS that are commonly understood in the securitization market to be third-party due diligences services.[1536] For

[1521] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1522] *See Clayton Letter.*

[1523] *See* paragraph (d)(1)(i) of Rule 17g–10. The commenter also recommended this modification be made to Item 4 of Form ABS Due Diligence–15E, which used similar text to describe due diligence services. *See Clayton Letter.* As discussed below in section II.H.3. of this release, the Commission is making a corresponding modification to Item 4.

[1524] *See CRE Letter; Deloitte Letter; Morningstar Letter; S&P Letter.*

[1525] *See* paragraph (c)(1)(v) of Rule 17g–10, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33544.

[1526] *See CRE Letter; Deloitte Letter; Morningstar Letter; S&P Letter.*

[1527] *See Morningstar Letter; Deloitte Letter.*

[1528] *See Morningstar Letter.*

[1529] *See Deloitte Letter.*

[1530] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33472.

[1531] *See* paragraph (d)(1)(v) of Rule 17g–10.

[1532] *See Deloitte Letter.*

[1533] *See* prefatory text of paragraph (d)(1) of Rule 17g–10.

[1534] *See* paragraph (d)(1)(v) of Rule 17g–10.

[1535] *See id.* One commenter suggested that the Commission clarify that the catchall definition of due diligence services includes only the review of the assets in connection with the issuance of the asset-backed securities as specifically requested by the issuer, underwriter, or NRSRO. *See Clayton Letter.* In response, the Commission notes that the certification under Rule 17g–10 must be provided by the person who is employed to provide third-party due diligence services. Accordingly, the catchall definition is not intended to cover reviews that the third-party provider itself was not employed to perform by the issuer, underwriter, or NRSRO.

[1536] Generally, third-party due diligence services have been performed with respect to RMBS. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471. Generally, in the RMBS context, the provider of third-party due diligence services is hired by the entity (for example, the underwriter, sponsor, or depositor) purchasing the pool of mortgage loans for the purpose of securitizing them. In conducting a review, the provider of third-party due diligence services analyzes a sample (for example, 25%) of the loans in the pool for one or more of the following purposes: (1) To assess the quality of the loan-by-loan data in the electronic file (''loan-tape'') that aggregates the information for the pool by comparing the information on the loan tape for each loan in the sample with the information contained on the hard-copy documents in the loan file; (2) to determine whether each loan in the sample adheres to the underwriting guidelines of the loan originator; (3) to assess the validity of the appraised value of the property indicated on the loan tape that collateralizes each loan in the sample; and (4) to determine whether the originator complied with

example, it is not intended to cover every type of service that involves the performance of diligence in the offering process. The catchall provision is designed to incorporate within the definition reviews that are commonly understood in the securitization market to be third-party due diligences services or analogous services that may develop in the future but are not expressly covered by the first four prongs of the definition.

Several commenters argued that agreed-upon procedures engagements performed by accounting firms should not be considered third-party due diligence services as contemplated by section 15E(s)(4) of the Exchange Act.[1537] Some of these commenters suggested that the proposed definition should apply only to reports that were prepared specifically with the intent to provide those reports to an NRSRO or otherwise in connection with obtaining a credit rating.[1538] Two of these commenters stated that accountants would be unlikely to perform any services that could fall within the proposed definition.[1539] In support of the position to exclude agreed-upon procedures engagements from the definition of due diligence services, commenters noted that these engagements generally include one or more of the following: (1) Comparing the loan tape to the loan file; (2) recalculating projected future cash flows due to investors; and (3) performing procedures that address other information included in the offering document. Commenters argued that these procedures are performed primarily to assist issuers or underwriters in verifying the accuracy of disclosures in registration statements and prospectuses.

The Commission agrees that the second and third examples performed as part of an agreed-upon procedure engagement and for the purpose referenced are not commonly understood as being due diligence services and should not trigger the requirements of section 15E(s)(4) of the Exchange Act. However, comparing the information on a loan tape with the information contained on the hard-copy documents in a loan file is an activity that falls within the definition of *due diligence services* in Rule 17g–10 because the work undertaken involves reviewing of the accuracy of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets.[1540] Consequently, the Commission is not persuaded that it would be appropriate to exclude this type of review solely because it is being performed in the context of an agreed-upon procedures engagement. As a result, comparing information on a loan tape with information contained on the hard-copy documents in a loan file, even if performed under an agreed-upon procedure engagement, is a third-party due diligence service under Rule 17g–10.[1541]

The Commission understands there may be particular considerations that would need to be taken into account under applicable professional standards that govern certain services provided by the accounting profession.[1542] The requirements and limitations resulting from relevant professional standards generally are described within the reports issued and, to the extent such requirements or limitations are based upon professional standards, the Commission would not object to the inclusion of the same description in the written certifications on Form ABS Due Diligence–15E required under Rule 17g–10.

Commenters suggested that Form ABS Due Diligence–15E should be required to be provided to NRSROs only at the time the Exchange Act-ABS is initially issued or rated.[1543] One of these commenters stated that the due diligence provider's obligations should ''come to an end'' after providing the certification and suggested that for later rating actions, the NRSRO should be permitted to ''disclose that it is relying on'' an earlier report.[1544] Another of these commenters stated that the proposed requirements should be limited to services provided ''prior to the issuance of the ABS'' and suggested that the certification be prepared on a ''one-time basis per report.'' [1545] A third commenter stated that the certification should not ''sunset'' and instead should be provided ''for the life of the transaction/rated security.'' [1546]

The Commission recognizes that third-party due diligence services commonly are performed prior to the issuance of an Exchange Act-ABS. Consequently, the Commission expects most of the forms will be executed and provided at this time. However, if an NRSRO, issuer, or underwriter employs a person to provide third-party due diligence services after the issuance, the Commission believes that NRSROs monitoring the credit rating will benefit from obtaining a Form ABS Due Diligence–15E relating to the due diligence services, as will investors in the Exchange Act-ABS. Consequently, the Commission is not persuaded that it would be appropriate to exempt post-issuance performance of due diligence services from the requirements of section 15E(s)(4) of the Exchange Act.

One commenter recommended that the obligations of the third-party due diligence provider should come to an end after the person provides the certification.[1547] As discussed above, the Commission has added a ''safe harbor'' to Rule 17g–10 under which a provider of third-party due diligence services can meet its obligations under section 15E(s)(4)(B) of the Exchange Act.[1548] In short, in order to be deemed to have satisfied those obligations, the provider must promptly deliver an executed Form ABS Due Diligence–15E after completion of the due diligence services to each NRSRO that previously requested or that requests the form and deliver the form to the issuer or underwriter that maintains the Rule 17g–5 Web site with respect to the Exchange Act-ABS. At this point, the third party will have met its obligation under section 15E(s)(4)(B) and Rule 17g–10. However, if the third party is employed by an NRSRO, issuer, or underwriter to perform subsequent due diligence services with respect to the Exchange Act-ABS, it will incur new obligations under section 15E(s)(4)(B) and Rule 17g–10.

Commenters also sought clarification of the application of Rule 17g–10, as proposed, to transactions or entities located outside the United States.[1549] After considering comments, as discussed above in section II.G.1. of this release, the Commission has added an

federal, state, and local laws in making each loan in the sample. *Id.*

[1537] *See ABA Letter; AICPA Letter; ASF Letter; CRE Letter; Deloitte Letter; Ernst & Young Letter; FSR Letter; KPMG Letter; PWC Letter.*

[1538] *See ABA Letter; AICPA Letter; Ernst & Young Letter.*

[1539] *See AICPA Letter; Ernst & Young Letter.*

[1540] *See* paragraph (d)(1)(i) of Rule 17g–10. *See also Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471 (''In conducting a review, the provider of third-party due diligence services analyzes a sample (for example, 25%) of the loans in the pool for one or more of the following purposes: (1) To assess the quality of the loan-by-loan data in the electronic file ('loan-tape') that aggregates the information for the pool by comparing the information on the loan tape for each loan in the sample with the information contained on the hard-copy documents in the loan file. . .'').

[1541] *See* paragraph (d)(1)(i) of Rule 17g–10.

[1542] *See, e.g.,* Public Company Accounting Oversight Board, Interim Attestation Standard, AT Section 201, at ¶¶ .06 and .31.

[1543] *See Clayton Letter; DBRS Letter; Deloitte Letter; S&P Letter.*

[1544] *See Deloitte Letter.*

[1545] *See Clayton Letter.*

[1546] *See S&P Letter.*

[1547] *See Deloitte Letter.*

[1548] *See* paragraph (c) of Rule 17g–10.

[1549] *See ABA Letter; DBRS Letter.*

exemption in paragraph (a)(3) of Rule 17g–7. The provision exempts an NRSRO from the disclosure requirements upon taking a rating action, including the requirement that the NRSRO publish any Form ABS Due Diligence–15E it receives or obtains from a Rule 17g–5 Web site, if the rating action involves a rated obligor or issuer of the rated security that is not a U.S. person and if the NRSRO has a reasonable basis to conclude that transactions in the securities issued by the obligor or the issuer will be effected only outside the United States.[1550] Further, the Commission has issued a temporary order exempting NRSROs from the Rule 17g–5 Web site requirements if similar conditions are met.[1551] Consequently, if a person is employed by an NRSRO, issuer, or underwriter to perform third-party due diligence services with respect to an Exchange Act-ABS that is exempt from the Rule 17g–5 Web site provisions the person will not need to deliver an executed Form ABS Due Diligence–15E to the issuer or underwriter of the Exchange Act-ABS to meet the ''safe harbor'' requirement in paragraph (c)(3) of Rule 17g–10, as adopted.[1552] Instead, the person only will need to promptly deliver an executed Form ABS Due Diligence–15E to any NRSRO that requests it under paragraphs (c)(1) or (c)(2).[1553]

3. New Form ABS Due Diligence–15E

Section 15E(s)(4)(C) of the Exchange Act provides that the Commission shall establish the appropriate format and content for the written certifications required under section 15E(s)(4)(B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.[1554] The Commission proposed Form ABS Due Diligence–15E to implement section 15E(s)(4)(C).[1555] As proposed, the form contained five items and a signature line with a corresponding representation.[1556]

In the proposing release, the Commission sought comment on matters such as should proposed Form ABS Due Diligence–15E be more prescriptive in terms of the steps a provider of third-party due diligence services would need to take in performing the review.[1557] Commenters stated that the proposed Form ABS Due Diligence–15E should not prescribe more requirements regarding the due diligence review.[1558] Two NRSROs added that more prescriptive standards may violate section 15E(c)(2) of the Exchange Act,[1559] which prohibits the Commission from regulating the substance of credit ratings. Another NRSRO stated that the proposed form should ''follow a more general approach'' rather than prescribe minimum requirements for the third-party due diligence reviews.[1560]

The Commission believes for now that the steps to be taken by a third party-due diligence provider in reviewing the assets underlying an Exchange Act-ABS should be decided upon by the party engaging the provider (most commonly the underwriter, sponsor, or depositor). As a provider of third-party due diligence services noted in its comment letter, ''[t]raditionally, our services have been used by loan purchasers to make better decisions about how they price portfolios and manage risk'' and ''[p]rospectively, we anticipate playing a valuable role by independently validating the information used by market participants to make decisions relating to loans being included in securitization transactions.''[1561] The Commission believes that the parties engaging the services of third-party due diligence providers should have the flexibility to prescribe the steps they believe are necessary to help them evaluate the assets underlying an Exchange Act-ABS. Consequently, the form requires a provider of third-party due diligence services to disclose information about its review of the assets underlying an Exchange Act-ABS but does not prescribe how the review must be conducted. For these reasons, the Commission, as discussed below, is adopting Form ABS Due Diligence–15E substantially as proposed, with modifications to the disclosure requirements in Items 3 and 4, a modification to the representation requirement in the certification, and certain technical modifications.[1562] The modifications do not substantively alter the form from the proposal.

As proposed, Item 1 of the form elicited the identity and address of the provider of third-party due diligence services.[1563] The Commission is adopting Item 1 as proposed.[1564] This Item elicits the identity and address of the provider of third-party due diligence services.

As proposed, Item 2 of the form elicited the identity and address of the issuer, underwriter, or NRSRO that employed the provider of third-party due diligence services.[1565] Those disclosures were intended to notify users of the certification of which third party conducted the review described in the certification and which person employed the third party to conduct the review, respectively.[1566]

The Commission is adopting Item 2 with a technical, non-substantive modification from the proposal.[1567] Commenters asked whether the form must be addressed to a specific NRSRO.[1568] It does not. The form is a general certification. However, as discussed above in section II.H.2. of this release, the provider of third-party due diligence services must deliver the form promptly, to each NRSRO that requests it as well as to the issuer or underwriter that maintains the Rule 17g–5 Web site with respect to the Exchange Act-ABS that is the subject of the due diligence services, to be deemed to have met its obligation under section 15E(s)(4)(B) of the Exchange Act.

As proposed, Item 3 of the form provided that if the manner and scope of the due diligence provided by the third party satisfied the criteria for due diligence published by an NRSRO, the third party must identify the NRSRO and the title and date of the published criteria in a table provided on the form.[1569] The proposed table and instructions would permit the

[1550] *See* paragraph (a)(3) of rule 17g–7.

[1551] *See Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations from Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment,* Exchange Act Release No. 68286 (Nov. 26, 2012).

[1552] *See* paragraph (c)(3) of Rule 17g–10.

[1553] *See* paragraphs (c)(1) and (2) of Rule 17g–10.

[1554] *See* 15 U.S.C. 78o–7(s)(4)(C).

[1555] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33474–33476, 33562–33563; Form ABS Due Diligence–15E, as proposed.

[1556] *See* Form ABS Due Diligence–15E, as proposed.

[1557] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476.

[1558] *See ASF Letter; Clayton Letter; CRE Letter; DBRS Letter; Morningstar Letter.*

[1559] *See DBRS Letter; Morningstar Letter.*

[1560] *See S&P Letter.*

[1561] *See Clayton Letter.*

[1562] *See* Form ABS Due Diligence–15E.

[1563] *See* Item 1 of Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33562.

[1564] *See* Item 1 of Form ABS Due Diligence–15E.

[1565] *See* Item 2 of Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33562.

[1566] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33474.

[1567] *See* Item 2 of Form ABS Due Diligence–15E. The modification adds the phrase ''the third-party'' before the phrase ''due diligence services.'' As modified, Item 2 is consistent with Item 1, as proposed and adopted (which uses the phrase ''third-party due diligence services''). This modification is not substantive.

[1568] *See ASF Letter; Clayton Letter.*

[1569] *See* Item 3 of Form ABS Due Diligence 15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33562.

identification of more than one NRSRO, which would allow the third party to reflect in a single form that it conducted due diligence services in a manner that satisfied the due diligence requirements of multiple NRSROs.[1570] The Commission is adopting Item 3 with one modification to clarify the instruction for the Item in response to comments.[1571]

Specifically, commenters raised concerns about what it would mean for the third party to certify that it had satisfied the criteria for due diligence published by an NRSRO.[1572] For example, one NRSRO stated that due diligence providers are ''not in a position'' to opine on ''whether the NRSRO's criteria have been satisfied.'' [1573] Another commenter stated that it should be ''up to the NRSRO to determine'' whether the criteria were satisfied.[1574] A third commenter stated that the disclosure should only be required where the due diligence provider is expressly engaged to ''comply with a particular set of NRSRO-published criteria.'' [1575] A fourth commenter—an NRSRO—stated that the disclosure requirement should be limited to criteria published by the NRSRO involved in the engagement.[1576] Another NRSRO stated that it would ''continue to make its own assessment of whether its criteria are satisfied.'' [1577]

In response to the comments, the Commission notes that certain NRSROs, as part of the rating criteria for RMBS, have specified the steps a person engaged to perform third-party due diligence services must take in performing the services in order for them to rate the RMBS.[1578] For example, in the RMBS context, the provider of third-party due diligence services typically is hired by the entity (for example, the underwriter, sponsor, or depositor) purchasing the pool of mortgage loans for the purpose of securitizing them. In conducting a review, the provider of third-party due diligence services typically analyzes a sample (for example, 25%) of the loans in the pool for one or more of the following purposes: (1) To assess the quality of the loan-by-loan data in the electronic file (''loan-tape'') that aggregates the information for the pool by comparing the information on the loan tape for each loan in the sample with the information contained on the hard-copy documents in the loan file; (2) to determine whether each loan in the sample adheres to the underwriting guidelines of the loan originator; (3) to assess the validity of the appraised value of the property indicated on the loan tape that collateralizes each loan in the sample; and (4) to determine whether the originator complied with federal, state, and local laws in making each loan in the sample.[1579] The NRSROs most active in rating RMBS have incorporated requirements for the engagement of providers of third-party due diligence services by the entities requesting such ratings (for example, the underwriter or sponsor of the RMBS) into their procedures and methodologies for determining RMBS credit ratings.[1580] These engagement requirements prescribe the minimum scope and manner of the review of the assets underlying an RMBS that the provider of third-party due diligence services must conduct in order for the NRSRO to determine a credit rating for the RMBS, including the minimum sample size of the loans to be selected from the pool.[1581]

Item 3 was designed to require the third party to record in the form that the third party had endeavored to perform its due diligence in accordance with the due diligence criteria an NRSRO had published. Further, by executing the form, the third party would certify that it had performed the due diligence in accordance with the NRSRO's criteria.[1582]

The Commission acknowledges that certifying to having followed a given NRSRO's due diligence criteria does not establish that the third party in fact followed the criteria. However, the objective of sections 15E(4)(B) and (C) of the Exchange Act is to require third-party due diligence providers to provide a certification to NRSROs to ''ensure'' that the providers ''have conducted a thorough review of data, documentation, and other relevant information necessary for [an NRSRO] to provide an accurate rating.'' [1583] In the Commission's view, if an NRSRO has published criteria for performing due diligence reviews and the third party has sought to follow the criteria, the form should provide a means for the third party to certify that it sought to follow the criteria. For these reasons, the Commission is adopting Item 3 to the form substantially as proposed. However, in response to the comments, the Commission has modified the instruction for Item 3 so that it contains the words ''if the due diligence provided by the third party is *intended* to satisfy'' the criteria of an NRSRO.[1584]

[1570] *See* Item 3 of Form ABS Due Diligence 15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33562.

[1571] *See* Item 3 of Form ABS Due Diligence–15E.

[1572] *See Clayton Letter; DBRS Letter; Deloitte Letter; Moody's Letter; S&P Letter.*

[1573] *See Moody's Letter.*

[1574] *See Clayton Letter.*

[1575] *See Deloitte Letter.*

[1576] *See DBRS Letter.*

[1577] *See S&P Letter.*

[1578] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471, 33474–33475.

[1579] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471.

[1580] *See, e.g.,* Fitch, *U.S. RMBS Originator Review and Third-Party Due Diligence Criteria* (April 26, 2013) (''Fitch expects third-party loan-level reviews to be performed on all residential mortgage pools where the agency has been asked to assign ratings. The reviews should be conducted by independent due diligence companies prior to the transaction closing.''); Moody's, *Moody's Criteria for Evaluating Independent Third-Party Loan Level Reviews for U.S. Residential Mortgage Backed Securities (RMBS)* (Sept. 22, 2009) (''Moody's will not rate a U.S. RMBS transaction unless there has been a [third-party loan level review, ('TPR')] that at least meets our minimum sample size. If the minimum sample size is met, but the sample size is still less than Moody's target sample size or if the TPR findings are poor, Moody's may decide i) that more credit protection is needed to achieve a given rating level, ii) to assign a lower rating or iii) to decline to rate the transaction . . . Moody's will not rate a transaction unless it has received a report from the TPR firm as to the TPR scope, procedure and findings. The report must include a narrative summary of the review and an initial TPR findings report before input from the TPR sponsor.''); S&P, *Incorporating Third-Party Due Diligence Results into the U.S. RMBS Rating Process* (Mar. 14, 2012) (''Standard & Poor's believes that using third-party due diligence results in its rating analysis will increase transparency and strengthen the rating process. Our criteria for due diligence reviews are intended to increase our insight into the quality and validity of the information used to originate the mortgage loans pooled into securities.'').

[1581] For example, Fitch requires, at a minimum, a randomly selected minimum sample size to be the greater of 200 loans or 10% of the pool. *See* Fitch, *U.S. RMBS Originator Review and Third-Party Due Diligence Criteria.* Moody's defines its minimum sample size through statistical techniques. Specifically, Moody's requires that the sample size must not be less than that computed using a 95% confidence level, a 5% precision level, and an assumed error rate equal to the higher of the historic error rate for the originator or a Minimum Assumed Error Rate. *See* Moody's, *Moody's Criteria for Evaluating Independent Third-Party Loan Level Reviews for U.S. Residential Mortgage Backed Securities (RMBS).* S&P requires a sample that is the greater of either the number of loans needed for a statistically valid sample, or a 10% random sample for subprime and 5% sample for prime. At a minimum, S&P states that the number of loans in the sample should be 200 for subprime, and 100 for prime. S&P defines a statistically valid sample as the number of loans based on a 5% one-tailed level of significance with a 2% level of precision. S&P expects that the number of loans in the sample also will be a function of an estimate of an error rate. *See* S&P, *Incorporating Third-Party Due Diligence Results into the U.S. RMBS Rating Process.*

[1582] *See* 15 U.S.C. 78o–7(s)(4)(C) (providing that the Commission shall establish the appropriate format and content for the written certifications required under section 15E(s)(4)(B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating).

[1583] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C).

[1584] *See* Item 3 to Form ABS Due Diligence–15E. As proposed, the instruction read, in pertinent part, ''[i]f the manner and scope of the due diligence provided by the third party *satisfied''* the criteria of

Continued

As proposed, Item 4 of the form required the provider of the third-party due diligence services to describe the scope and manner of the due diligence services provided in connection with the review of assets in sufficient detail to provide an understanding of the steps taken in performing the review, including: (1) The type of assets that were reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the quality or integrity of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines; (6) whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review conducted with respect to the assets.[1585] The proposed disclosure was intended to allow the NRSRO and users of credit ratings to determine whether the provider of third-party due diligence services, based on its description, appeared to satisfy published criteria of the NRSRO if such a claim was made in Item 3.[1586] Alternatively, if no criteria had been published for the type of Exchange Act-ABS or no claim to satisfying criteria was made in Item 3, the proposed disclosure was intended to provide an understanding of the due diligence performed.[1587] The instructions for Items 4, as proposed, required the summary to be provided in an attachment to the Form, which would be considered part of the form.[1588]

The Commission is adopting Item 4 of Form ABS Due Diligence–15E with modifications, in part, in response to comments.[1589] Consistent with the modification to Item 3 discussed above, the Commission is modifying the last sentence of the instructions for the Item to replace the phrase ''satisfied the criteria for minimum due diligence'' with the phrase ''is intended to satisfy the criteria for due diligence.'' [1590] As adopted, Item 4 requires the third party to provide a description of the scope and manner of the due diligence services provided in connection with the review of assets that is sufficiently detailed to provide an understanding of the steps taken in performing the review and to include in the description:

- The type of assets that were reviewed;
- The sample size of the assets reviewed;
- How the sample size was determined and, if applicable, computed;
- Whether the accuracy of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; [1591]
- Whether the conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria, or other requirements was reviewed and, if so, how the review was conducted; [1592]
- Whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted;
- Whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted; and
- Any other type of review that was part of the due diligence services conducted by the person executing the Form.[1593]

One commenter stated that the instruction that the description must be ''sufficiently detailed'' to provide an understanding of the steps taken in performing the review should be replaced with a standard that is not subjective.[1594] The Commission is not persuaded that this is necessary. First, this instruction is consistent with the instructions for Exhibit 2 to Form NRSRO, which has been in use since 2007.[1595] Second, by identifying the matters that must be included in the description, the instruction provides objective guidance on the topics that the description must address. Another commenter suggested that examples of each of the categories of information would be helpful.[1596] The discussion above provides some examples of the matters that providers of third-party due diligence services review in the context of RMBS issuances. As discussed above, Form ABS Due Diligence–15E is designed to account for due diligence services provided with respect to other types of Exchange Act-ABS (in addition to RMBS). Consequently, providing specific examples could create confusion if new types of reviews tailored to non-RMBS Exchange Act-ABS develop in the future. The description of the types of reviews in Item 4 provides detail on the matters that must be addressed in the form in a way that is designed to provide

an NRSRO. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33562 (emphasis added).

[1585] *See* Item 4 of Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33563. The proposed instructions would require the third party to provide this description regardless of whether the third party represented in Item 3 of the form that its review satisfied published criteria of an NRSRO. In other words, the third party would not be able to simply rely on a cross-reference to the NRSRO's published criteria to explain the work completed in performing the due diligence.

[1586] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33475.

[1587] *See id.*

[1588] *See id.* at 33563.

[1589] *See* Item 4 to Form ABS Due Diligence–15E.

[1590] The Commission also removed the word ''minimum'' before the phrase ''due diligence'' in the last sentence because it was unnecessary.

[1591] As discussed above in section II.H.2. of this release, a commenter that provides due diligence services recommended modifying this description of due diligence services by replacing the phrase ''quality and integrity'' of the data with the word ''accuracy.'' *See Clayton Letter.* The Commission believes that this change will more accurately describe the nature of the work undertaken by a provider of third-party due diligence services, as suggested by the commenter, and, therefore, has revised the instruction accordingly.

[1592] As proposed, the phrase in the instruction stated ''whether the origination of the assets conformed to stated underwriting or credit extension guidelines, standards, criteria or other requirements was reviewed and, if so, how the review was conducted.'' *See* Item 4 of Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33472. The final instruction was modified to replace the phrase ''origination of the assets conformed'' with the phrase ''conformity of the origination of the assets.'' *See* Item 4 to Form ABS Due Diligence–15E. This modification is intended to provide a clearer description of the category without substantively changing it.

[1593] One commenter stated that the due diligence provider should only be required to describe ''those of the eight steps that relate to the services it actually performed'' and suggested that the requirement to describe ''any other type of review conducted with respect to the assets'' be omitted. *See Deloitte Letter.* The instruction requires the third-party due diligence provider to describe only the reviews that the provider conducted (that is, not reviews conducted by other service providers). The instruction has been modified to clarify this point. Specifically, it now states ''any other type of review that was part of the due diligence services conducted by the *person executing this Form''* (emphasis added).

[1594] *See Clayton Letter.*

[1595] *See* instructions for Exhibit 2 to Form NRSRO (instructing, in pertinent part, that an applicant for registration as an NRSRO or NRSRO submitting the form must provide in the Exhibit a general description of the procedures and methodologies used by the applicant or NRSRO to determine credit ratings, including unsolicited credit ratings within the classes of credit ratings for which the applicant or NRSRO is seeking registration or is registered and that the description must be *sufficiently detailed* to provide users of credit ratings with an understanding of the processes employed by the applicant or NRSRO in determining credit ratings, including, as applicable, descriptions of a number of matters enumerated in the instructions) (emphasis added).

[1596] *See Deloitte Letter.*

guidance without narrowing the matters to the RMBS context.[1597]

As proposed, Item 5 of the form would require the provider of third-party due diligence services to provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2 (that is, conveyed to the issuer, underwriter, or NRSRO that employed the third party to perform due diligence services).[1598] As with Item 4, the instructions for Items 5, as proposed, required the summary to be provided in an attachment to the form, which would be considered part of the Form.[1599]

The Commission is adopting Item 5 of Form ABS Due Diligence–15E with a technical non-substantive modification in response to comment.[1600] The Item provides that the person providing due diligence services must provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person that employed the third party to perform the services. One commenter stated that the instruction regarding the summary be ''sufficiently detailed to provide an understanding of the findings and conclusions'' should be eliminated.[1601] The Commission is adopting the ''sufficiently detailed'' standard in this Item as it is doing with respect to Item 4.[1602] As stated above, the standard is consistent with the instructions for Exhibit 2 to Form NRSRO.

Finally, as proposed, the individual executing the form on behalf of a provider of third-party due diligence services would need to make two representations: (1) That he or she has executed the form on behalf of, and on the authority of, the third party; and (2) that the third party conducted a thorough review in performing the due diligence described in Item 4 and that the information and statements contained in the form, including Items 4 and 5 attached to the form, are accurate in all significant respects.[1603] The proposed representation was intended to implement section 15E(s)(4)(C) of the Exchange Act, which provides that the Commission shall establish the appropriate format and content of the written certifications ''to ensure that providers of due diligence services have conducted a *thorough review* of data, documentation, and other relevant information necessary for [an NRSRO] to provide an accurate rating.'' [1604]

The Commission is adopting the certification in Form ABS Due Diligence–15E with one modification. Commenters stated that the certification should indicate that it is as of the date signed.[1605] The Commission agrees. As adopted, the certification contains the representation that the third-party due diligence provider conducted a thorough review in performing the due diligence described in Item 4 of the form and that the information and statements contained in the form, including Items 4 and 5 attached to the form, are accurate in all significant respects *on and as of the date hereof*.[1606]

One commenter stated that ''professional standards as well as liability concerns would prevent an accountant from stating that he or she has performed a 'thorough review' of information because that term is undefined.'' [1607] Another commenter stated that the words ''thorough review'' should be replaced with ''due care.'' [1608] This commenter stated that, ''[b]y their very nature, due diligence procedures often relate to a sample, rather than the entire population of assets, and in this sense the review may not be 'thorough' as to the scope of assets reviewed and ''the procedures themselves are limited in that choices were made to perform certain procedures and not others.'' [1609] This commenter also suggested that the phrase ''accurate in all significant respects'' be omitted from the certification.[1610] Two commenters stated that the phrase ''accurate in all significant respects'' should be changed to a ''materiality'' standard.[1611] One of these commenters also suggested that the certification should be ''based on objective standards that can be verified by the signer'' and should state that the due diligence provider did not conduct any reviews in addition to those expressly requested.[1612]

In response to these comments, the Commission notes that, as stated in the proposing release, including ''thorough review'' in the certification was designed to implement section 15E(s)(4)(C) of the Exchange Act, which provides that the Commission shall establish the appropriate format and content of the written certifications ''to ensure that providers of due diligence services have conducted a *thorough review* of data, documentation, and other relevant information necessary for [an NRSRO] to provide an accurate rating.'' [1613] Further, this language will provide some assurance to persons using the certification to evaluate the underlying assets (including NRSROs determining credit ratings for the Exchange Act-ABS) that the third-party due diligence provider undertook the review described in Item 4 in a thorough manner. Also, it should create an incentive for a provider of third-party due diligence services to perform these reviews in a competent manner because the third party must certify that the work was thorough.[1614] In response to comment, the Commission notes that the provider of third-party due diligence services must certify that it ''conducted a thorough review in performing the due diligence described in Item 4 attached to [the] Form.'' [1615] Consequently, the third party need only certify that a ''thorough review'' was conducted with respect to

[1597] The descriptions in Item 4 correspond to the prongs of the definition of *due diligence services* in Rule 17g–10. A provider of third-party due diligence services noted in its comment letter that the definition of *due diligence services* in Rule 17g–10 (subject to certain modification suggested by the commenter) ''captures the scope of due diligence services provided to issuers or underwriters by third-party due diligence providers in connection with the rating of an issuance of ABS . . .'' *See Clayton Letter.* As discussed above and in section II.H.2. of this release, this commenter suggested, among other things, that the phrase ''quality and integrity'' of the data as used in the definition of *due diligence services* and in Item 4 should be replaced with the word ''accuracy.'' *Id.*

[1598] *See* Item 5 of Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33563.

[1599] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33563.

[1600] *See* Item 5 of Form ABS Due Diligence–15E. One commenter suggested that the word ''description'' in the second sentence of the instruction be replaced with the word ''summary.'' *See Clayton Letter.* The Commission agrees with this suggestion because Item 5 is titled ''Summary of findings and conclusions of review'' and the first sentence of the instruction provides that the person executing the certification should provide a ''summary'' of the findings and conclusions.

[1601] *See Clayton Letter.*

[1602] *See* Item 5 of Form ABS Due Diligence–15E.

[1603] *See* ''Certification'' on Form ABS Due Diligence–15E, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33563.

[1604] *See* 15 U.S.C. 78o–7(s)(4)(C) (emphasis added); *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476.

[1605] *See Deloitte Letter; S&P Letter.*

[1606] *See* ''Certification'' on Form ABS Due Diligence–15E (emphasis added to highlight the modification).

[1607] *See AICPA Letter.*

[1608] *See Deloitte Letter.*

[1609] *Id.*

[1610] *Id.*

[1611] *See Clayton Letter; DBRS Letter.*

[1612] *See Clayton Letter.*

[1613] *See* 15 U.S.C. 78o–7(s)(4)(C) (emphasis added).

[1614] As discussed above in section II.H.2. of this release, the Commission understands that in making the certification there may be particular considerations that would need to be taken into account under applicable professional standards that govern certain services provided by the accounting profession.

[1615] *See* ''Certification'' on Form ABS Due Diligence–15E.

the work actually performed as specified in Item 4 of the form (for example, reviewing a sample of the assets). This limits the scope of the certification to the matters reflected in Item 4. Consequently, in response to the comment that the third-party due diligence provider should state that it did not conduct any reviews in addition to those expressly requested, Item 4 will reflect the nature and scope of the review work performed, which will be determined by the engagement.

Further, in response to comments, the Commission notes that the part of the certification as to the accuracy of the information contained in the report is modeled on the certification NRSROs must make on Form NRSRO.[1616] This has proven to be a workable attestation standard as to the accuracy of information disclosed in a form since it was implemented in 2007. It also provides an incentive for the person executing the form to take steps to verify that the information contained in the form is accurate. In response to comments that the standard should be changed to a materiality standard, the Commission notes that the ''accurate in all significant respects'' is a standard that is intended to incorporate materiality. For all of these reasons, the Commission is adopting the certification substantially as proposed.

4. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments and new rules related to disclosing information about third-party due diligence services.[1617] In particular, this section addresses the potential economic effects of Rule 15Ga–2 and Rule 17g–10 and the related amendments, including effects related to amended Form ABS–15G and new Form ABS Due Diligence–15E, as well as effects of the amendments to Rule 17g–7 requiring that NRSROs publish any written certifications received from third-party due diligence providers when taking certain rating actions.[1618] The baseline that existed before today's amendments and new rules was one in which, under Rule 193, the issuer of any registered Exchange Act-ABS offering was required to perform due diligence with respect to the assets underlying the security.[1619] The issuer could conduct the review directly or engage one or more third-party vendors to perform the review. Under Item 1111(a)(7) of Regulation AB, the nature as well as the findings and conclusions of the review performed under Rule 193 was required to be disclosed in the prospectus.[1620] These requirements applied whether or not the registered Exchange Act-ABS would be rated by an NRSRO. Commission rules did not require that issuers review assets or disclose to investors the nature, findings, and conclusions of any reviews in the case of unregistered Exchange Act-ABS offerings, whether or not rated by an NRSRO.

Even in the case of registered offerings, information about the nature, findings, and conclusions of all the third-party due diligence that was undertaken might not have been disclosed under the existing rules. Rule 193 requires a review that provides reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects. The rule requires that issuers disclose the nature of their review but does not require issuers to disclose the specifics of each report where they have engaged third parties to perform multiple reviews and/or produce multiple reports, including interim reports, and does not require that the issuer disclose the identity of the third party or third parties engaged to perform a review. Any third party to which the findings and conclusions of the review disclosed in the prospectus are attributed must be named as an expert in the prospectus, though the issuer is permitted to attribute the findings and conclusions of the review to itself.

In the baseline, the issuer or underwriter of a rated Exchange Act-ABS, whether registered or unregistered, typically provided some information about third-party due diligence reports to any NRSROs they hired to rate the security. Further, some NRSROs, for certain asset classes of Exchange Act-ABS, have adopted minimum standards for due diligence that are required to be met in order for a security to be rated. For example, as discussed above, some NRSROs, as a condition to rating an RMBS, require that a non-affiliated third party perform a due diligence review of the assets underlying the RMBS. An NRSRO may also require that due diligence reviews be performed in accordance with specified criteria, and/or that due diligence be performed by one of a specified set of third-party due diligence providers that has been approved by the NRSRO. Under the baseline requirements, any information about due diligence provided by an issuer or underwriter to an NRSRO hired to rate an Exchange Act-ABS also was required to be disclosed on a password-protected Rule 17g–5 Web site, which could be accessed by other NRSROs that provided the required certification.[1621] However, the information transmitted by issuers and underwriters to NRSROs was not subject to mandatory disclosure requirements, and any disclosure may have involved editing or filtering by issuers or underwriters.[1622] In addition, issuers and underwriters who received multiple due diligence reports need not have provided information about all of the reports to NRSROs. The Commission does not believe that NRSROs typically hire third-party due diligence providers directly, but prior to the amendments and new rules, information about third-party due diligence services employed directly by NRSROs was not required to be disclosed to other NRSROs.

In addition to concerns about due diligence information potentially being withheld from NRSROs, market participants, academics, and other observers have expressed concern about decreased standards of due diligence in Exchange Act-ABS offerings.[1623] For example, it has been reported that the percentage of loans in mortgage pools subject to review dropped from 30% to 5% from the year 2000 to 2005.[1624] Also, litigation in the wake of the financial crisis alleged systemic abuses in due diligence practices with respect to asset-backed securities.[1625]

[1616] *See* ''Certification'' on Form NRSRO.

[1617] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1618] The new requirements with respect to disclosing information about due diligence services are discussed in sections II.G.5., II.H.1., II.H.2., and II.H.3. of this release.

[1619] *See* Public Law 111–203, 945.

[1620] *See* 17 CFR 229.1111(a)(7).

[1621] *See* 17 CFR 240.17g–5.

[1622] *See, e.g.,* John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia University Law School, *Enhancing Investor Protection and the Regulation of Securities Markets* (Mar. 10, 2009) (testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs), pp. 64–65, *available at http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=d5da9848-ea57-475a-b6e9-93fc74b85abd* (''Coffee Testimony II'') (''An offering process for structured finance that was credible would look very different than the process we have recently observed. First, a key role would be played by the due diligence firms, but their reports would not go only to the underwriter (who appears to have at times ignored them). Instead, without editing or filtering, their reports would also go directly to the credit rating agency.'').

[1623] *See* Coffee Testimony II, pp. 54–56 (describing ''the rapid decline in due diligence after 2000'' and citing market participants and journalists raising related concerns).

[1624] *See* Vikas Bajaj and Jenny Anderson, *Inquiry Focuses on Withholding of Data on Loans,* New York Times, January 12, 2008, at A–1.

[1625] *See Complaint,* People of the State of New York, by Eric T. Schneiderman, against J.P. Morgan

Relative to the baseline, the amendments and new rules should benefit NRSROs, the users of credit ratings, and investors and other Exchange Act-ABS market participants who may or may not be users of credit ratings. NRSROs that are hired by the issuer or underwriter of any Exchange Act-ABS to provide a credit rating, and any other NRSROs that are not hired but are producing credit ratings related to the due diligence services, should benefit from receiving the information in Form ABS Due Diligence–15E. Each Form ABS Due Diligence–15E will contain important details about the third-party due diligence performed with respect to the Exchange Act-ABS to which the services relate, including a description of the scope and manner of the due diligence services provided in connection with the review of the assets underlying the Exchange Act-ABS and a summary of the findings and conclusions that resulted from the due diligence services. The form will be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification, promoting confidence in the accuracy of the content of the form. To the extent that there are any additional due diligence reports obtained by an issuer or underwriter subject to Rule 15Ga–2 [1626] that are not related to credit ratings and therefore are not required to be disclosed to the NRSROs on Form ABS Due Diligence–15E, NRSROs will also have access to the findings and conclusions of these reports, via the Form ABS–15G required to be furnished at least five business days prior to the first sale in the offering.

NRSROs may therefore receive information derived from additional reports of third-party due diligence providers, and more detail about the third-party due diligence services, than they would have obtained under the baseline requirements. Importantly, issuers and underwriters can no longer select what part of this information to provide to NRSROs, reducing the possibility of less favorable information being withheld from NRSROs. Having access to more complete data may allow NRSROs to generate higher quality credit ratings, both in the case of solicited credit ratings and in the case of unsolicited credit ratings by NRSROs. Non-hired NRSROs that choose not to access the Rule 17g–5 Web sites because of the requirement to provide the annual certification under paragraph (e) of the rule may benefit less from the amendments and new rules.[1627] Specifically, though these non-hired NRSROs can request Form ABS Due Diligence–15E from the provider of third-party due diligence services, they will not be able to request this form until they become aware of a given offering and which third-party has provided services related to that offering, and so they may not have the required information to provide unsolicited credit ratings in as timely a manner as NRSROs that do have access to these Web sites. However, prior to today's amendments and new rules, non-hired NRSROs that did not have access to the Rule 17g–5 Web sites were already disadvantaged in providing unsolicited credit ratings given that they likely lacked timely access to other information about the Exchange Act-ABS.

Users of credit ratings, as well as investors and other market participants who may or may not be users of credit ratings, may also benefit from the Form ABS–15G and Form ABS Due Diligence–15E disclosures, particularly in cases where information that was not previously disclosed to these persons becomes available as a consequence of the amendments and new rules. As noted above, the findings and conclusions of all third-party due diligence reports obtained by issuers and underwriters of rated Exchange Act-ABS will be made public through disclosures on Form ABS–15G, except in the case of municipal Exchange Act-ABS for which the issuer or underwriter chooses to make such information publicly available through some other means and in the case of certain offshore transactions.[1628] In the case of registered rated Exchange Act-ABS, the Form ABS–15G disclosures may include findings and conclusions of reports (for example, interim reports) other than the report(s) supporting the results reported in the prospectus under Rule 193 and Item 1111(a)(7) of Regulation AB. Consequently, information that would not have been available to the public under the baseline requirements may now be disclosed publicly. In the case of unregistered rated Exchange Act-ABS, because Rule 193 and Item 1111(a)(7) of Regulation AB do not apply to such offerings, all of the information about the findings and conclusions of third-party due diligence reports disclosed in Forms ABS–15G should be information that may not have been available to potential investors, and would not have been disclosed to the broader public, under the baseline requirements.

In addition, any disclosures on Form ABS Due Diligence–15E will be published by NRSROs with their credit ratings when taking rating actions covered by Rule 17g–7 with respect to the Exchange Act-ABS. The Forms ABS Due Diligence–15E will contain additional detailed information about third-party due diligence with respect to an Exchange Act-ABS for which the NRSRO is producing a credit rating beyond the findings and conclusions that must be disclosed by issuers and underwriters, including a description of the scope and manner of the due diligence services provided in connection with the review of the assets underlying an Exchange Act-ABS. In the case of any review that is also discussed in the prospectus pursuant to Rule 193, the description of such review disclosed in Form ABS Due Diligence–15E may include information that is not already disclosed as part of the ''nature of the review'' discussed in the prospectus. Also, Form ABS Due Diligence–15E information with respect to any due diligence services employed by an NRSRO rating the security will also be published together with each NRSRO's credit rating, for credit rating actions subject to Rule 17g–7.

In particular, in the case of registered and certain unregistered Exchange Act-ABS with issuer-paid credit ratings, any disclosures on Form ABS Due Diligence–15E will be made publicly

Securities LLC, JPMorgan Chase Bank, EMS Mortgage LLC (Oct. 2012).

[1626] As discussed above, the Commission has excluded issuers and underwriters of municipal and certain offshore offerings of Exchange Act-ABS from Rule 15Ga–2. Issuers and underwriters of municipal Exchange Act-ABS remain subject to the statutory obligation under section 15E(s)(4)(A) to make publicly available the findings and conclusions of any third-party due diligence reports they obtain, and could choose to satisfy their obligation by voluntarily submitting Form ABS–15G on EMMA.

[1627] *See* 17 CFR 240.17g–5(e) (requiring, among other things, that the NRSRO certify that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to the rule, if it accesses such information for ten or more issued securities or money market instruments in the calendar year covered by the certification).

[1628] As discussed above, in light of the practical and legal considerations raised by commenters, the Commission adopted revisions to the proposal to provide that Rule 15Ga–2, as well as section 15E(s)(4)(A), will not apply to certain offshore offerings of Exchange Act-ABS. The criteria for exemption include, among other things, that the security issued will be offered and sold upon issuance, and that any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States. It is therefore possible that the rule may result in foreign issuers seeking to avoid the disclosure requirement by limiting certain offerings of Exchange Act-ABS to transactions outside the United States, thus potentially depriving U.S. investors of diversification and related investment opportunities.

available by the issuer-paid NRSRO pursuant to Rule 17g–7, perhaps, for example, on its corporate Internet Web site. However, if Exchange Act-ABS, whether registered or unregistered, is rated only by subscriber-paid NRSROs, then the Form ABS Due Diligence–15E information is only required by Rule 17g–7 to be made available to subscribers of these NRSROs. Finally, a commenter indicated that in some unregistered offerings of Exchange Act-ABS, credit ratings are distributed only to potential investors in the offering.[1629] Because Rule 17g–7 requires that Forms ABS Due Diligence–15E are made available to the same persons who can receive or access the credit rating, the information in these forms about the scope and manner of the due diligence services provided in connection with the review of assets may then only be made available to these potential investors.

In the above cases in which, relative to the baseline, new information becomes available to users of credit ratings and investors and other market participants who may or may not be users of credit ratings, many of these persons should benefit from the information. The information on the findings and conclusions of reviews disclosed using Form ABS–15G may be of particular use in understanding the quality of the asset pool underlying the Exchange Act-ABS, and possibly may represent a more balanced view of such quality than would have been provided in the absence of the amendments and new rules, since the findings and conclusions of all reviews obtained by issuers and underwriters must be reported. The information from Form ABS Due Diligence–15E may be of particular use in determining the adequacy and the level of due diligence services provided by the third parties. The information in both forms may be of use to users of credit ratings and investors and market participants who may or may not be users of credit ratings in evaluating rated Exchange Act-ABS, both in isolation and in comparison to other rated Exchange Act-ABS. The additional information available relative to the baseline—because it provides insights into the quality of the asset pool and the due diligence procedures of the parties involved—also may help these persons in evaluating the NRSROs, issuers and underwriters of Exchange Act-ABS, third-party due diligence providers, and other parties involved in the issuance process. Consequently, the additional information may be of use in current and future investment decisions as well as other interactions among the various parties involved. The benefits of this information may be constrained, however, by the fact that Form ABS Due Diligence–15E disclosures for different securities which may be rated by different NRSROs are not consolidated in a single location, potentially increasing the effort required to collect and compare these disclosures.

Users of credit ratings and investors and other market participants who may or may not be users of credit ratings may also benefit from other effects of the adopted rules. To the extent that NRSROs obtain more complete information about Exchange Act-ABS that they rate, users of credit ratings may benefit from the higher quality credit ratings that may result. The new information available to investors and other market participants, together with these higher quality credit ratings, may result in more informed investment decisions—potentially improving individual portfolio efficiency as well as market efficiency—and may benefit capital formation by encouraging more participation in the Exchange Act-ABS market. Also, the detailed disclosures and the accompanying certification requirements may promote greater rigor and discipline of due diligence procedures and thus benefit investors and other market participants who may or may not be users of credit ratings. In particular, the detailed disclosures and the identification of the third parties involved may enhance the ability of third-party due diligence providers to form a market reputation for providing thorough and accurate due diligence reviews, increasing the competition among these third parties on the basis of quality. In addition, the increased comparability of the quality of due diligence across transactions may enhance competition among issuers.[1630]

Relative to the baseline, the amendments and new rules will result in compliance costs to issuers and underwriters in offerings of Exchange Act-ABS, third-party due diligence providers, and NRSROs. Rule 15Ga–2 will result in costs to issuers and underwriters in offerings of rated Exchange Act-ABS, whether registered or unregistered (other than municipal Exchange Act-ABS and certain offshore Exchange Act-ABS). Although they are excluded from Rule 15Ga–2, issuers and underwriters of municipal Exchange Act-ABS will still incur costs to comply with their statutory disclosure obligation under section 15E(s)(4)(A) of the Exchange Act, and the Commission has estimated costs to these issuers and underwriters based on the assumption that they will satisfy the disclosure obligation by furnishing Form ABS–15G on EMMA.[1631] The Commission believes that the entities that will furnish Form ABS–15G pursuant to Rule 15Ga–2 and/or section 15E(s)(4)(A) of the Exchange Act generally will already have processes and protocols in place to file Form ABS–15G in order to disclose repurchase activity as required by Rule 15Ga–1.[1632] However, they will bear any costs of adapting their current processes and protocols to provide the information required to comply with the new disclosure requirements, including modifying their existing Form ABS–15G processes and protocols to accommodate these requirements. They also will incur ongoing costs to prepare and furnish Form ABS–15G to the Commission through EDGAR or, in the case of municipal Exchange Act-ABS, potentially through EMMA. Based on analysis for purposes of the PRA, the Commission estimates that Rule 15Ga–2 and the amendments to Form ABS–15G will result in total industry-wide one-time costs to issuers and underwriters of approximately $9,509,000 and total industry-wide annual costs to issuers and underwriters of approximately $202,000.[1633]

Rule 17g–10 will result in one-time and recurring costs for providers of third-party due diligence services. Initially, they will need to develop processes and protocols for preparing the information required, certifying, and promptly delivering Form ABS Due Diligence–15E to NRSROs and to issuers and underwriters maintaining Rule 17g–5 Web sites. They also may engage outside counsel, and/or consult with in-house counsel, to advise them on how to comply with the new requirements. Providers of third-party due diligence

[1629] *See DBRS Letter.*

[1630] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1631] To the extent that issuers and underwriters of municipal Exchange Act-ABS use another means to make the required information publicly available, such as through an Internet Web site, the compliance costs to these parties could be greater or less than the Commission's estimates, depending on the method chosen to disclose the information.

[1632] As discussed above, the Commission has revised the final rule to clarify that a single Form ABS–15G may be furnished when the issuer and/or one or more underwriters have obtained the same third-party due diligence report. The Commission thus expects that the securitizer responsible for filing Rule 15Ga–1 disclosures on Form ABS–15G will most likely also file the Rule 15Ga–2 disclosures.

[1633] *See* section V.I. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.10. of this release.

services also will bear recurring costs. Each time they are employed by an issuer, underwriter, or NRSRO to perform due diligence services, they will need to prepare and execute the Form. Based on analysis for purposes of the PRA, the Commission estimates that Rule 17g–10 and Form ABS Due Diligence–15E will result in total industry-wide one-time costs to third-party due diligence providers of approximately $1,405,000 and total industry-wide annual costs of approximately $67,000.[1634] Third-party due diligence providers and the individuals executing the forms on behalf of the third parties may also bear the risk of future liability and associated costs due to the certification requirements in the rule.

The amendments and new rules related to Form ABS Due Diligence–15E also will result in one-time costs for NRSROs to amend their standard agreement forms with issuers and underwriters of Exchange Act-ABS to include the new representation required under Rule 17g–5. Further, the amendments and new rules will result in recurring costs for issuers and underwriters to promptly post the form on their Rule 17g–5 Web sites. Based on analysis for purposes of the PRA, the Commission estimates that these compliance efforts will result in total industry-wide costs of approximately $1,902,000 in one-time costs to NRSROs and approximately $34,000 in annual costs to issuers and underwriters.[1635] NRSRO compliance costs with respect to attaching Forms ABS Due Diligence–15E to the forms that they must publish when taking certain credit rating actions are addressed above in section II.G.6. of this release.

Rule 17g–10 and the associated amendments may also lead to other costs. One commenter stated that it ''remains possible that certain third-party due diligence providers may refuse to provide these certifications'' or ''it may make it more difficult for certain relatively smaller transactions to come to market, since third-party due diligence providers may only be willing to provide these certifications for the largest of transactions, where fees are at levels high enough to justify the associated costs and legal risks.'' [1636] The Commission acknowledges that the required certification by third-party due diligence providers may increase the litigation risk and liability of these providers, particularly for those third party providers that do not already bear expert liability under Rule 193. The required certification therefore may increase the fees charged by these providers—which may be borne by issuers, underwriters, or investors—and may diminish competition by reducing the number of providers who are willing to provide due diligence in these offerings. These effects could impact capital formation, in that it may be more costly or difficult to issue Exchange Act-ABS to the extent that the performance of third-party due diligence services is necessary to bring these securities to market. Also, though the Commission believes that NRSROs have not generally employed third-party due diligence services, the disclosures related to any third-party due diligence services employed by NRSROs may reduce any incentives NRSROs have to employ such services, given that the details about, and the results of, such due diligence will be disclosed to competing NRSROs.[1637]

Together, all of the adopted rules regarding third-party due diligence services may result in additional costs. The required disclosures may be detrimental to capital formation by delaying market access by issuers.[1638] There also may be other costs to investors and other market participants. The disclosure requirements with respect to any third-party due diligence report obtained may incentivize issuers and underwriters to decrease the number and scope of due diligence reviews undertaken in order to decrease the likelihood that they reveal problems that would have to be disclosed to market participants. If fewer or more limited reviews are undertaken, the information available directly or indirectly (such as through credit ratings) to investors and other market participants may ultimately be reduced. Alternatively, the required disclosures with respect to third-party due diligence reports may cause issuers and underwriters to undertake their own due diligence internally or via related subsidiaries, rather than by employing third parties, in order to avoid making the required disclosure or because third-party due diligence providers increase their fees or become unwilling to provide these services. These potential changes in issuer and underwriter behavior could result in a reduced quality of due diligence undertaken with respect to Exchange Act-ABS because of the lack of independent reviews. The possibility of less comprehensive or less independent due diligence being undertaken may be mitigated by market pressures because, as noted above, some NRSROs require that due diligence be undertaken by an independent third party and that this due diligence meet certain criteria before they will produce a credit rating for certain types of Exchange Act-ABS. Also, if no Form ABS–15G disclosure is made, investors will be put on notice that the issuer or underwriter did not employ a provider of third-party due diligence services in connection with the offering of an Exchange Act-ABS, and thus these investors may be less likely to participate in the offering or may demand a lower offering price.

The Commission has considered the costs and benefits of reasonable alternatives relative to the amendments and new rules, including certain alternatives that have been raised by commenters and discussed above. As noted above, the Commission considered alternative approaches to the required timing of the disclosures, namely a greater or fewer number of days before the first sale in an offering by which Forms ABS–15G must be furnished or a more explicit requirement than the ''promptly'' standard governing the provision of Form ABS Due Diligence–15E.[1639] If Forms ABS–15G are furnished closer in time to the first sale in an offering, the informational benefits of the disclosures may be reduced, because NRSROs and market participants may not have enough time to thoroughly and accurately analyze the included information before investment or credit rating decisions are made. However, the longer the delay between the required furnishing of Forms ABS–15G and the first sale in the offering, the more of an impediment the requirement may be to prompt market access by issuers and underwriters. The Commission believes it has appropriately balanced these considerations in requiring that Forms ABS–15G be furnished five business days prior to the first sale in the offering. In the case of Form ABS Due Diligence–15E, it is possible that prescribing a required timeframe for provision of the form could provide more assurance that NRSROs are able to

[1634] *See* section V.J. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.9. of this release.

[1635] *See* section V.J. of this release (discussing implementation and annual compliance considerations). These costs are derived by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.5. of this release.

[1636] *See Morningstar Letter.*

[1637] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1638] *See id.*

[1639] *See* sections II.H.1. and II.H.3. of this release.

thoroughly review the information and incorporate it into their credit ratings. However, an explicit timeframe does not seem appropriate given the variation and uncertainty in how quickly the disclosures will be able to be provided in practice.

The Commission also considered whether, as suggested by a commenter,[1640] only information about final due diligence reports should have to be disclosed on Form ABS–15G. Limiting the disclosure requirement to final reports may reduce compliance costs to issuers and underwriters. However, as discussed above, the Commission believes that NRSROs, users of credit ratings, and investors and market participants who may or may not be users of credit ratings should benefit from the information derived from interim as well as final due diligence reports.[1641] In particular, requiring that all reports, including interim reports, received by issuers or underwriters be disclosed further limits the possibility that issuers and underwriters can prevent less favorable information from being revealed (for example, by requesting a change in the due diligence methodology or hiring a different third party due diligence provider after viewing a less favorable interim report).

Another alternative would be to require NRSROs to publish each Form ABS Due Diligence–15E on EDGAR and allow them to incorporate the forms by reference when publishing a related credit rating. This approach would, in some cases, increase the persons that have access to the information in the form. Also, it may increase the benefits of the disclosure by including all third-party due diligence disclosures in a consolidated location, rather than a combination of EDGAR (with respect to Form ABS–15G information) and each of the various means by which each NRSRO publishes their ratings (with respect to Form ABS Due Diligence–15E information). However, this approach would increase the total compliance costs borne by NRSROs.

I. Standards of Training, Experience, and Competence

Section 936 of the Dodd-Frank Act provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings: (1) Meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; and (2) is tested for knowledge of the credit rating process.[1642] The Commission proposed new Rule 17g–9 and adding paragraph (b)(15) to Rule 17g–2 to implement section 936 of the Dodd-Frank Act.[1643]

1. New Rule 17g–9

Rule 17g–9, as proposed, had three paragraphs: (a), (b) and (c).[1644] Paragraph (a), as proposed, contained a requirement that an NRSRO design and administer standards of training, experience, and competence.[1645] Paragraph (b), as proposed, identified factors an NRSRO would need to consider in designing the standards.[1646] Paragraph (c), as proposed, set forth two requirements—one relating to periodic testing and the other relating to minimum experience—that an NRSRO would need to incorporate into the standards.[1647] The Commission is adopting Rule 17g–9 substantially as proposed but with modifications in response to comments.[1648]

As discussed below, some commenters raised concerns that the proposed rule provided too much flexibility to an NRSRO to design its standards of training, experience, and competence. The Commission intended the proposed rule to provide flexibility because, among other reasons, the NRSROs vary significantly in the size and the scope of their activities. The Commission reiterates its view, as stated in the proposing release, that the standards established by an NRSRO with more than a thousand credit analysts and that produces tens of thousands of credit ratings across a wide range of asset classes may need to be different from the standards of an NRSRO with fewer than ten credit analysts and that focuses on a particular class of credit ratings.[1649] Moreover, the rating methodologies used by NRSROs and potential NRSRO applicants to determine credit ratings may vary significantly. For these and other reasons, as discussed below, Rule 17g–9, as adopted, provides flexibility to NRSROs to customize their standards, provided they consider the factors in proposed paragraph (b) and incorporate the standards required under proposed paragraph (c) of Rule 17g–9.

As proposed, paragraph (a) of Rule 17g–9 provided that an NRSRO must establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered.[1650] Under the proposal, an NRSRO would be permitted to design standards for its credit analysts that are customized to its size, business model, and procedures and methodologies for determining credit ratings, which vary widely across NRSROs.[1651] At the same time, the proposed rule specified an objective for the standards which was consistent with section 936 of the Dodd-Frank Act.[1652] In particular, the standards needed to be reasonably designed to achieve the objective that the individuals employed by the NRSRO to determine credit ratings produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered.[1653]

The Commission is adopting paragraph (a) of Rule 17g–9 substantially as proposed but with modifications in response to comments.[1654] As adopted, the paragraph provides that an NRSRO must establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that

[1640] *See Clayton Letter.*

[1641] *See* section II.H.1. of this release.

[1642] Public Law 111–203, 936. A related provision, section 939E of the Dodd-Frank Act, requires the GAO to conduct a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by NRSROs that would be responsible for: (1) Establishing independent standards for governing the profession of rating analysts; (2) establishing a code of ethical conduct; and (3) overseeing the profession of rating analysts. A report on the results of the study must be submitted to Congress not later than one year after the publication of Commission rules pursuant to section 936 of the Dodd-Frank Act. Public Law 111–203, 939E. In this regard, a commenter stated that it ''looks forward to a robust discussion on the merits and feasibility of creating an independent professional organization for ratings analysts once the [GAO] issues its report on the matter.'' *See AFSCME Letter.*

[1643] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476–33480.

[1644] *See id.* at 33476–33480.

[1645] *See id.* at 33476–33477.

[1646] *See id.* at 33477–33478.

[1647] *See id.* at 33478–33480.

[1648] *See* Rule 17g–9.

[1649] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476.

[1650] *See* paragraph (a) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476–33477, 33543.

[1651] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33476.

[1652] *See id.* at 33476–33477.

[1653] *See* Public Law 111–203, 936 (providing, in pertinent part, that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates).

[1654] *See* paragraph (a) of Rule 17g–9.

are reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[1655]

Commenters addressed paragraph (a), as proposed.[1656] Several commenters stated that in general it was not appropriate to permit NRSROs to design their own credit analyst training and testing programs and that, for example, the Commission or a private certification program should provide standards and requirements.[1657] One commenter stated that ''the Commission should provide a set of minimum standards'' and that the standards ''should include individual sector experience, minimum education such as an MBA, and certifications such as a CFA, which includes a strong ethics standard.'' [1658] A second commenter stated that ''[t]he standards must include a system for periodically reviewing ratings for 'accuracy,' specifically for the purpose of adjusting'' the standards for credit analysts based on the results of such reviews.[1659] A third commenter stated that the Commission should prescribe the minimum content for training, to include topics such as ethics, conflicts of interest, and regulations on the ratings process, as well as the proper development of methodologies.[1660]

On the other hand, several NRSROs stated that it was appropriate that the rule provide flexibility to NRSROs in designing the standards required under the proposed rule.[1661] One NRSRO stated that credit rating agencies ''come in many shapes and sizes and they determine credit ratings in many different ways'' and, therefore, ''[i]mposing prescriptive analyst standards on such a diverse group would diminish the value of the rule.'' [1662]

In response to comments that NRSROs should not have flexibility to design their own standards and that the rule should prescribe specific requirements, the Commission believes at this time, as discussed above, that the proposed approach achieves an appropriate balance between prescribing objectives, factors that must be considered, and specific standards that must be included and allowing NRSROs to tailor the standards to their business models, size, and rating methodologies, which vary significantly across NRSROs and potential NRSRO applicants. For example, prescribing minimum education requirements (such as an MBA) and certification requirements (such as a CFA)—as suggested by one commenter—may not be appropriate for all NRSROs because, for example, it could disqualify an analyst that has substantial experience in conducting credit analysis but does not have the requisite degree or certification.[1663] Further, this could burden smaller NRSROs to the extent they would need to hire new analysts to meet the requirements or need to pay for their analysts to obtain the necessary degrees or certifications.

An NRSRO stated that ''as forward-looking statements of opinion, ratings should not be categorized as 'accurate' or 'inaccurate'" and that the Commission should instead focus on whether the ratings have been derived in a manner consistent with the NRSRO's policies and procedures.[1664] In response, the Commission re-iterates that section 936 of the Dodd-Frank Act requires the Commission to issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings meets standards of training, experience, and competence necessary to produce ''accurate'' credit ratings for the categories of issuers whose securities the person rates.[1665] Paragraph (a) of Rule 17g–9, as proposed and adopted, implements this requirement by providing that the standards must be reasonably designed to achieve the objective of producing accurate credit ratings.[1666] The Commission acknowledges that there is no consensus as to whether or how credit ratings can be measured for accuracy.[1667] The Commission also recognizes that the credit rating assigned to an obligor or obligation today may need to be revised in the future if circumstances change and that even the most creditworthy obligors or obligations may default. Consequently, for the purposes of Rule 17g–9, as adopted, an ''accurate'' credit rating does not mean a credit rating that once issued will never need to be upgraded or downgraded or classified as a default. Instead, to be accurate under the rule, the credit rating should be a credible assessment of the relative creditworthiness of an obligor or obligation.[1668] To be a credible assessment at the time of issuance, the credit rating, among other things, should be determined in accordance with the applicable rating methodology of the NRSRO; take into account all relevant information as specified by the rating methodology; not be influenced by conflicts of interest; be based solely upon the merits of the obligor, security, or money market instrument being rated; and be an independent evaluation of the credit risk and merits of the obligor, security, or money market instrument.[1669] Historical performance statistics can play a role in evaluating whether an NRSRO's credit ratings over time are providing credible assessments of the relative creditworthiness of obligors and obligations.

An NRSRO suggested that NRSROs should not be required to comply with Rule 17g–9 ''to the extent the NRSRO reasonably believes it is prohibited by applicable law or binding agreements in the relevant jurisdiction from doing so.'' [1670] In response, the Commission notes that the rule as adopted gives NRSROs the flexibility to design their standards of training and testing for credit analysts. Consequently, an NRSRO can tailor its standards to accommodate local laws. These standards, must, however, meet the requirements of Rule 17g–9. The Commission does not believe a blanket

[1655] *Id.*

[1656] *See Better Markets Letter; CFA/AFR Letter; Clark Letter; COPERA Letter; Davis Letter DBRS Letter; Morningstar Letter; S&P Letter.*

[1657] *See Better Markets Letter; CFA/AFR Letter; Clark Letter; COPERA Letter; Davis Letter.*

[1658] *See COPERA Letter.*

[1659] *See Better Markets Letter.*

[1660] *See id.*

[1661] *See DBRS Letter; Morningstar Letter; S&P Letter.*

[1662] *See DBRS Letter.*

[1663] *See COPERA Letter.*

[1664] *See S&P Letter.*

[1665] *See* Public Law 111–203, 936(1).

[1666] *See* paragraph (a) of Rule 17g–9.

[1667] *See, e.g.,* Staff 2012 Staff Report on Assigned Credit Ratings, pp. 52–53.

[1668] *See id.* at 14–21 (describing credit rating symbols and their definitions).

[1669] *See, e.g.,* section 15E(q)(2)(F) of the Exchange Act (providing that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument). As discussed above in section II.G.4. of this release, the Commission is implementing section 15E(q)(2)(F) through paragraph (a)(1)(iii) of Rule 17g–7, as adopted. This paragraph, as adopted, provides that the NRSRO must attach to the form accompanying a credit rating a signed statement by a person within the NRSRO stating that the person has responsibility for the rating action and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument.

[1670] *See Moody's Letter* (''[I]in some jurisdictions it might not be possible to require an existing employee to meet new competence, experience, training, or testing requirements unless he or she agrees to such requirements in an amended employment agreement or collective bargaining agreement. If the employee, union or works council declines to sign the amended agreement, it might not be possible for the NRSRO to modify unilaterally the employment relationship.'').

exemption would be appropriate, but if laws or binding agreements in certain jurisdictions prohibit the NRSRO from complying with certain provisions of Rule 17g–9, the NRSRO can seek appropriate targeted relief.

Finally, one NRSRO suggested that the words ''and subclasses'' be removed from paragraph (a) of proposed Rule 17g–9 because ''NRSROs are registered only for various credit rating classes; there is no subclass registration.'' [1671] A second NRSRO stated that it determines ''credit ratings by committee and no one individual is responsible for any credit rating.'' [1672] Another commenter stated that ''[i]ndividuals do not 'produce . . . credit ratings,' accurate or otherwise.'' [1673]

While the use of the term ''subclasses'' was designed to account for the different types of obligors and obligations assigned credit ratings within a class of credit ratings, the Commission agrees with the comment that the use of the term in paragraph (a) was potentially confusing because NRSROs do not register in subclasses of credit ratings.[1674] Accordingly, the Commission has modified proposed paragraph (a) of Rule 17g–9 to remove the reference to ''subclasses,'' and paragraph (a) as adopted refers only to ''the classes of credit ratings'' for which the NRSRO is registered.[1675] In response to comments that individuals generally do not ''determine'' credit ratings (the language in the proposed rule),[1676] paragraph (a) of Rule 17a–9 has been modified from the proposal to refer to credit analysts as individuals an NRSRO employs ''to participate in the determination of credit ratings'' instead of individuals who ''produce'' credit ratings, and the rule as adopted refers to the NRSRO as producing credit ratings.[1677]

As proposed, paragraphs (b)(1) through (4) of Rule 17g–9 identified certain factors that the NRSRO would need to consider when establishing standards of training, experience, and competence.[1678] Specifically, the NRSRO would have been required to consider:

- If the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated; [1679]
- If the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies; [1680]
- The classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses; [1681] and
- The complexity of the obligors, securities, or money market instruments being rated by the individual.[1682]

The proposed factors were intended to provide guidance to NRSROs about the Commission's expectations for the design of the standards of training, experience, and competence.[1683]

The Commission is adopting paragraph (b) of Rule 17g–9 substantially as proposed but with modifications in response to comments.[1684] As adopted, paragraph (b) requires an NRSRO to consider the following factors when establishing the standards required under paragraph (a):

- If the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated; [1685]
- If the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies; [1686]
- The classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses; [1687] and
- The complexity of the obligors, securities, or money market instruments for which the individual participates in determining credit ratings.[1688]

Commenters addressed paragraph (b) of Rule 17g–9, as proposed.[1689] One commenter stated that ''the Commission should set forth more specific expectations'' and that, for example, ''the Commission should provide guidance regarding what kind of technical expertise in quantitative analysis should be required, depending on how the person will be using quantitative procedures and methodologies.'' [1690] Another commenter stated that the factors listed in paragraph (b) should include that certain types of securities (for example new or highly complex securities) may require more training and specialized expertise.[1691] On the other hand, an NRSRO stated that the factors set forth in paragraph (b) of proposed Rule 17g–9 ''sufficiently capture the general issues an NRSRO should consider in designing its analyst training program.'' [1692] Another NRSRO stated that the factors were ''reasonable.'' [1693]

In response to the comment that the rule should include more specific expectations,[1694] the Commission believes the factors strike an appropriate balance in terms of identifying critical matters an NRSRO should take into

[1671] *See DBRS Letter.*

[1672] *See S&P Letter.*

[1673] *See Harrington Letter.*

[1674] *See DBRS Letter.*

[1675] *See* paragraph (a) of Rule 17g–9. However, paragraphs (b) and (c) of Rule 17g–9, as adopted, refer to classes and subclasses of credit ratings. The references to ''subclasses'' are designed to account for the fact that rating methodologies used within a class of credit ratings (for example, structured finance) may be substantially different for certain subclasses (for example, a CDO as compared to an RMBS).

[1676] *See S&P Letter; Harrington Letter.*

[1677] *See* paragraph (a) of Rule 17g–9.

[1678] *See* paragraphs (b)(1) through (4) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33477–33478, 33543.

[1679] *See* paragraph (b)(1) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1680] *See* paragraph (b)(2) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1681] *See* paragraph (b)(3) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1682] *See* paragraph (b)(4) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1683] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33477.

[1684] *See* paragraph (b) of Rule 17g–9.

[1685] *See* paragraph (b)(1) of Rule 17g–9.

[1686] *See* paragraph (b)(2) of Rule 17g–9.

[1687] *See* paragraph (b)(3) of Rule 17g–9.

[1688] *See* paragraph (b)(4) of Rule 17g–9. Consistent with the modifications to paragraph (a) discussed above, the Commission is modifying paragraph (b)(4) from the proposal by replacing the phrase ''rated by the individuals'' with the phrase ''for which the individual participates in determining credit ratings''.

[1689] *See AFSCME Letter; Better Markets Letter; CFA/AFR Letter; COPERA Letter; DBRS Letter; S&P Letter.*

[1690] *See AFSCME Letter.*

[1691] *See CFA/AFR Letter.*

[1692] *See DBRS Letter.*

[1693] *See S&P Letter.*

[1694] *See AFSCME Letter; CFA/AFR Letter; COPERA Letter; S&P Letter.*

consideration but with sufficient generality to have broad application across NRSROs with different business models, sizes, and rating methodologies, while identifying specific factors the Commission believes are important for an NRSRO to consider when designing the standards. Further, as discussed below, the Commission is adopting, in paragraph (c) of Rule 17g–9, specific items that an NRSRO must include in its standards of training, experience, and competence.[1695]

One commenter stated that the rule should recognize that certain types of securities (for example new or highly complex securities) may require more training and specialized expertise.[1696] The factor listed in paragraph (b)(4) of Rule 17g–9, as adopted, requires NRSROs to consider the complexity of the obligors or securities rated by the analyst when establishing the standards required under paragraph (a) of Rule 17g–9. The Commission believes that this requirement achieves the commenter's objective of having the standards take into account the complexity of securities being rated by the analyst.

As proposed, paragraphs (c)(1) and (2) of Rule 17g–9 provided that an NRSRO must include the following in the standards, respectively:

- A requirement for periodic testing of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings; [1697] and
- A requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.[1698]

The Commission is adopting paragraph (c)(1) of Rule 17g–9 substantially as proposed but with modifications in response to comments.[1699] As adopted, paragraph (c)(1) provides that an NRSRO must include in the standards required under paragraph (a) a requirement for periodic testing of the individuals employed by the NRSRO to participate in the determination of credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings.[1700]

Commenters addressed paragraph (c)(1) of Rule 17g–9, as proposed.[1701] Some commenters stated that the Commission or another regulatory body or independent credentialing organization should establish and administer NRSRO testing regimes or establish minimum testing standards.[1702] One of these commenters stated that the testing requirement should be more detailed, and should include requirements related to the ''frequency of testing, basic content, consequences of failure, and eligibility for retesting.'' [1703] In contrast, three NRSROs stated that an NRSRO should be able to design its own testing programs.[1704]

In response to comments that the Commission or another independent entity should establish and administer NRSRO credit analyst testing programs or that the testing requirement should be more detailed,[1705] the Commission notes that section 936 of the Dodd-Frank Act requires that NRSRO credit analysts be ''tested for knowledge of the credit rating process.'' [1706] As rating methodologies vary among the NRSROs, the Commission believes it is appropriate for NRSROs to design their own testing programs, subject to the requirements of paragraphs (a), (b), and (c) of Rule 17g–9. In particular, the standards for testing must be reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[1707]

An NRSRO stated that the testing program should ''apply only to the credit rating procedures and methodologies that fall within the scope of the individual's primary area or areas of analytical responsibility'' and that credit analysts should be tested on the ''principal methodologies'' used by the NRSRO to determine credit ratings.[1708] The Commission notes that the question of whether an NRSRO's standards for testing are reasonably designed to ensure that credit analysts meet standards of training, experience, and competence necessary to produce accurate ratings for categories of issuers whose securities the person rates and that they are tested for knowledge of the credit rating process will depend on the NRSRO's rating methodologies and how the NRSRO requires its credit analysts to apply them. An individual's primary area or areas of responsibility certainly will be relevant to the designing testing standards that will apply to the employee. For example, an NRSRO may need to tailor its training and testing program to account for the different rating methodologies it uses to determine credit ratings across classes and subclasses of credit ratings so that a given employee is trained and tested on the particular rating methodology or methodologies the employee uses to determine credit ratings.

An NRSRO stated that analysts with certain qualifications and subject to professional examinations and continuing education requirements should be exempt from the testing requirement.[1709] In response, the Commission notes that section 936 of the Dodd-Frank Act provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings is tested for knowledge of *the credit rating process*.[1710] Paragraph (c)(1) of Rule 17g–9, as adopted, implements this section by providing that an NRSRO must include in the standards required under paragraph (a) a requirement for periodic testing of the individuals employed by the NRSRO to participate in the determination of credit ratings on their *knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings* in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings.[1711] Consequently, the subject matter of the training must be the NRSRO's rating methodologies. This does not mean that the standards of training established by the NRSRO cannot take into account qualifications, professional

[1695] *See* paragraph (c) of Rule 17g–9.

[1696] *See CFA/AFR Letter.*

[1697] *See* paragraph (c)(1) Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1698] *See* paragraph (c)(2) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1699] Consistent with the modifications to paragraph (a) discussed above, the Commission is modifying paragraph (c)(1) from the proposal to replace the phrase ''individuals employed by [the NRSRO] to determine credit ratings'' with the phrase ''individuals employed by [the NRSRO] to participate in the determination of credit ratings''. *See* paragraph (c)(1) of Rule 17g–9.

[1700] *See* paragraph (c)(1) Rule 17g–9.

[1701] *See Better Markets Letter; CFA/AFR Letter; COPERA Letter; DBRS Letter; Fitch Letter; Harrington Letter; Moody's Letter; Morningstar Letter.*

[1702] *See Better Markets Letter; CFA/AFR Letter; COPERA Letter.*

[1703] *See Better Markets Letter.*

[1704] *See DBRS Letter; Morningstar Letter; S&P Letter.*

[1705] *See Better Markets Letter; CFA/AFR Letter; COPERA Letter.*

[1706] Public Law 111–203, 936(2).

[1707] *See* paragraph (a) of Rule 17g–9.

[1708] *See Moody's Letter.*

[1709] *See Fitch Letter.*

[1710] *See* Public Law 111–203, 936(2) (emphasis added).

[1711] *See* paragraph (c)(1) of Rule 17g–9 (emphasis added).

examinations, and continuing education requirements. However, unless external professional examinations and continuing education requirements address the NRSRO's specific rating methodologies, exemptions from the required testing and continuous education requirements would not be appropriate.

One commenter stated that testing of credit analysts on their knowledge of the credit rating process could be abused by managers.[1712] The Commission believes testing credit analysts for knowledge of the credit rating process as mandated by section 936 and Rule 17g–9 will benefit the NRSRO, the analysts employed by the NRSRO, and investors and other users of credit ratings by promoting the analysts' adherence to, the proper application of, the NRSRO's rating methodologies. In response to the commenter's concern, the Commission notes that section 15E(j) of the Exchange Act requires the NRSRO to designate an individual responsible for, among other things, ensuring compliance with the securities laws.[1713] This individual is responsible for, among other things, establishing procedures for the receipt, retention, and treatment of confidential anonymous complaints by employees of the NRSRO.[1714] Thus, employees have the recourse of submitting confidential and anonymous complaints if managers seek to abuse the training program administered by the NRSRO. For all of these reasons, the Commission does not believe it would be appropriate or necessary to refrain from implementing the statute in response to the concern raised by the commenter.

The Commission is adopting paragraph (c)(2) of Rule 17g–9 with a modification from the proposal in response to comments.[1715] In particular, a number of commenters addressed the proposed requirement that at least one individual with three or more years of experience in performing credit analysis participate in the determination of a credit rating.[1716] Some commenters stated that the three-year requirement was not sufficient, for example, with respect to complex securities.[1717] For example, one of these commenters stated that ''[g]iven the enormous complexity of the ratings process, and the importance of ratings in our financial markets, requiring the involvement of a person with only three years of experience in each rating is woefully insufficient'' and that ''[s]ubstantially more seasoning is necessary to ensure that each rating is properly supervised.'' [1718] Similarly, an NRSRO stated that the proposed requirement ''sets such a low bar that it is almost meaningless.'' [1719] Another NRSRO stated that ''the Commission should not establish a minimum number of years experience for participating in the determination of a rating'' and that ''NRSROs should establish their own requirements.'' [1720] In contrast, one commenter stated that requiring that at least three years of credit rating committee experience would be ''sensible.'' [1721]

The Commission is persuaded that the rule should not solely require three years of experience. For example, there may be types of obligors or obligations that—because of their complexity—require an individual to participate in determining the credit rating who has more than three years of experience. Consequently, as adopted, paragraph (c)(2) of Rule 17g–9 provides that an NRSRO must include in the standards required under paragraph (a) a requirement that at least one individual with an appropriate level of experience in performing credit analysis, which may in some instances be more than, but cannot be less than, three years participates in the determination of a credit rating.[1722] Thus, the rule requires that the level of experience be commensurate with the type of obligor or obligation being rated and it sets a floor of a minimum of three years of experience.

As proposed, paragraph (c)(2) provided that the experience must be in performing credit analysis.[1723] In the proposing release, the Commission noted that performing credit analysis is not synonymous with determining credit ratings and that many financial institutions have credit risk departments staffed by individuals who analyze the creditworthiness of existing and future counterparties and borrowers.[1724] The Commission stated in the proposing release that it preliminarily intended that this type of work would qualify a credit analyst to meet the three-year requirement in paragraph (c)(2) of proposed Rule 17g–9.[1725]

One commenter stated that the experience should be in determining credit ratings and that ''other experiences in assessing credit should not serve to fulfill this requirement.'' [1726] In contrast, an NRSRO stated that the requisite experience should not be limited to having worked for an NRSRO because such a requirement ''could negatively impact smaller NRSROs and possible new entrants, given the small number of entities in the industry.'' [1727] The Commission continues to believe that experience performing credit analysis whether in determining credit ratings or in other contexts (for example, in the credit department of a financial institution) can qualify an individual to meet the requirement in paragraph (c)(2) of Rule 17g–9, as adopted. In fact, the fresh perspective of a credit analyst who has been performing credit analysis for purposes other than determining credit ratings could promote the quality of credit ratings and innovation.

Finally, one commenter stated that that an experienced analyst also should be required to certify approval of the rating in writing.[1728] At this time, due to other measures in place, the Commission does not believe such a requirement is necessary. First, as discussed above, the Commission is implementing section 15E(q)(2)(F) through paragraph (a)(1)(iii) of Rule 17g–7, as adopted. This paragraph, as adopted, provides that the NRSRO must attach to the form accompanying a credit rating a signed statement by a person within the NRSRO stating that the person has responsibility for the rating action and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument. Second, paragraph (a)(2) of Rule 17g–2 requires NRSROs to make and retain records with respect to each current credit rating, including the identity of any credit analyst that participated in determining the rating and the identity of any person that approved the credit rating.

[1712] *See Harrington Letter.*

[1713] *See* 15 U.S.C. 78o–7(j).

[1714] *See* 15 U.S.C. 78o–7(j)(3)(B).

[1715] *See* paragraph (c)(2) of Rule 17g–9.

[1716] *See AFSCME Letter; Better Markets Letter; CFA/AFR Letter; DBRS Letter; Harrington Letter; Morningstar Letter; S&P Letter.*

[1717] *See AFSCME Letter; Better Markets Letter; CFA/AFR Letter.*

[1718] *See Better Markets Letter.*

[1719] *See DBRS Letter.*

[1720] *See S&P Letter.*

[1721] *See Harrington Letter.*

[1722] *See* paragraph (c)(2) of Rule 17g–9.

[1723] *See* paragraph (c)(2) of Rule 17g–9, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543.

[1724] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33479.

[1725] *Id.* at 33479.

[1726] *See Harrington Letter.*

[1727] *See Morningstar Letter.*

[1728] *See Better Markets Letter.*

2. Amendment to Rule 17g–2

The Commission proposed adding paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence the NRSRO must establish, maintain, enforce, and document pursuant to proposed Rule 17g–9 as a record that must be retained.[1729] As a result, the standards would have been subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[1730] The Commission stated that this record, along with other records the proposal would have required NRSROs to make, should be subject to the same recordkeeping requirements applicable to other records an NRSRO is required to retain pursuant to Rule 17g–2.[1731]

One commenter stated that ''we strongly support the Commission proposal to make training, testing, and experience policies subject to recordkeeping requirements'' and that the Commission ''should make clear that this includes testing results.'' [1732] Another commenter stated that ''the documentation requirement should include documentation not only of the standards, but also of the implementation, including records showing that analysts have been tested, that ratings have been reviewed for accuracy to identify weaknesses in the training regime, and that a seasoned analyst has participated in and approved of each credit rating.'' [1733] The Commission does not believe for now that it is necessary to require the documentation and/or retention of these specific types of records. The Commission notes that NRSROs may need to be able to demonstrate compliance with Rule 17g–9 and that making and retaining records showing that analysts have been tested and the experience level of persons participating in credit ratings is one way to demonstrate compliance with the rule. Further, as noted above, paragraph (a)(2) of Rule 17g–2 requires NRSROs to make and retain records with respect to each current credit rating, including the identities of any credit analyst that participated in determining the rating and the identity of any person that approved the credit rating.[1734] Finally, using credit rating performance statistics could be a useful input in evaluating the effectiveness of training programs.[1735]

The Commission is adding paragraph (b)(15) to Rule 17g–2 as proposed.[1736] This will provide a means for the Commission to monitor the NRSROs' compliance with Rule 17g–9. The record must be retained until three years after the date the record is replaced with an updated record in accordance with the amendment to paragraph (c) of Rule 17g–2 discussed above in section II.A.2. of this release.[1737]

3. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the amendments and new rule relating to the standards of training, experience, and competence.[1738] The baseline that existed before today's adoption of Rule 17g–9 and the amendment to Rule 17g–2 was one in which an NRSRO was not required to establish, maintain, enforce, and document standards of training, experience, and competence for its credit analysts that are reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings in the classes of credit ratings for which the NRSRO is registered and that include a requirement to conduct periodic testing of its credit analysts for knowledge of the NRSRO's procedures and methodologies to determine credit ratings and a requirement that at least one individual with an appropriate level of experience in performing credit analysis, but not less than three years, participates in the determination of a credit rating. Further, NRSROs were not required to retain a record documenting the procedures and methodologies. However, NRSROs and applicants for registration as NRSROs were required to disclose in Exhibit 8 to Form NRSRO a general description of the minimum qualifications required of their credit analysts and credit analyst supervisors, including education level and work experience.

Relative to this baseline, Rule 17g–9 and the amendment to Rule 17g–2 will likely provide benefits. These new requirements should result in higher levels of competency among NRSRO credit analysts, which should result in higher quality credit ratings. The factors enumerated in paragraph (b) of Rule 17g–9 could serve an investor protection function by providing benchmarks that could be used by the Commission and the NRSRO to evaluate whether a given NRSRO's standards are reasonably designed to meet the objective that the NRSRO produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered. In particular, the first two factors should help the Commission and the NRSRO evaluate the degree to which knowledge and technical expertise with respect to data and models is emphasized in the standards of an NRSRO. The latter two factors should help the Commission and the NRSRO evaluate the degree to which expertise in factors relevant to credit ratings and the complexity of obligors, securities, or money market instruments are emphasized in the NRSRO's standards of training for its credit analysts.

The requirement in paragraph (c)(2) of Rule 17g–9 that at least one individual with an appropriate level of experience in performing credit analysis, but not less than three years, participates in the determination of a credit rating should help achieve the objective that an NRSRO produces accurate credit ratings. The requirement in paragraph (c)(1) of Rule 17g–9 for periodic testing of an NRSRO's credit analysts on their knowledge of the NRSRO's procedures and methodologies to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings should also enhance integrity and quality of the credit ratings. Higher quality credit ratings should benefit those who use credit ratings in making investment and credit-based decisions. The requirement to document the standards will also help the NRSRO to adhere to the standards.

The record the NRSROs must retain under the amendment to Rule 17g–2 will be used by Commission examiners to evaluate whether a given NRSRO's policies and procedures are reasonably designed to achieve the objective that the NRSRO produces accurate credit ratings in the classes of credit ratings for which it is registered and whether the NRSRO is complying with the policies and procedures.

[1729] *See* section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[1730] *See* 17 CFR 240.17g–2(c) through (f).

[1731] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33423.

[1732] *See CFA/AFR Letter.*

[1733] *See Better Markets Letter.*

[1734] *See* paragraph (a)(2) of Rule 17g–2.

[1735] *See Better Markets Letter.*

[1736] *See* paragraph (b)(15) of Rule 17g–2. Section 17(a)(1) of the Exchange Act requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[1737] *See* paragraphs (b)(15) and (c) of Rule 17g–2.

[1738] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

Relative to the baseline, the amendments and new rule will result in costs for NRSROs. NRSROs will incur one-time costs when establishing and documenting the standards of training, experience, and competence for NRSRO credit analysts and ongoing costs to update these standards and conduct periodic testing. Based on analysis for purposes of the PRA, the Commission estimates that Rule 17g–9 will result in total industry-wide one-time costs to NRSROs of approximately $7,834,000 and total industry-wide annual costs to NRSROs of approximately $1,629,000.[1739] Further, NRSROs will incur costs in conducting periodic testing for knowledge of the credit rating process. The cost of this testing will likely vary significantly across NRSROs and depend on their size, the different types of credit ratings they issue, and the complexity of their methodologies. However, based on analysis for purposes of the PRA, the Commission estimates that Rule 17g–9 will result in additional total industry-wide annual costs for NRSROs to conduct periodic testing of their credit analysts of approximately $5,990,000.[1740]

Relative to the baseline, the amendments to Rule 17g–2 prescribing retention requirements for the documentation of the standards will result in costs to NRSROs. NRSROs already have recordkeeping systems in place to comply with the recordkeeping requirements in Rule 17g–2 before today's amendments. Therefore, the recordkeeping costs of this rule will be incremental to the costs associated with these existing requirements. Specifically, the incremental costs will consist largely of updating their record retention policies and procedures and retaining and producing the additional record. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (b)(15) of Rule 17g–2 and the amendment to paragraph (c) of Rule 17g–2 will result in total industry-wide one-time costs to NRSROs of approximately $12,000 and total industry-wide annual costs to NRSROs of approximately $3,000.[1741]

A possible additional cost is that the requirements could distort the labor market for individuals with at least three years of experience in performing credit analysis. For example, NRSROs may need to pay a premium to retain such individuals, which may inhibit them from moving to productive activity in other industries. The magnitude of this cost is infeasible to estimate as the degree to which these salaries may increase is unknown.

The amendments and new rule should have a number of effects related to efficiency, competition, and capital formation.[1742] First, they could improve the quality of credit ratings. As a result, users of credit ratings could make more efficient investment decisions based on this higher-quality information. Market efficiency could also improve if this information is reflected in asset prices. Consequently, capital formation could also improve as capital could flow to more efficient uses with the benefit of this enhanced information. These amendments also will result in costs, which may have a component that is fixed in magnitude across NRSROs and does not depend on the size of an NRSRO. Therefore, the operating costs per credit rating of smaller NRSROs may increase relative to that of larger NRSROs, creating adverse effects on competition. As a result of these amendments, the barriers to entry for credit rating agencies to register as an NRSRO might be higher for credit rating agencies, while some NRSROs, particularly smaller firms, may decide to withdraw from registration as an NRSRO. These costs also will depend on the complexity of operations within the NRSRO.

There are reasonable alternatives to the requirements in the amendments and new rule. First, the Commission or an independent entity could provide standards for training and testing programs or administer these programs as suggested by commenters.[1743] As discussed earlier, the Commission believes at this time that allowing NRSROs the flexibility to design their own standards achieves an appropriate balance between prescribing standards and allowing NRSROs to tailor the standards to their business models, size, and rating methodologies, which vary significantly across NRSROs and potential NRSRO applicants.

Another alternative is that the Commission could make the requirements of paragraph (c)(2) of Rule 17g–9 less restrictive. For example, one commenter suggested that the Commission not require a minimum number of years of experience for individuals participating in the determination of credit ratings and that NRSROs should establish their own requirements.[1744] However, if NRSROs established a lower requirement, this alternative could decrease the quality of credit ratings by decreasing the level of expertise brought to determinations of credit ratings. However, it could also decrease costs if it eliminates the potential distortions to the labor market for analysts with at least three years of experience discussed earlier.

J. Universal Rating Symbols

Section 938(a) of the Dodd-Frank Act provides that the Commission shall require, by rule, each NRSRO to establish, maintain, and enforce written policies and procedures that: (1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument;[1745] (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating;[1746] and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[1747] Section 938(b) of the Dodd-Frank Act provides that nothing in section 938 shall prohibit an NRSRO from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.[1748]

Further, section 939(h)(1) of the Dodd-Frank Act provides that the Commission shall undertake a study on the feasibility and desirability of:

- Standardizing credit rating terminology, so that all credit rating agencies issue credit ratings using identical terms;
- standardizing the market stress conditions under which ratings are evaluated;
- requiring a quantitative correspondence between credit ratings

[1739] *See* section V.K. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.8. of this release.

[1740] *See* section V.K. of this release (discussing implementation and annual compliance considerations). The annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.8. of this release.

[1741] *See* section V.K. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[1742] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1743] *See Better Markets Letter; CFA/AFR Letter; COPERA Letter; Davis Letter.*

[1744] *See S&P Letter.*

[1745] *See* Public Law 111–203, 938(a)(1).

[1746] *See* Public Law 111–203, 938(a)(2).

[1747] *See* Public Law 111–203, 938(a)(3).

[1748] *See* Public Law 111–203, 938(b).

and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

• standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.[1749]

Section 939(h)(2) of the Dodd-Frank Act provides that the Commission shall submit to Congress a report containing the findings of the study and the recommendations, if any, of the Commission with respect to the study.[1750] The Commission submitted the staff report to Congress in September 2012.[1751]

Finally, section 15E(c)(2) of the Exchange Act provides, in pertinent part, that the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[1752]

The Commission proposed to implement section 938(a) of the Dodd-Frank Act by proposing paragraph (b) of Rule 17g–8 and by adding paragraph (b)(14) to Rule 17g–2.[1753]

1. Paragraph (b) of New Rule 17g–8

Section 938(a) of the Dodd-Frank Act prescribes the policies and procedures the Commission shall require, by rule, of each NRSRO.[1754] Consequently, paragraph (b) of Rule 17g–8, as proposed, was modeled on the statutory text.[1755]

As proposed, the prefatory text of paragraph (b) provided that an NRSRO must establish, maintain, enforce, and document policies and procedures that are reasonably designed to achieve three objectives identified in paragraphs (b)(1), (2), and (3).[1756] The prefatory text of paragraph (b), as proposed, mirrored the prefatory text of section 938(a) of the Dodd-Frank Act, except that the proposed rule text included the word ''document'' so that the rule, as proposed, would require the NRSRO to document the policies and procedures it establishes, maintains, and enforces.[1757] The requirement was added so that an NRSRO would need to set forth its policies and procedures in writing.[1758] This requirement, coupled with the Commission's proposed amendment to Rule 17g–2, was designed, among other things, to make the policies and procedures more readily available to Commission examiners.[1759] Documenting the policies and procedures in writing also will promote the NRSRO's compliance with them. For all these reasons, the Commission is adopting the prefatory text as proposed.[1760]

Paragraph (b)(1) of Rule 17g–8, as proposed, would require the NRSRO to have policies and procedures reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.[1761] The text of this provision mirrored the text of section 938(a)(1) of the Dodd-Frank Act.[1762] One commenter stated that the paragraph, as proposed, was ''sufficiently explicit.'' [1763] The Commission is adopting paragraph (b)(1) of Rule 17g–8 as proposed.[1764]

The Commission noted in the proposing release that section 15E(s)(3)(B)(ii) of the Exchange Act provides that the Commission's rule requiring an NRSRO to generate a form to disclose information with the publication of a credit rating requires disclosure of information on the content of the credit rating, including: (1) The historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.[1765] As discussed above in section II.G.3. of this release, the Commission has implemented this requirement in paragraph (a)(1)(ii)(L) of Rule 17g–7, as adopted.[1766] The Commission continues to believe that paragraph (b)(1) of Rule 17g–8, as adopted, will work in conjunction with the requirement in paragraph (a)(1)(ii)(L) of Rule 17g–7, as adopted, in that the policies and procedures required under paragraph (b)(1) of Rule 17g–8 will assist the NRSRO in generating the information required to be disclosed pursuant to paragraph (a)(1)(ii)(L) of Rule 17g–7. The information produced by an NRSRO's policies and procedures under paragraph (b)(1) is expected to be relevant to the credit analyses performed by the NRSRO.

Paragraph (b)(2) of Rule 17g–8, as proposed, would require the NRSRO to establish, maintain, enforce, and document policies and procedures reasonably designed to clearly define each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO.[1767] This proposed provision would implement section 938(a)(2) of the Dodd-Frank Act.[1768] One commenter stated that the paragraph, as proposed, was ''sufficiently explicit.'' [1769]

The Commission is adopting paragraph (b)(2) of Rule 17g–8 substantially as proposed.[1770] As adopted, the paragraph provides that an NRSRO must establish, maintain, enforce, and document policies and procedures that are reasonably designed to clearly define each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class of credit ratings for which the NRSRO is registered (including subclasses within each class) and to include such definitions in Exhibit 1 to Form NRSRO.[1771]

In the proposing release, the Commission stated that paragraph (b)(2) of Rule 17g–8 would work in conjunction with the requirements to

[1749] *See* Public Law 111–203, 939(h)(1).

[1750] *See* Pub. L. 111–203, 939(h)(2).

[1751] *See* 2012 Staff Report on Credit Rating Standardization.

[1752] *See* 15 U.S.C. 78o–7(c)(2).

[1753] *See* paragraph (b) of Rule 17g–8, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33543. *See also* paragraph (b)(14) of Rule 17g–2, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539.

[1754] *See* Public Law 111–203, 938(a).

[1755] *See* paragraph (b) of proposed Rule 17g–8; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33480–33481, 33543.

[1756] *See* prefatory text of paragraph (b) of Rule 17g–8, as proposed.

[1757] *See* Public Law 111–203, 938(a).

[1758] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33480.

[1759] *See id.*

[1760] *See* prefatory text of paragraph (b) of Rule 17g–8.

[1761] *See* proposed paragraph (b)(1) of Rule 17g–8.

[1762] *See* Public Law 111–203, 938(a)(1).

[1763] *See S&P Letter.*

[1764] *See* paragraph (b)(1) of Rule 17g–8.

[1765] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33480; 15 U.S.C. 78o–7(s)(3)(B)(ii).

[1766] *See* paragraph (a)(1)(ii)(L) of Rule 17g–7 (providing that the form to accompany a credit rating must include information on the content of the credit rating, including: (1) If applicable, the historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default).

[1767] *See* proposed paragraph (b)(2) of Rule 17g–8.

[1768] *See* Public Law 111–203, 938(a)(2).

[1769] *See S&P Letter.*

[1770] *See* paragraph (b)(2) of Rule 17g–8.

[1771] *See id.* The text of paragraph (b)(2), as proposed, referred to ''each class and subclass of credit ratings'' for which the NRSRO is registered. As discussed above in section II.I.1. of this release, the Commission has modified paragraph (a) of Rule 17g–9 to, among other things, remove a reference to an NRSRO being registered in a subclass of credit ratings. Consistent with this modification, the Commission is modifying paragraph (b)(2) from the proposal to remove the reference to being registered in a subclass of credit ratings. However, the Commission added a parenthetical to the rule text to include a reference to ''subclasses'' of credit ratings.

disclose definitions of symbols, numbers, or scores that denote credit rating categories and notches within categories in Exhibit 1 to Form NRSRO.[1772] As discussed above in section II.E.1. of this release, Exhibit 1 requires, among other things, that an NRSRO clearly define, after the presentation of all applicable Transition/Default Matrices, each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings in any Transition/Default Matrix presented in the Exhibit.[1773] Consequently, taken together, paragraph (b)(2) of Rule 17g–8, as adopted, and the instructions for Exhibit 1 to Form NRSRO require an NRSRO to have policies and procedures that clearly define the meaning of each symbol, number, or score used by the NRSRO to denote a credit rating and to disclose those meanings in Exhibit 1 where investors and other users of credit ratings can find them.

Paragraph (b)(3) of Rule 17g–8, as proposed, would require the NRSRO to have policies and procedures reasonably designed to apply any symbol, number, or score defined pursuant to paragraph (b)(2) of Rule 17g–8 in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[1774] This provision mirrored the text of section 938(a)(3) of the Dodd-Frank Act, except that the proposed rule text added the term ''obligors.'' [1775] The Commission proposed this addition in order to apply the provisions of paragraph (b)(3), as proposed, to credit ratings of obligors as entities in addition to credit ratings of securities and money market instruments.[1776] One commenter stated that the paragraph, as proposed, was ''sufficiently explicit.'' [1777] The Commission is adopting paragraph (b)(3) of Rule 17g–8 as proposed.[1778]

The Commission received comments regarding paragraph (b) of proposed Rule 17g–8.[1779] One NRSRO stated that it supported the proposal and that it ''is generally consistent'' with what the NRSRO ''does today.'' [1780] Another NRSRO stated, as noted above, that the rule text was ''sufficiently explicit'' and also stated that it did not support the addition of further detail regarding the objectives of the rule, and that additional requirements with respect to the rule may ''interfere with the analytical independence of NRSROs in violation of Section 15E(c)(2) of the Exchange Act.'' [1781]

Several commenters were critical of the proposal.[1782] One commenter stated that paragraph (b) of proposed Rule 17g–8 did not achieve the objective of section 938 of the Dodd-Frank Act.[1783] This commenter raised concerns about how municipalities are assigned credit ratings as compared to other types of obligors and recommended that the Commission ''adopt language that would clearly require NRSROs to apply symbols consistently across classes and subclasses of credit ratings.'' [1784] Similarly, another commenter stated that because the proposed rule does not ''require that rating symbols would have to be designed to clearly reflect the potential degree of default,'' the rule will not ''correct the discrepancy between what AAA means in the municipal or corporate debt context and what it means in the structured product context.'' [1785] One commenter stated that the Commission should re-propose the rule and, in doing so, require NRSROs ''to specify an acceptable range of default probabilities and corresponding loss expectations for each asset class and rating symbol.'' [1786] The commenter also provided its analysis of NRSROs' credit rating performance statistics as disclosed in Exhibit 1 to Form NRSRO through 2012, which the commenter stated shows that ''performance across asset classes has not been comparable.'' [1787]

The Commission shares the concerns raised by these commenters that the historical performance of credit ratings at the same notch in a global rating scale of some NRSROs has been significantly different for certain classes of credit ratings, particularly the historical performance of credit ratings of structured finance products. The Commission staff noted this inconsistency of performance in its 2012 report on credit rating standardization, which was submitted to Congress as required by section 939(h)(2) of the Dodd-Frank Act.[1788]

In drafting paragraph (b) of Rule 17g–8, the Commission has sought to address this concern in a manner that strikes an appropriate balance between adopting a measure designed to address inconsistencies in the performance of credit ratings in different classes to which an NRSRO applies the same rating scale and definitions with the prohibition in section 15E(c)(2) of the Exchange Act under which the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings.[1789] In seeking to strike this balance, the Commission modeled the rule closely on the text of section 938(a) of the Dodd-Frank Act.[1790] This section provides, in pertinent part, that the Commission shall require, by rule, each NRSRO to establish, maintain, and enforce written policies and procedures to, among other things, apply any defined credit rating symbol in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[1791] The Commission also considered the fact that section 939(h)(1) of the Dodd-Frank Act required the Commission to study certain matters relating to credit rating standardization (as opposed to mandating rulemaking), including the feasibility and desirability of standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.[1792] Comments received in response to the study argued that that the Commission does not have the authority to require credit rating standardization because, by statute, the Commission may not regulate the methodologies NRSROs use to

[1772] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33480–33481.

[1773] *See* paragraph (2) of the instructions for Exhibit 1.

[1774] *See* paragraph (b)(3) of Rule 17g–8, as proposed.

[1775] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33481.

[1776] *See id.* at 33481.

[1777] *See S&P Letter.*

[1778] *See* paragraph (b)(3) of Rule 17g–8.

[1779] *See AFSCME Letter; CFA/AFR Letter; CFA II Letter; COPERA Letter; DBRS Letter; Moody's Letter; S&P Letter.*

[1780] *See DBRS Letter.*

[1781] *See S&P Letter.*

[1782] *See AFSCME Letter; CFA/AFR Letter; CFA II Letter; COPERA Letter.*

[1783] *See AFSCME Letter. See also* Committee on Banking, Housing, and Urban Affairs, U.S. Senate, *The Restoring American Financial Stability Act of 2010,* Committee Report No. 111–176, at 124 (Apr. 30, 2010), *available at http://www.gpo.gov/fdsys/pkg/CRPT-111srpt176/pdf/CRPT-111srpt176.pdf.*

[1784] *See AFSCME Letter* (''An AAA rating for a municipal bond should indicate the same likelihood of default or non-payment as an AAA rating for any other kind of security. Failure to do so would eviscerate Section 938 and continue to burden municipal issuers unfairly.'').

[1785] *See COPERA Letter.*

[1786] *See CFA II Letter.*

[1787] *See CFA II Letter. See also* CFA/AFR Letter (citing findings that the 5-year default rate prior to 2005 of one NRSRO's ratings at the Baa notch was 0.l% for municipal bonds, 2.2% for corporate bonds, and 24% for CDOs).

[1788] *See* 2012 Staff Report on Credit Rating Standardization, pp. 37–38. *See also* Pub. L. 111–203, 939(h)(2).

[1789] *See* 15 U.S.C. 78o–7(c)(2).

[1790] *See* Public Law 111–203, 938(a).

[1791] *See id.*

[1792] *See* Public Law 111–203, 939(h)(1).

determine credit ratings.[1793] Moreover, as required under section 939(h)(2) of the Dodd-Frank Act, the Commission was required to report its findings to Congress upon completion of the study.[1794] The Commission submitted a staff report to Congress in 2012 and the findings in the report have not resulted in any legislative changes relating to credit rating standardization at this time.[1795]

The Commission believes at this time that paragraph (b) of Rule 17g–8, as adopted, implements section 938(a) of the Dodd-Frank Act in a manner that appropriately balances relevant concerns. The rule requires NRSROs to have policies and procedures that are reasonably designed to apply the definition of any credit symbol, number, or score in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[1796] An NRSRO—in establishing, maintaining, and enforcing these policies and procedures—will need to take into consideration how it applies its rating scales and definitions to classes of credit ratings and the rating methodologies it uses to determine credit ratings in those classes. Moreover, the prefatory text of the rule requires that the policies and procedures must be reasonably designed.[1797] Consequently, Rule 17g–8, as adopted, requires an NRSRO to have policies and procedures reasonably designed to achieve the objective of consistency without specifically mandating how an NRSRO's credit ratings and rating methodologies must be designed to achieve this consistency.

Commenters raised concerns about how the Commission would enforce Rule 17g–8, as proposed.[1798] One commenter stated that ''the Commission fails to make clear how it will enforce the requirement that ratings be based on an assessment of the likelihood of default and applied consistently across different rating categories.'' [1799] In particular, the commenter asked what standards the Commission will use to determine whether ratings are being applied consistently across categories of ratings and what steps will NRSROs be required to take if their performance statistics reveal discrepancies in the performance of ratings across different rating categories.[1800] The commenter that suggested that the Commission re-propose the rule stated that, if ratings of certain asset classes diverge significantly from the expected norms, the Commission should require the NRSRO to identify the source of the error that led to the divergence and what it is doing to remedy the problem and ''where the divergence in ratings performance across asset classes persists, the Commission should require the NRSRO to adjust its methodology—which in turn could affect its outstanding and prospective ratings—to correct the problem.'' [1801] The commenter further stated that a different system of symbols should be used for certain asset classes ''where comparability cannot be achieved.'' [1802] In addition, the commenter stated that the Commission should hold NRSROs accountable if they fail to achieve a high degree of ratings comparability between asset classes by, for example, seeking fines or the disgorgement of profits or suspending or revoking the NRSRO's registration for the affected asset class.[1803] In contrast, an NRSRO stated that ''because credit ratings reflect forward-looking opinions, we would be concerned about any attempt to judge an NRSRO's adherence to this proposed rule based on an analysis of its ratings performance over any defined period of time'' and that ''an NRSRO's compliance with this rule should be measured by whether the NRSRO has policies and procedures in place to promote comparability of ratings across the asset classes it rates and has adhered to such policies and procedures.'' [1804]

In response to these comments, the Commission notes that paragraph (b) of Rule 17g–8, as adopted, sets forth an objective: That the definition of any credit rating symbol, number, or score is applied in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[1805] Further, the rule provides that an NRSRO must establish, maintain, enforce, and document policies and procedures that are reasonably designed to achieve this objective.[1806] Consequently, in enforcing the rule, the Commission will consider whether the NRSRO is achieving the objective through the use of established procedures and methodologies that are reasonably designed. In response to the commenters, the Commission agrees that the performance of credit ratings (transition and default statistics) in each class of credit ratings for which the NRSRO applies the same rating scale and definitions will be relevant to considering whether the objective of consistency is being met.[1807] If the Commission staff believes the objective of consistency is not being met, the staff will need to consider whether the NRSRO has established, maintained, enforced, and documented policies and procedures that are reasonably designed to achieve this objective before making a recommendation to the Commission that the Commission institute an enforcement action. The staff may also bring a potential violation to the attention of the NRSRO. In response to the commenters, the Commission notes that if appropriate the Commission can take enforcement action for such a violation.[1808] Finally, an NRSRO that has not complied with paragraph (b) of Rule 17g–8 may take steps to adjust its rating methodology or use different rating scales and definitions for different classes of credit ratings, as suggested by one of the commenters, to the extent doing so is necessary and appropriate to address the failure.[1809]

2. Amendment to Rule 17g–2

The Commission proposed adding paragraph (b)(14) of Rule 17g–2 to identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to paragraph (b) of Rule 17g–8 as a record that must be retained.[1810] As a result, the policies and procedures would be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2. One NRSRO stated that it ''supports'' the amendment to Rule 17g–2.[1811] The Commission is adding paragraph (b)(14)

[1793] *See* 2012 Staff Report on Credit Rating Standardization, pp. 2, 12–14 (summarizing commenters' views).

[1794] *See* Public Law 111–203, 939(h)(2).

[1795] *See* 2012 Staff Report on Credit Rating Standardization.

[1796] *See* paragraphs (b)(2) and (3) of Rule 17g–8.

[1797] *See* prefatory text of paragraph (b) of Rule 17g–8.

[1798] *See CFA/AFR Letter; CFA II Letter; S&P Letter.*

[1799] *See CFA/AFR Letter.*

[1800] *See id.*

[1801] *See id.*

[1802] *See id.*

[1803] *See CFA II Letter.*

[1804] *See S&P Letter.*

[1805] *See* paragraphs (b)(2) and (3) of Rule 17g–8.

[1806] *See* prefatory text of paragraph (b) of Rule 17g–8.

[1807] *See S&P Letter.*

[1808] *See CFA II Letter.* As discussed above in section II.D. of this release, the Exchange Act provides the Commission with authority to impose a wide range of fines, penalties, and other sanctions on NRSROs for violations of any section of the Exchange Act and the rules under the Exchange Act. *See* 15 U.S.C. 78o–7(d); 15 U.S.C. 78u; 15 U.S.C. 78u; 15 U.S.C. 78u–2; 15 U.S.C. 78u–3; 15 U.S.C. 78ff.

[1809] *See CFA II Letter* (suggesting the NRSRO adjust its rating methodology or use different rating scales and definitions).

[1810] See paragraph (b)(14) 0f Rule 17g–2, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33481.

[1811] *See DBRS Letter.*

to Rule 17g–2 as proposed.[1812] This will provide a means for the Commission to monitor the NRSROs' compliance with paragraph (b) of Rule 17g–8 as a record. The record must be retained until three years after the date the record is replaced with an updated record in accordance with the amendment to paragraph (c) of Rule 17g–2 discussed above in section II.A.2. of this release.[1813]

3. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the amendments and new rule regarding NRSRO credit rating symbols, numbers, or scores.[1814] The economic baseline that existed before today's new rules was one in which an NRSRO was not required to establish, maintain, enforce, document, and retain records of policies and procedures reasonably designed to: Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; clearly define each symbol, number, or score in the NRSRO's rating scale for each class of credit ratings (including subclasses within each class) for which the NRSRO is registered; or to apply any such symbol, number, or score in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used. However, the instructions for Exhibit 1 to Form NRSRO required an NRSRO or a credit rating agency applying for registration as an NRSRO to ''define the credit rating categories, notches, grades, and rankings used'' by the NRSRO or applicant.[1815]

One academic study finds that performance within comparable rating categories has been inconsistent across asset classes from 1980 until 2010.[1816] In addition, it has been reported that five-year default rates for CDOs at the lowest investment-grade rating as determined by a large NRSRO were roughly ten times higher from 1993 to 2005 than for corporate bonds at the same rating for the same NRSRO from 1983 to 2005.[1817] Another academic study concludes that having new structured products rated similarly to corporate bonds created the illusion of comparability with existing ''single-name'' securities and provided access to a large pool of potential buyers in the years prior to the financial crisis.[1818] This academic study also finds evidence suggesting that differences in observed default rates between structured products and comparable corporate bonds may be explained by differences in the types of risk to which these instruments are exposed.[1819]

Relative to this baseline, paragraph (b) of Rule 17g–8 should provide benefits. In particular, it should promote greater consistency by NRSROs in terms of assigning credit ratings across different classes of credit ratings and, thereby, promote the information value of credit ratings as assessments of relative creditworthiness for the benefit of users of credit ratings. The requirement that an NRSRO have policies and procedures reasonably designed to assess the probability that an issuer will default, fail to make timely payments, or otherwise not make payments to investors should facilitate this outcome. Specifically, this assessment may provide additional inputs in terms of the relative creditworthiness of obligors and issuers, which may be used to inform credit ratings if deemed appropriate by the NRSRO, and thereby improve the quality of credit ratings as assessments of relative creditworthiness. The requirement that an NRSRO have policies and procedures to disclose the meaning of credit rating symbols, numbers, and scores could benefit users of credit ratings by promoting a better understanding of credit rating terminology and allowing these parties to better compare the various credit ratings issued by a single NRSRO and credit ratings across NRSROs.

The records the NRSRO must retain under the amendments to Rule 17g–2 will be used by Commission examiners to evaluate whether a given NRSRO's policies and procedures are reasonably designed and the NRSRO is adhering to them. Setting forth the policies and procedures in writing also will promote adherence to them by the NRSRO.

Relative to the baseline, paragraph (b) of Rule 17g–8 will result in costs for NRSROs. NRSROs will need to expend resources to develop the policies and procedures required by the rule, to document, comply with, and enforce them, and to update them periodically as appropriate. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (b) of Rule 17g–8 will result in total industry-wide one-time costs to NRSROs of approximately $566,000 and total industry-wide annual costs to NRSROs of approximately $142,000.[1820]

NRSROs may also incur costs expending resources to modify credit rating symbols, numbers, scores, and their definitions in order to conform to the requirement that these symbols, numbers, and scores be applied consistently across applicable asset classes. For example, one NRSRO claimed that the new rule would require some NRSROs to change their rating symbol systems or how they apply their symbols to certain categories of obligors or obligations.[1821] However, another NRSRO stated that the new rule ''is generally consistent'' with what it ''does today.''[1822] This cost will likely vary significantly across NRSROs and depend on the number of asset classes rated and the degree to which their current symbols, numbers, and scores are applied consistently.

Relative to the baseline, the amendments to Rule 17g–2 prescribing retention requirements for the documentation of the policies and procedures will result in costs to NRSROs. NRSROs already have recordkeeping systems in place to comply with the recordkeeping requirements in Rule 17g–2 before today's amendments. Therefore, the recordkeeping costs of this rule will be incremental to the costs associated with

[1812] *See* paragraph (b)(14) of Rule 17g–2. Section 17(a)(1) of the Exchange Act requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[1813] *See* paragraphs (b)(14) and (c) of Rule 17g–2.

[1814] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1815] Before today's amendments, paragraph (i) of Rule 17g–1 required an NRSRO to make Form NRSRO and Exhibits 1 through 9 publicly available on its Web site ''or through another comparable, readily accessible means.''

[1816] *See* Jess Cornaggia, Kimberly J. Cornaggia, and John E. Hund, *Credit Ratings across Asset Classes* (2014), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1909091.*

[1817] *See* Charles Calomiris and Joseph Mason, *Reclaim Power from the Ratings Agencies,* Financial Times (Aug. 24, 2007), p. 11.

[1818] *See* Coval, Jurek, and Stafford, *The Economics of Structured Finance.*

[1819] *See id.* (A ''feature of the securitization process is that it substitutes risks that are largely diversifiable for risks that are highly systematic. As a result, securities produced by structured finance activities have far less chance of surviving a severe economic downturn than traditional corporate securities of equal rating.'').

[1820] *See* section V.L. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[1821] *See Moody's Letter.*

[1822] *See DBRS Letter.*

these existing requirements. Specifically, the incremental costs will consist largely of updating their record retention policies and procedures and retaining and producing the additional record. Based on analysis for purposes of the PRA, the Commission estimates that paragraph (b)(14) of Rule 17g–2 and the amendment to paragraph (c) of Rule 17g–2 will result in total industry-wide one-time costs to NRSROs of approximately $12,000 and total industry-wide annual costs to NRSROs of approximately $3,000.[1823]

As an additional possible cost, the final rule has the potential to decrease the quality of credit ratings in circumstances where the subjective judgment of participants in the rating process could improve the quality of ratings. In order to ensure that rating symbols, numbers, and scores are applied consistently across applicable ratings in compliance with these requirements, an NRSRO may establish credit rating procedures and methodologies that diminish the ability of participants in the rating process to exercise subjective judgment. The credit ratings may not therefore benefit fully from the expertise of the participants in the rating process. These amendments may also increase costs associated with understanding the definition of rating symbols, numbers, and scores. In order to ensure that rating symbols, numbers, and scores are applied consistently across applicable ratings in compliance with these requirements, an NRSRO may create different rating symbols, numbers, and scores for different asset classes. As a result, users of credit ratings may need to expend more effort in understanding a greater number of definitions.

The amendments and new rule should have a number of effects related to efficiency, competition, and capital formation.[1824] First, they could improve the quality and consistency of credit ratings as well as increasing the information available to users of credit ratings regarding the meaning of rating symbols, numbers, and scores. As a result, users of credit ratings could make more efficient investment decisions based on this higher-quality information. Market efficiency could also improve if this information is reflected in asset prices. Consequently, capital formation also could improve as capital could flow to more efficient uses with the benefit of this enhanced information. Alternatively, the quality of credit ratings may decrease in certain circumstances if an NRSRO establishes credit rating procedures and methodologies that diminish the ability of participants in the rating process to exercise subjective judgment. In this case, the quality of credit ratings may decrease, which could decrease the efficiency of investment decisions made by users of credit ratings. Market efficiency and capital formation also may be adversely impacted if lower quality information is reflected in asset prices, which may impede the flow of capital to efficient uses. These amendments will result in costs, some of which may have a component that is fixed in magnitude across NRSROs, and does not vary with the size of the NRSRO. Therefore, the operating costs per credit rating of smaller NRSROs may increase relative to that of larger NRSROs, creating adverse effects on competition. As a result of these amendments, the barriers to entry for credit rating agencies to register as an NRSRO might be higher for credit rating agencies, while some NRSROs, particularly smaller firms, may decide to withdraw from registration as an NRSRO.

K. Annual Report of Designated Compliance Officer

Section 932(a)(5) of the Dodd-Frank Act amended section 15E(j) of the Exchange Act to re-designate paragraph (j) as paragraph (j)(1) and to add paragraphs (j)(2) through (j)(5).[1825] Section 15E(j)(1) of the Exchange Act contains a self-executing provision that requires that an NRSRO designate an individual (the ''designated compliance officer'') responsible for administering the policies and procedures that are required to be established pursuant to sections 15E(g) and (h) of the Exchange Act,[1826] and for compliance with the securities laws and the rules and regulations under the securities laws, including those promulgated by the Commission under section 15E of the Exchange Act.[1827] Sections 15E(j)(2) through (4) of the Exchange Act contain self-executing requirements with respect to, among other things, the activities, duties, and compensation of the designated compliance officer.[1828]

Section 15E(j)(5)(A) of the Exchange Act contains a self-executing requirement that the designated compliance officer must submit to the NRSRO an annual report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO that includes: (1) A description of any material changes to the code of ethics and conflict of interest policies of the NRSRO; and (2) a certification that the report is accurate and complete.[1829] Section 15E(j)(5)(B) of the Exchange Act contains a self-executing requirement that the NRSRO shall file the report required under section 15E(j)(5)(A) together with the financial report that is required to be submitted to the Commission under section 15E of the Exchange Act.[1830]

Section 15E(k) of the Exchange Act provides that each NRSRO shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[1831] The Commission implemented section 15E(k) by adopting Rule 17g–3.[1832] Therefore, under the self-executing requirement in section 15E(j)(5)(B) of the Exchange Act, an NRSRO must file the report of the designated compliance officer with the reports required to be filed with the Commission pursuant to Rule 17g–3.[1833]

Before today's amendments, paragraph (a) of Rule 17g–3 required an NRSRO to furnish five or, in some cases, six separate reports within ninety days after the end of the NRSRO's fiscal year and identified the reports that must be furnished.[1834] The first report—on the

[1823] *See* section V.L. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.3. of this release.

[1824] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1825] *See* Public Law 111–203, 932(a)(5); 15 U.S.C. 78o–7(j)(1) through (5).

[1826] *See* 15 U.S.C. 78o–7(g) (''Prevention of misuse of nonpublic information''); 15 U.S.C. 78o–7(h) (''Management of conflicts of interest'').

[1827] *See* 15 U.S.C. 78o–7(j)(1).

[1828] *See* 15 U.S.C. 78o–7(j)(1) through (4).

[1829] *See* 15 U.S.C. 78o–7(j)(5)(A).

[1830] *See* 15 U.S.C. 78o–7(j)(5)(B).

[1831] The Dodd-Frank Act replaced the phrase ''furnish to the Commission'' with the phrase ''file with the Commission'' in section 15E(k) of the Exchange Act. *See* 15 U.S.C. 78o–7(k).

[1832] *See* 17 CFR 240.17g–3; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593.

[1833] *See* 15 U.S.C. 78o–7(j)(5)(B); 15 U.S.C. 78o–7(k); 17 CFR 240.17g–3.

[1834] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33481–33482. As discussed above in section II.A.3. of this release, an NRSRO must file an additional internal controls report and, as discussed below, an NRSRO must file the report

Continued

NRSRO's financial statements—must be audited; the remaining reports may be unaudited.

1. Amendment to Rule 17g–3

The Commission proposed adding paragraph (a)(8) to Rule 17g–3 to identify the report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO required to be filed with the Commission pursuant to section 15E(j)(5)(B) of the Exchange Act as a report that must be filed with the other reports required under Rule 17g–3.[1835] Paragraph (a)(8) of Rule 17g–3 would provide that the report would be ''unaudited.'' [1836] As stated above, section 15E(j)(5)(A)(ii) of the Exchange Act provides that the designated compliance officer must certify that the report is accurate and complete.

Commenters addressed this proposal.[1837] One commenter supported the Commission's proposal to include the report as one of the annual financial reports an NRSRO is required to file with the Commission,[1838] and another stated that the proposed requirement would facilitate effective NRSRO oversight by the Commission.[1839] This commenter stated that the requirement could be strengthened, however, by requiring the annual report be subjected to a third-party audit.[1840] Two commenters stated that the rule should not prescribe how the report must be certified because another section of the Exchange Act already provides that the designated compliance officer must certify that the report is accurate and complete.[1841] Specifically, one commenter stated that this requirement would be ''unnecessarily duplicative.'' [1842] The other commenter stated that the certification already required by section 15E(j)(5)(A)(ii) of the Exchange Act is sufficient.[1843]

The Commission is adopting paragraph (a)(8) to Rule 17g–3 as proposed. In response to the comment suggesting that the Commission require that the report be subject to a third-party audit,[1844] the Commission is not persuaded that such a requirement is necessary at this time, given the cost of requiring a third-party audit. Section 15E(j)(5)(A) of the Exchange Act provides that the report shall be filed with ''together with the financial report that is required to be submitted to the Commission under'' section 15E.[1845] Section 15E(k) provides, in pertinent part, that the financial reports shall be filed on a confidential basis.[1846] Consequently, the report of the designated compliance officer is not a public document that will be relied upon by investors and other users of credit ratings. The report is a non-public report that will be used by Commission examiners, who can consider the accuracy of the report in the context of their annual examinations of NRSROs.[1847] Finally, the Commission agrees with the commenters that it is not necessary to prescribe how the report must be certified because section 15E(j)(5)(A)(ii) of the Exchange Act provides that the designated compliance officer must certify that the report is accurate and complete.[1848]

2. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the amendment regarding the annual report of the designated compliance officer.[1849] The economic baseline which existed before today's amendments was one in which section 15E(j)(5)(A) of the Exchange Act requires that the designated compliance officer of an NRSRO submit to the NRSRO an annual report on the NRSRO's compliance with its policies and procedures and the securities laws, that includes a description of any material changes to the NRSRO's code of ethics and conflicts of interest policies and a certification that the report is accurate and complete. In addition, section 15E(j)(B) of the Exchange Act requires the NRSRO to file the report with the financial report that is required to be submitted to the Commission under section 15E of the Exchange Act. The Commission is adding paragraph (a)(8) to Rule 17g–3 to reflect the baseline requirement that the report must be filed with the other reports filed pursuant to Rule 17g–3. The amendment is not expected to result in benefits or costs relative to the economic baseline and is not expected to affect efficiency, competition, or capital formation.

One reasonable alternative to the amendment, as adopted, is to establish a requirement that the report be audited by a third party, as suggested by one commenter.[1850] This alternative would increase the cost of compliance with the rule, as NRSROs would be required to pay a third party to conduct the audit. However, an audit by a third party may improve the accuracy, reliability, and thoroughness of the report. As a result, this alternative could enhance Commission oversight of NRSROs as well as improve an NRSRO's internal compliance controls, which could improve the integrity and quality of an NRSRO's credit ratings.

As discussed above, the Commission is not persuaded that such a requirement is necessary at this time, given the cost of requiring a third-party audit and how the audit would be used.[1851] The report of the designated compliance officer is not a public document that will be relied upon by investors and other users of credit ratings. Instead, it will be used by Commission examiners, who can consider the accuracy of the report in the context of their annual examinations of NRSROs.

L. Electronic Submission of Form NRSRO and the Rule 17g–3 Annual Reports

1. Amendments to Rule 17g–1, Form NRSRO, Rule 17g–3, and Regulation S–T

Before today's amendments, applicants for registration as an NRSRO and NRSROs submitted Form NRSRO to the Commission in paper form.[1852] In addition, NRSROs submitted their annual reports under Rule 17g–3 in paper form.[1853] The Commission proposed amending Rule 17g–1, the instructions to Form NRSRO, Rule 17g–3, and Regulation S–T [1854] to implement a program for filing Forms NRSRO

of the designated compliance officer. *See* paragraphs (a)(7) and (a)(8) of Rule 17g–3. Consequently, an NRSRO must now file seven or, in some cases, eight reports.

[1835] *See* paragraph (a)(8) of Rule 17g–3, as proposed; *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33481–33482, 33539.

[1836] *See* paragraph (a)(8) of Rule 17g–3, as proposed.

[1837] *See DBRS Letter; Levin Letter; S&P Letter.*

[1838] *See DBRS Letter.*

[1839] *See Levin Letter.*

[1840] *See id.*

[1841] *See DBRS Letter; S&P Letter.*

[1842] *See S&P Letter.*

[1843] *See DBRS Letter.*

[1844] *See Levin Letter.*

[1845] *See* 15 U.S.C. 78o–7(j)(5)(B).

[1846] *See* 15 U.S.C. 78o–7(k).

[1847] The report also will be used as governance tool by the NRSRO to evaluate its compliance with the securities laws and its policies and procedures.

[1848] *See* 15 U.S.C. 78o–7(j)(5)(A)(ii).

[1849] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1850] *See Levin Letter.*

[1851] *See* section II.K.1. of this release (discussing how the report is not a public document that will be relied upon by investors and other users of credit ratings but rather will be used by Commission examiners).

[1852] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33482.

[1853] *See id.* at 33482.

[1854] 17 CFR 232 *et seq.* Regulation S–T contains ''General Rules and Regulations for Electronic Filers.''

(other than in the case of a registration application) and the annual reports electronically.[1855] Under the proposals, an NRSRO would be required to use the Commission's EDGAR system to: (1) Electronically file or furnish, as applicable, Form NRSRO and the information and documents contained in the exhibits required to be submitted with Form NRSRO if the submission is made pursuant to paragraph (e), (f), or (g) of Rule 17g–1 (an update of registration, an annual certification, or a withdrawal from registration, respectively);[1856] and (2) electronically file or furnish, as applicable, the annual reports required by Rule 17g–3.[1857] In the proposing release, the Commission stated that it intended that Form NRSRO would be an electronic, fillable, form and that the exhibits would be submitted with the Form.[1858]

Under the proposal, an applicant or NRSRO would continue to submit in paper format Forms NRSRO pursuant to paragraphs (a), (b), (c), and (d) of Rule 17g–1 (initial applications for registration, applications to register for an additional class of credit ratings, supplements to an initial application or application to register for an additional class of credit ratings, and withdrawals of initial applications or applications to register for an additional class of credit ratings, respectively). The Commission stated in the proposing release that these materials are appropriately received in paper form because of the iterative nature of the NRSRO registration application process.[1859] For example, an applicant often will have a number of phone conferences and meetings with the Commission staff during the application process to clarify the information submitted in the application. These interactions may result in applicants informally providing additional information relating to the application and informally amending or augmenting information provided in the form and its exhibits. The Commission continues to believe paper submissions facilitate this type of iterative process.

The Commission also proposed amending Items A.8 and A.9 of the instructions to Form NRSRO to distinguish between Form NRSRO submissions under paragraph (a), (b), (c), or (d) of Rule 17g–1 and submissions under paragraph (e), (f), or (g) of Rule 17g–1.[1860] Before today's amendments, Item A.8 provided the address of Commission headquarters as the address where a Form NRSRO submitted under paragraph (a), (b), (c), (d), (e), (f), or (g) of Rule 17g–1 must be submitted.[1861] The Commission proposed amending Item A.8 to add above the address a sentence that would instruct an applicant to submit to the Commission at the address indicated two paper copies of a Form NRSRO submitted pursuant to paragraph (a), (b), (c), or (d) of Rule 17g–1 and adding a sentence below the address providing that after registration, an NRSRO must submit Form NRSRO electronically to the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, if the submission is made pursuant to paragraph (e), (f), or (g) of Rule 17g–1.[1862]

Before today's amendments, Item A.9 of the Instructions to Form NRSRO provided that a Form NRSRO will be considered furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form.[1863] The Commission proposed amending the instruction to provide that a Form NRSRO will be considered filed with or furnished to, as applicable, the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form, including the instructions in Item A.8 with respect to how a Form NRSRO must be filed with or furnished to the Commission.[1864]

The Commission proposed amending Rule 17g–3 to add paragraphs (d) and (e).[1865] Proposed paragraph (d) of Rule 17g–3 would provide that the reports required by the rule must be submitted electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[1866] In addition, because the Rule 17g–3 annual reports are not required to be made public, the Commission proposed adding paragraph (e) to Rule 17g–3, which would provide that information submitted on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law and that confidential treatment may be requested by marking each page ''Confidential Treatment Requested'' and by complying with Commission rules governing confidential treatment.[1867]

Electronic submissions using the EDGAR system are subject to Regulation S–T and the EDGAR Filer Manual.[1868] The EDGAR Filer Manual contains detailed technical specifications concerning EDGAR submissions and provides technical guidance concerning how to begin making submissions on EDGAR.

One technical specification the EDGAR Filer Manual includes is the electronic ''submission type'' for each submission made through the EDGAR system, and under the proposal, the EDGAR Filer Manual and the EDGARLink software would provide for two EDGAR electronic submission types: One for the submission of Form NRSRO and one for the submission of the annual reports under Rule 17g–3.[1869]

The Commission proposed amending Rule 101 of Regulation S–T [1870] by adding paragraph (a)(1)(xiv).[1871] Proposed paragraph (a)(1)(xiv) would

[1855] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33482–33485.

[1856] *See id.* at 33538. Under the proposal, the electronic submissions of Form NRSRO and the exhibits required to be submitted with Form NRSRO would be made available to the public on EDGAR immediately upon filing. The amendments to paragraph (f) of Rule 17g–1 referred to a Form NRSRO and Exhibits 1 through 9 as the submissions that would be required to be made electronically. The proposed amendments to paragraph (e) of Rule 17g–1 also referred to a Form NRSRO and Exhibits 1 through 9. However, Exhibit 1 (performance statistics) should not have been included with respect to the proposed amendments to paragraph (e) because section 15E(b)(1)(A) of the Exchange Act provides that NRSROs are not required to update performance statistics if they becomes materially inaccurate, but that NRSROs must file updated performance statistics with the annual certification. Accordingly, as adopted, the amendments to paragraph (e) of Rule 17g–1 refer to Exhibits 2 through 9 to Form NRSRO. The proposed amendments to paragraph (g) of Rule 17g–1 did not refer to exhibits to Form NRSRO because an NRSRO is not required to include exhibits to Form NRSRO with a notice of withdrawal from registration under this paragraph.

[1857] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539. Under the proposal, the electronic submission of the annual reports required under Rule 17g–3 would not be available to the public. The information submitted under Rule 17g–3 is, and would continue to be, kept confidential to the extent permitted by law.

[1858] *See id.* at 33483.

[1859] *See id.*

[1860] *See id.* at 33552.

[1861] *See id.* at 33483.

[1862] *See id.* at 33552.

[1863] *See id.* at 33483.

[1864] *See id.* at 33552.

[1865] *See id.* at 33484.

[1866] *See id.* at 33539.

[1867] *See id.*

[1868] *See* 17 CFR 232.101 *et seq. See also EDGAR Filer Manual, available at http://www.sec.gov/info/edgar/edmanuals.htm; Information for EDGAR Filers, available at http://www.sec.gov/info/edgar.shtml#guidance.*

[1869] *See, e.g., EDGAR Filer Manual,* Vol. II, section 5.1 (''Non-Public and Confidential''), section 5.4 (''Document Types in EDGAR''), *available at http://www.sec.gov/info/edgar/edgarfm-vol2-v26.pdf.*

[1870] 17 CFR 232.101(a)(1).

[1871] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33484.

identify the Forms NRSRO and the information and documents submitted in Exhibits 1 through 9 to Form NRSRO submitted to the Commission under paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted under Rule 17g–3 as submissions to the Commission that must be made in electronic format.[1872]

The Commission also proposed an amendment to Rule 201 of Regulation S–T.[1873] Rules 201 and 202 [1874] of Regulation S–T address hardship exemptions from EDGAR filing requirements, and paragraph (b) of Rule 13 of Regulation S–T [1875] addresses the related issue of filing date adjustments. Under Rule 201, if an electronic filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file a properly legended paper copy of the filing under cover of Form TH [1876] no later than one business day after the date on which the filing was to be made.[1877] A filer who files in paper form under the temporary hardship exemption must submit an electronic copy of the filed paper document within six business days of the filing of the paper document.[1878]

In addition, an electronic filer may apply for a continuing hardship exemption under Rule 202 of Regulation S–T if it cannot file all or part of a filing without undue burden or expense.[1879] The application must be made at least ten business days before the due date of the filing. In contrast to the self-executing temporary hardship exemption process, a filer can obtain a continuing hardship exemption only by submitting a written application, upon which the Commission, or the Commission staff pursuant to delegated authority, must then act. Under paragraph (b) of Rule 13 of Regulation S–T, if an electronic filer in good faith attempts to file a document, but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request that the Commission grant an adjustment of the filing date.

The Commission proposed making the temporary hardship exemption in Rule 201 unavailable for the submissions of Form NRSRO and the information and documents submitted in Exhibits 1 through 9 to Form NRSRO under paragraph (e), (f), or (g) of Rule 17g–1 and the annual reports required under Rule 17g–3 by amending the introductory text of paragraph (a) of Rule 201 of Regulation S–T to add this group of submissions to the list of submissions for which the temporary hardship exemption is unavailable.[1880] An NRSRO would continue to have the ability to apply for a continuing hardship exemption under Rule 202 if it could not submit all or part of an application without undue burden or expense or for an adjustment of the due date under paragraph (b) of Rule 13 if there were technical difficulties beyond the NRSRO's control.

The Commission received three comments that addressed these proposals.[1881] One commenter stated that it supported the proposal, and that having information available immediately and in one location would benefit users of credit ratings by making it easier to access information about NRSROs and to compare the information provided by different NRSROs.[1882] An NRSRO stated that it would have no objection to the proposal, that providing the information as PDF documents would be ''the preferred and simplest'' way to provide the information, and that providing the information in XBRL or XML format would not provide additional analytical benefit and could make it more difficult for users to access Form NRSRO.[1883] This commenter also stated, however, that the temporary hardship exemption should be available for electronic filings of Form NRSRO.

One NRSRO objected to the proposal, stating that the Commission ''vastly overstated the benefits and understated the costs'' of the proposal.[1884] The commenter stated that having the public information available immediately and in one place would not be useful to users of credit ratings, as the information is not time-sensitive and it is relatively easy to retrieve the information from the NRSROs' Web sites. This commenter also stated that the Commission did not estimate ''the expense an NRSRO would incur in compiling Form NRSRO, its exhibits, and the annual reports into an EDGAR-acceptable format'' and that the Commission underestimated the costs of becoming familiar with Regulation S–T and the EDGAR Filer Manual and other ''start-up tasks'' as well as ongoing expenses. In addition, the commenter stated that requiring that the documents be submitted in XBRL format would increase costs without conferring benefits. The commenter suggested, alternatively, that NRSROs be required to make the submissions as PDF documents via electronic mail to a designated Commission email address, with confidential information encrypted before transmission.

The Commission is adopting the amendments to Rule 17g–1, Form NRSRO, Rule 17g–3, and Regulation S–T substantially as proposed, with modifications, in response to comment.[1885] The amendments specify that the information that is required to be submitted to the Commission electronically on EDGAR be submitted as PDF documents and, in contrast to the proposal, make the temporary hardship exemption in Rule 201 of Regulation S–T available for these submissions.

In response to the comment objecting to the proposal, stating that the Commission underestimated the costs and overstated the benefits of the proposal, and stating that the Commission should instead require that NRSROs email the submissions as PDF documents to the Commission,[1886] the final amendments provide that the submissions must be made as PDF documents, which another NRSRO described as ''the most preferred and simplest'' way to provide the information.[1887] However, in response to this comment, as explained below in the economic analysis, the Commission has increased its estimate of the cost of the proposal. In addition, as explained below in the economic analysis, the Commission agrees with another commenter that the amendments will benefit users of credit ratings [1888] and also that the amendments will benefit NRSROs and Commission staff.

Accordingly, the amendments to paragraphs (e), (f), and (g) of Rule 17g–1, as adopted, provide that a Form NRSRO and the information and documents in the exhibits required to be submitted with the form must be filed electronically with the Commission on EDGAR as a PDF document in the

[1872] *See id.* at 33537.

[1873] 17 CFR 232.201. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33484.

[1874] 17 CFR 232.202.

[1875] 17 CFR 232.13(b).

[1876] 17 CFR 239.65, 249.447, 269.10, and 274.404.

[1877] *See* 17 CFR 232.201(a).

[1878] *See* 17 CFR 232.201(b).

[1879] *See* 17 CFR 232.202(a).

[1880] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33537. The Commission previously has made the temporary hardship exemption unavailable for EDGAR submissions of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) of the Exchange Act. *See Mandated Electronic Filing and Web site Posting for Forms 3, 4 and 5,* Securities Act Release No. 8230 (May 7, 2003), 68 FR 25788 (May 13, 2010).

[1881] *See DBRS Letter; ICI Letter; S&P Letter.*

[1882] *See ICI Letter.*

[1883] *See S&P Letter.*

[1884] *See DBRS Letter.*

[1885] *See DBRS Letter; S&P Letter.*

[1886] *See DBRS Letter.*

[1887] *See S&P Letter.*

[1888] *See ICI Letter.*

format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[1889] Similarly, amended Item A.8 to the Instructions for Form NRSRO has been modified from the proposal to provide that an NRSRO must make these submissions ''electronically on EDGAR as a PDF document in the format required by the EDGAR Filer Manual as defined in Rule 11 of Regulation S–T.'' [1890] The amendments to Instruction A.9 to Form NRSRO, to include a reference to the instructions in Item A.8, are adopted as proposed.[1891]

Paragraph (d) of Rule 17g–3 has similarly been modified from the proposal to provide that the reports must be filed with or furnished to, as applicable, the Commission electronically on EDGAR as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[1892] Paragraph (e) of Rule 17g–3 is adopted as proposed.[1893]

Rule 104 of Regulation S–T [1894] provides for ''unofficial PDF copies'' that are included in electronic submissions through EDGAR. Under the amendments, however, the electronic submissions will be ''official'' filings with the Commission. Accordingly, as adopted, paragraph (xiv) of Regulation S–T adds Form NRSRO and the information and documents in Exhibits 1 through 9 of Form NRSRO, filed with or furnished to, as applicable, the Commission pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports filed with or furnished to, as applicable, the Commission pursuant to Rule 17g–3 as documents that must be filed electronically with the Commission; that the documents must be filed or furnished on EDGAR as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T; and that notwithstanding Rule 104 of Regulation S–T, the PDF documents filed or furnished pursuant to this paragraph will be considered as officially filed with or furnished to, as applicable, the Commission.[1895]

Finally, the Commission is modifying the proposal in response to comment,[1896] to make the temporary hardship exemption in Rule 201 available for the submissions of Form NRSRO and the information and documents submitted in the exhibits that must be filed with the form under paragraph (e), (f), or (g) of Rule 17g–1 and the annual reports required under Rule 17g–3. Accordingly, if an NRSRO has unanticipated technical difficulties beyond its control, such as a power outage or equipment failure, that prevent the timely preparation and submission of an electronic submission, the NRSRO may make the submission in paper form under the temporary hardship exemption under cover of Form TH no later than one business day after the submission was to be made. The NRSRO must submit an electronic copy within six business days of the submission of the paper document. This should mitigate the burden for an NRSRO that experiences a technical problem.

2. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the specific amendments relating to the requirement that NRSROs make certain submissions to the Commission electronically.[1897] The baseline that existed before today's amendments was one in which, as discussed above, applicants for registration as an NRSRO and NRSROs were required to submit Form NRSRO to the Commission in paper form.[1898] In addition, NRSROs were required to submit their annual reports under Rule 17g–3 in paper form.[1899] NRSROs were also required under paragraph (i) of Rule 17g–1 to make the public portions of their most recent Forms NRSRO publicly available within ten business days after submission to the Commission (or, in the case of an application for registration as an NRSRO or for an additional class of credit ratings, within ten business days after a Commission order granting such an application), and did so by posting electronic copies of their current Forms NRSRO and Exhibits 1 to 9 to these forms on their public Web sites. Investors interested in comparing the content of these forms across all NRSROs could visit each of the individual NRSRO Web sites to locate the forms, or use direct hyperlinks to the relevant Web pages published on the Commission's Web site.[1900]

Relative to the baseline, the amendments may provide benefits to users of credit ratings. In the proposing release, the Commission preliminarily identified potential benefits resulting from the proposed amendments.[1901] As discussed above, one commenter stated that having the information available immediately and in one location would benefit users of credit ratings by making it easier to access information about NRSROs and to compare the information provided by different NRSROs.[1902] However, an NRSRO commented that the Commission ''vastly overstated'' the benefits of the proposal.[1903] In response, the Commission more specifically identifies the sources of expected benefits in this release.

The electronic submission of Form NRSRO will allow the Commission to make the public portions of the Form NRSRO of each NRSRO publicly available on EDGAR immediately upon submission. Moreover, past submissions of Form NRSRO on the EDGAR system will remain available even after updated versions are submitted, benefitting users of credit ratings relative to the baseline by maintaining the availability of historical data that they may find useful in evaluating and comparing NRSROs.[1904] The Commission believes that the availability of these forms on EDGAR may also marginally benefit users of credit ratings by reducing the time and effort required to retrieve Forms NRSRO, since they will be consolidated in a single location rather than located on separate Web sites, and potentially reducing (by up to ten days, given the time allowed for NRSROs to post these forms on their Web sites) the delay before the forms are made publicly available. One NRSRO commented that users of credit ratings would be ''far more likely'' to continue to access Forms NRSRO from NRSRO Web sites instead of EDGAR, given that they may use these Web sites to access other useful information.[1905] In response, the Commission notes that Forms NRSRO are likely to be a helpful

[1889] *See* paragraphs (e) through (g) of Rule 17g–1.

[1890] *See* Instruction A.8 to Form NRSRO.

[1891] *See* Instruction A.9 to Form NRSRO.

[1892] *See* paragraph (d) of Rule 17g–3.

[1893] *See* paragraph (e) of Rule 17g–3.

[1894] 17 CFR 232.104.

[1895] *See* paragraph (a)(1)(xiv) of Rule 101 of Regulation S–T.

[1896] *See S&P Letter.*

[1897] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1898] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33482.

[1899] *See id.*

[1900] Hyperlinks to the NRSROs' Forms NRSRO are available on the Commission's Web site at *http://www.sec.gov/ocr.*

[1901] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33531.

[1902] *See ICI Letter.*

[1903] *See DBRS Letter.*

[1904] *See* section II.E.4. of this release (discussing the limitations of interpreting performance statistics computed using the single cohort approach using only the most current Forms NRSRO, since these forms would only contain information about the most recent cohorts of credit ratings).

[1905] *See DBRS Letter.*

starting point for evaluating and comparing NRSROs.

The Commission believes that the electronic submission of the Forms NRSRO and the Rule 17g–3 annual reports may marginally benefit NRSROs because they will avoid the uncertainties, delay, and expense related to the physical delivery of multiple paper copies of the submissions.

The Commission believes that the requirement that Forms NRSRO and the Rule 17g–3 annual reports be submitted through the EDGAR system may promote efficiency. As stated above, the availability of the public portions of Forms NRSRO on EDGAR will provide a centralized location for users of credit ratings to access these disclosures. The electronic submission of Forms NRSRO, including the confidential portions of these forms, and the annual reports, which will not be made public, will also assist the Commission staff in storing and accessing these records in furtherance of the Commission's NRSRO oversight function. To the extent that the ready access to the public portions of the current and, in the future, previous Forms NRSRO on EDGAR improves the ability of users of credit ratings to evaluate and compare NRSROs, the electronic submission requirement may also indirectly enhance competition.[1906]

These amendments will result in compliance costs to NRSROs, including costs to gain access to and become familiar with the EDGAR system. In the proposing release, the Commission stated that it believed that the initial costs to become familiar with the EDGAR system and adopt processes for using the system would be minimal and that the annual costs would be no greater than the costs attributable to paper submissions.[1907] One NRSRO commented that the Commission understated the initial costs of the proposal as ''an NRSRO will have to familiarize itself with the roughly 35 Rules of Regulation S–T as well as the first two volumes of the EDGAR Filer Manual (which currently total more than 600 pages) and related EDGAR technical guidance.'' [1908] However, the commenter did not provide a different estimate of the cost associated with the proposal.[1909] In response to this comment, the Commission notes that not all of Regulation S–T or the EDGAR Filer Manual applies to NRSRO submissions. In addition, the Commission has published on its Web site staff guidance for EDGAR filers and staff answers to frequently asked questions that may reduce the time required for NRSROs to familiarize themselves with the EDGAR system. Nonetheless, as discussed in section IV.D.1. of this release, the Commission has revised its estimate of the time required for an NRSRO to become familiar with the EDGAR system. The same commenter also stated that the Commission failed to consider the significant annual costs of monitoring changes in EDGAR filing requirements, but the commenter did not provide an estimate of these costs.[1910] In response, the Commission has added an estimated annual burden attributable to monitoring changes in EDGAR filing requirements.[1911] The Commission's estimates of these costs are provided below.

As discussed above, the Commission has also modified the requirement to submit certain Forms NRSRO and annual reports under Rule 17g–3 to the Commission electronically. One NRSRO described documents in PDF format as ''the most preferred and simplest'' way to provide the information.[1912] Another NRSRO commented that submission formats other than PDF would require ''very expensive'' reformatting and, because NRSROs post PDF versions of Form NRSRO on their Web sites, would result in costs of ''producing two sets of these documents in two different electronic formats on an ongoing basis.'' [1913] In response to these comments, the Commission has modified the proposed amendments to require that the electronic submissions be made on EDGAR as PDF documents.

Based on analysis for purposes of the PRA, the Commission estimates that the amendments to Rule 17g–1, Form NRSRO, Rule 17g–3, and Regulation S–T regarding electronic submission of certain Forms NRSRO and NRSRO annual reports under Rule 17g–3 will result in total industry-wide one-time costs to NRSROs of approximately $46,000 and total industry-wide annual costs to NRSROs of approximately $6,000.[1914]

As discussed above, the Commission has modified the proposal to make the temporary hardship exemption available to NRSROs. Because the temporary hardship exemption process is self-executing, the Commission expects that any costs borne by NRSROs when availing of the temporary hardship exemption, including the cost to make the submission in paper form under the cover of Form TH, will be *de minimis.* Also, given that the Commission has simplified the technical requirements for the submissions by requiring PDF rather than XML or XBRL documents, and that the temporary hardship exemption will be available if an NRSRO nonetheless experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the Commission does not expect NRSROs to apply for continuing hardship exemptions.

As discussed above, one reasonable alternative to the Commission's approach would be to require that the electronic submissions be made in XBRL or XML format. Two NRSROs stated that such formats would not provide incremental benefits, while one of these commenters stated that requiring such formats ''would substantially increase an NRSRO's costs'' and the other noted that ''a detailed technical analysis would need to be performed to determine the impact and any associated costs.'' [1915] However, one commenter suggested that requiring Exhibit 1 to Form NRSRO in particular to be submitted in XML or XBRL format would benefit investors, regulators, and other market participants.[1916] While the Commission agrees that submissions in these formats may benefit certain users of credit ratings by facilitating the comparative analysis of the quantitative data in the forms over time and across NRSROs, the Commission is sensitive to the concerns raised by NRSROs and has determined not to impose at this time a requirement that the submissions be made in XML or XBRL formats, in part to limit the additional compliance costs that would be borne by NRSROs. One NRSRO suggested that PDF copies of the required submissions should be transmitted via email, with the confidential submissions being encrypted before transmission.[1917] While such an approach may reduce the compliance costs associated with electronic submission, the Commission

[1906] *See* section I.B.3. of this release (providing a broader discussion of the potential impacts of the amendments and new rules on efficiency, competition, and capital formation).

[1907] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33531.

[1908] *See DBRS Letter.*

[1909] *See id.*

[1910] *See id.*

[1911] *See* section IV.D.1. of this release.

[1912] *See S&P Letter.*

[1913] *See DBRS Letter.*

[1914] *See* section V.N. of this release (discussing implementation and annual compliance considerations). The one-time and annual costs are determined by monetizing internal hour burdens and adding external costs identified in the PRA analysis in section IV.D.1. and section IV.D.12. of this release.

[1915] *See DBRS Letter; S&P Letter.*

[1916] *See CFA II Letter.*

[1917] *See DBRS Letter.*

believes that the costs of using the EDGAR system are balanced by the benefits discussed above of using this system not only for delivery of electronic submissions to the Commission, but also for the dissemination and storage of these submissions.

M. Other Amendments

The Commission proposed additional amendments to several NRSRO rules in response to amendments the Dodd-Frank Act made to sections of the Exchange Act that authorize or otherwise are relevant to these rules and to clarify certain provisions of the NRSRO rules.[1918] The Commission is adopting these amendments as proposed.[1919]

1. Changing ''Furnish'' to ''File''

Before the enactment of the Dodd-Frank Act, the Exchange Act contained provisions requiring NRSROs to ''furnish'' certain items to the Commission. For example, section 15E(k) of the Exchange Act required NRSROs to ''furnish'' financial information to the Commission.[1920] Section 932(a) of the Dodd-Frank Act amended several Exchange Act provisions relating to NRSROs to replace the word ''furnish'' with the word ''file'' in section 15E(b) (which addresses NRSRO submission of updates of registration and annual certifications to the Commission); section 15E(d) (which addresses Commission sanctions on NRSROs); section 15E(k) (which addresses NRSRO submission of financial information to the Commission); and section 15E(l) (which provides that registration under section 15E of the Exchange Act is the sole method of registration as an NRSRO).[1921] For example, section 15E(b)(2), as amended, provides that an NRSRO shall ''file'' its annual certification with the Commission. In accordance with the Dodd-Frank Act amendment to section 15E(b) of the Exchange Act, the Commission proposed amending paragraphs (e) and (f) of Rule 17g–1, which address the submission of updates of registration and annual certifications, respectively, to require that the Forms NRSRO submitted to the Commission under those provisions be filed with, rather than furnished to, the Commission.[1922] Similarly, in accordance with the Dodd-Frank Act amendment to section 15E(k) of the Exchange Act, the Commission proposed amending paragraphs (a)(1) through (a)(5) of Rule 17g–3 to require that the reports submitted to the Commission under those provisions be filed with, rather than furnished to, the Commission.[1923]

The Dodd-Frank Act, however, did not replace the word ''furnish'' with the word ''file'' in sections 15E(a) and 15E(e) of the Exchange Act (which address the submission of initial applications for registration as an NRSRO and the submission of voluntary withdrawals from registration, respectively), or in section 17(a)(1) of the Exchange Act (which provides the Commission with authority to, among other things, require NRSROs to furnish reports to the Commission).[1924]

The Commission stated in the proposing release that it preliminarily believed that the failure to replace the word ''furnish'' with the word ''file'' in section 15E(a) of the Exchange Act was an inadvertent omission.[1925] For example, section 15E(b)(1) of the Exchange Act, as amended by the Dodd-Frank Act, refers to information ''required to be *filed*'' under section 15E(a)(1)(B)(i) of the Exchange Act (emphasis added).[1926] Similarly, section 15E(d)(1)(B) of the Exchange Act, as amended by the Dodd-Frank Act, refers to ''the date on which an application for registration is *filed* with the Commission'' (emphasis added).[1927] In addition, the legislative history of section 932(a) states that ''[Title IX, Subtitle C, of the Dodd-Frank Act] requires all references to 'furnish' be replaced with the word 'file' in existing law.'' [1928] Consequently, the Commission proposed amending paragraphs (a), (b), and (c) of Rule 17g–1 (which address initial applications for registration as an NRSRO, applications to register for an additional class of credit ratings, and supplementing an application, respectively) to substitute the words ''file with the Commission two paper copies of'' in place of the words ''furnish the Commission with.'' [1929]

The Commission did not propose replacing the word ''furnish'' with the word ''file'' in paragraph (d) of Rule 17g–1 (which addresses the withdrawal of an application for registration) or in paragraph (g) of Rule 17g–1 (which addresses the submission of voluntary withdrawals from registration).[1930] Consequently, as proposed, when referencing the submission of Form NRSRO to the Commission, paragraphs (h) and (i) of Rule 17g–1 (which include provisions relating to when a Form NRSRO will be considered filed with or furnished to the Commission and the public availability of Form NRSRO, respectively) would use phrases such as ''filing with or furnishing to, as applicable.'' [1931]

The Commission also did not propose to amend paragraph (a)(6) of Rule 17g–3 to treat the report identified in that paragraph (an unaudited report of the number of credit rating actions taken during the fiscal year) as a filing. That paragraph was adopted under section 17(a)(1) of the Exchange Act.[1932] Section 17(a)(1) of the Exchange Act provides that any report an NRSRO ''is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.'' [1933] As stated above, the Dodd-Frank Act did not amend this provision.

The Commission proposed amending Form NRSRO and the instructions to Form NRSRO to conform the form and its instructions to the proposed amendments discussed above.[1934] Under the proposed amendments, Form NRSRO and the Instructions to Form NRSRO would use the word ''file'' instead of the word ''furnish'' when referring to a Form NRSRO submitted

[1918] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33485–33489.

[1919] The Commission is also making a technical amendment to paragraphs (e) and (f) of Rule 17g–1 to replace the phrase ''Exhibits . . . of Form NRSRO'' to the phrase ''Exhibits. . . to Form NRSRO'' for consistency with paragraph (i) of Rule 17g–1 and a technical amendment to paragraph (i) of Rule 17g–1 to replace the word ''paragraphs'' with the word ''paragraph.''

[1920] *See* Public Law 109–291, 4(a) (adding section 15E to the Exchange Act).

[1921] *See* Public Law 111–203, 932(a); 15 U.S.C. 78o–7(b), (d), (k), and (l). Among other things, an application, report, or document ''filed'' with the Commission pursuant to the Exchange Act or rules under the Exchange Act is subject to the provisions of section 18 of the Exchange Act. *See* 15 U.S.C. 78o–7r. As explained below, however, the Dodd-Frank Act did not replace all references in Exchange Act provisions relating to NRSROs from ''furnish'' to ''file.''

[1922] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33538.

[1923] *See id.* at 33539. The Commission adopted paragraphs (a)(1) through (a)(5) of Rule 17g–3 under section 15E(k). *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593.

[1924] *See* 15 U.S.C. 78o–7(e); 15 U.S.C. 78q(a)(1).

[1925] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33485.

[1926] *See* 15 U.S.C. 78o–7(a)(1)(B)(i).

[1927] *See* 15 U.S.C. 78o–7(d)(1)(B).

[1928] *See Conference Report,* H.R. 4173 (June 29, 2010), p. 872.

[1929] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33538.

[1930] *See id.*

[1931] *See id.*

[1932] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6464–6465.

[1933] *See* 15 U.S.C. 78o–7q(a)(1).

[1934] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33546–33561.

under paragraphs (a), (b), (c), (e), and (f) of Rule 17g–1. In addition, in some cases, the Commission proposed using the term ''submit'' when referring to a Form NRSRO that may have been submitted prior to enactment of the Dodd-Frank Act when the submission would have been ''furnished to'' as opposed to ''filed with'' the Commission. The Commission intended the word ''submit'' as used in this context to mean the submission was either ''furnished'' or ''filed'' depending on the applicable securities laws in effect at the time of the submission.

The Commission did not receive comments on the proposals to amend Rule 17g–1, Rule 17g–3, Form NRSRO, and the instructions to Form NRSRO to replace the word ''furnish'' with the word ''file'' and is adopting the amendments as proposed.

2. Amended Definition of NRSRO

The first prong of the definition of *nationally recognized statistical rating organization* in section 3(a)(62) of the Exchange Act, prior to being amended by the Dodd-Frank Act, provided that the entity ''has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E.'' [1935] Section 932(b) of the Dodd-Frank Act deleted this prong of the definition.[1936] Instruction F.4 to Form NRSRO contained a definition of *nationally recognized statistical rating organization* that incorporated the section 3(a)(62) definition as originally enacted.[1937] The Commission proposed amending this definition to conform it to the section 3(a)(62) definition as amended by the Dodd-Frank Act.[1938]

Two NRSROs supported this amendment,[1939] and the Commission is adopting it as proposed.

3. Definition of Asset-Backed Security

Prior to today's amendments, several of the Commission's NRSRO rules had requirements that were specific to credit ratings for structured finance products by providing that the rules apply to credit ratings with respect to ''a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction.'' [1940] This text mirrors the text of section 15E(i) of the Exchange Act, which provides the Commission with authority to prohibit an NRSRO from the practice of ''lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the [NRSRO].'' [1941] The Commission has provided the following interpretation with respect to this text in its rules:

> The term ''structured finance product'' as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. This broad category of financial instrument includes, but is not limited to, asset-backed securities such as residential mortgage-backed securities (''RMBS'') and to other types of structured debt instruments such as collateralized debt obligations (''CDOs''), including synthetic and hybrid CDOs, or collateralized loan obligations (''CLOs'').[1942]

Section 941(a) of the Dodd-Frank Act amended section 3 of the Exchange Act to add paragraph (a)(79), which defines the term *asset-backed security*.[1943] The Exchange Act definition of *asset-backed security* includes a ''collateralized mortgage obligation.'' [1944] Consequently, the Commission stated in the proposing release that the current identification of structured finance products in the Commission's rules (namely, ''a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction'') may have redundant terms because the new definition of *asset-backed security* in section 3(a)(79) of the Exchange Act as an ''asset-backed securities transaction'' would include a ''mortgage-backed securities transaction.'' [1945] Consequently, the Commission stated in the proposing release that it preliminarily believed that the inclusion of the term ''mortgage-backed securities transactions'' in certain of the Commission's NRSRO rules may be redundant.[1946] The Commission therefore proposed deleting the term ''or mortgage-backed'' from the identification of structured finance products in these rules.[1947] One NRSRO supported the proposal,[1948] and another NRSRO stated that it would not change the requirements of the affected rules.[1949] The Commission is adopting the amendments as proposed.

4. Other Amendments to Form NRSRO

The Commission proposed clarifying amendments to Form NRSRO to better ensure that disclosures on Form NRSRO are consistent across applicants and NRSROs.[1950]

a. Clarification With Respect to Items 6 and 7

Items 6 and 7 of Form NRSRO elicit information concerning the number of credit ratings an applicant or NRSRO has outstanding in each class of credit ratings for which the applicant is applying to be registered or for which the NRSRO is registered, respectively.[1951] Item 6 applies to initial applications for registration as an NRSRO, application supplements, and applications to add a class of credit ratings. Item 7 applies for updates of registration, annual certifications, withdrawals from registration, and applications to add a class of credit ratings. The classes of credit ratings for which an NRSRO can be registered are: (1) Financial institutions, brokers, or dealers; [1952] (2) insurance companies; [1953] (3) corporate issuers; [1954] (4) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of Title 17, Code of Federal Regulations, ''as in effect on the date of enactment of this paragraph''); [1955] and (5) issuers of government securities, municipal securities, or securities issued by a foreign government.[1956]

NRSROs have raised questions about how they should count the number of credit ratings outstanding in a given class of credit ratings for the purposes

[1935] *See* Public Law 109–291, 3(a) (adding section 3(a)(62) to the Exchange Act).

[1936] *See* Public Law 111–203, 932(b).

[1937] This instruction, ''Explanation of Terms,'' was numbered as ''Instruction F'' before today's amendments. It should have been numbered as ''Instruction I.''

[1938] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33560. The Instruction is numbered I.4 in the Instructions to Form NRSRO.

[1939] *See DBRS Letter; S&P Letter.*

[1940] *Nationally Recognized Statistical Rating Organizations,* 76 FR at 33486 (referencing paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2, paragraph (a)(6) of Rule 17g–3, paragraphs (a)(3) and (b)(9) of Rule 17g–5, and paragraph (a)(4) of Rule 17g–6).

[1941] *See* 15 U.S.C. 78o–7(i).

[1942] *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63832, footnote 3 (Dec. 4, 2009).

[1943] *See* Public Law 111–203, 941(a); 15 U.S.C. 78c(a)(77).

[1944] *See* 15 U.S.C. 78c(a)(77)(A)(i).

[1945] *See* 15 U.S.C. 78c(a)(77)(A).

[1946] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33486–33487; 15 U.S.C. 78c(a)(79)(A).

[1947] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33539–33540.

[1948] *See DBRS Letter.*

[1949] *See S&P Letter.* The Commission agrees with the commenter.

[1950] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33487–33489.

[1951] *See* Form NRSRO, Items 6–7.

[1952] *See* 15 U.S.C. 78c(a)(62)(A)(i).

[1953] *See* 15 U.S.C. 78c(a)(62)(A)(ii).

[1954] *See* 15 U.S.C. 78c(a)(62)(A)(iii).

[1955] *See* 15 U.S.C. 78c(a)(62)(A)(iv).

[1956] *See* 15 U.S.C. 78c(a)(62)(A)(v).

of Form NRSRO.[1957] For example, the GAO has found that some NRSROs counted the number of issuers rated but not the number of securities or money market instruments rated, some NRSROs counted the number of securities or money market instruments rated and excluded the number of rated obligors in the total, and some NRSROs counted the number of obligors, securities, and money market instruments rated.[1958]

The Commission's intent in Items 6 and 7 is to elicit the total number of obligors, securities, and money market instruments in a given class of credit ratings for which the applicant or NRSRO has assigned a credit rating that was outstanding as of the applicable date (the date of the application in the case of Item 6 and the date of the most recent calendar year-end in the case of Item 7). Consequently, the Commission proposed amending Items 6.A and 7.A of Form NRSRO to specify that an applicant or NRSRO must provide the ''approximate number of obligors, securities, and money market instruments'' for each class of credit ratings for which the applicant or NRSRO has an outstanding credit rating.[1959]

In addition, the Commission proposed amending Instruction H to Form NRSRO (as it relates to Items 6.A and 7.A) in four ways.[1960] First, in conformity with the proposed amendments to the text of Items 6.A and 7.A in the Form, the instructions would be amended to provide that the applicant or NRSRO must, for each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the applicant or NRSRO presently has a credit rating outstanding as of the date of the application (Item 6.A) or had a credit rating outstanding as of the most recently ended calendar year (Item 7.A).

Second, Instruction H was proposed to be amended to provide that the applicant or NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer.[1961] This proposed instruction was designed to clarify that each security or money market instrument of an issuer must be included in the count if it is assigned a credit rating by the applicant or NRSRO. For example, if the issuer is in the structured finance class, each tranche of the structured finance product that is assigned a credit rating must be included in the count. In addition, if an issuer issues securities or money market instruments that have different maturities, the applicant or NRSRO must include each such security in the count if the NRSRO assigns a credit rating to the security or money market instrument.

Third, Instruction H was proposed to be amended to provide that the applicant or NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating.[1962] In other words, the applicant or NRSRO cannot double count an obligor, security, or money market instrument by including it in the totals for two or more classes of credit ratings. For example, some securities have characteristics that could cause an applicant or NRSRO to classify them as municipal securities or structured finance products.[1963] Nonetheless, under the proposed amendment, the applicant or NRSRO would need to select the most appropriate class for the security or money market instrument and include it in the count for that class.

Fourth, Instruction H was proposed to be amended to provide that the applicant or NRSRO must include in the class of credit ratings described in section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities), to the extent not described in section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction.[1964] Section 3(a)(62)(B)(iv) contains a narrower definition of *asset-backed security* than the Commission uses for the purposes of its NRSRO rules.[1965] In fact, the definition is narrower than the new definition of *asset-backed security* in section 3(a)(79) of the Exchange Act.[1966] The Commission intends an applicant and an NRSRO to use the broader definition that captures all structured finance products when providing the number of credit ratings outstanding in this class. The proposed amendments to Instruction H to Form NRSRO were designed to make this intention more clear.

Two NRSROs supported the proposed amendments to Items 6 and 7 of Form NRSRO and the related Instructions to Form NRSRO.[1967] The Commission is adopting them as proposed.

Because some obligors, securities, and money market instruments have characteristics that could cause them to be assigned to more than one class of credit rating, the Commission sought comment on which class would be the most appropriate for these types of obligors, securities, and money market instruments. For example, the Commission requested comment on how tax-exempt housing bonds should be classified for purposes of Items 6 and 7 of Form NRSRO.[1968] Several NRSROs provided comment in response to this request.[1969] One NRSRO stated that the Commission should create a new subclass of credit ratings under the insurance company class to distinguish traditional insurance companies from the special-purpose vehicles set up solely to provide reinsurance to insurance carriers.[1970] Two NRSROs stated that tax-exempt housing bonds should be classified in the category for issuers of government securities; supra-national issuers should be classified in the category for issuers of government securities; and covered bonds should be classified in the category for financial institutions.[1971] One NRSRO stated that if a municipality issues securities on behalf of a for-profit healthcare company, the securities should be classified as government securities, and that securitizations of healthcare receivables and insurance-linked securities are both typically classified in the asset-backed security category.[1972] Another NRSRO stated that covered bonds that are effectively ''repackaged'' should be classified as issuers of asset-backed securities; that healthcare revenue bonds or industrial revenue bonds should be classified as corporate

[1957] *See, e.g.,* GAO Report 10–782, pp. 46–47.

[1958] *See id.*

[1959] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33487–33488, 33547–33549.

[1960] *See id.* at 33487–33488, 33554–33555.

[1961] *See id.*

[1962] *See id.*

[1963] For example, tax exempt housing bonds share characteristics of both municipal securities and structured finance products.

[1964] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33487–33488, 33554–33555.

[1965] *Compare* 15 U.S.C. 78c(a)(62)(B)(iv), *with:* Instructions for Exhibit 1 to Form NRSRO; paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2; paragraph (a)(6) of Rule 17g–3; paragraphs (a)(3) and (b)(9) of Rule 17g–5; and paragraph (a)(4) of Rule 17g–6.

[1966] *Compare* 15 U.S.C. 78c(a)(62)(B)(iv), *with* 15 U.S.C. 78c(a)(79).

[1967] *See DBRS Letter; S&P Letter.*

[1968] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33488.

[1969] *See A.M. Best Letter; DBRS Letter; S&P Letter.*

[1970] *See A.M. Best Letter.*

[1971] *See DBRS Letter; S&P Letter.*

[1972] *See DBRS Letter.*

securities; that insurance-linked securities should be classified as insurance companies; that energy prepay transactions should be classified as a corporate issuer; and that Airline Enhanced Equipment Trust Certificates should be classified as corporate debt.[1973]

Given the complexity of trying to classify every type of obligor, security, or money market instrument that potentially could straddle two or more classes of credit ratings, the Commission is deferring making specific classifications for purposes of Items 6 and 7 of Form NRSRO. Instead, an NRSRO should make reasonable and consistent judgments about the classification of these types of obligors, securities, and money instruments.

b. Clarification With Respect to Exhibit 8

The Commission proposed amending Instruction H to Form NRSRO as it relates to Exhibit 8.[1974] Exhibit 8 requires an applicant or NRSRO to provide the number of credit analysts it employs and the number of its credit analyst supervisors. The Commission proposed two amendments to the instructions for Exhibit 8. The first amendment would delete a parenthesis that instructs the applicant or NRSRO to ''see definition below'' of the term *credit analyst* because that term is not defined in the Form. The second amendment would clarify that the applicant or NRSRO, in providing the number of its credit analysts, should include the number of its credit analyst supervisors. This was designed to ensure that the disclosures in Form NRSRO are consistent across applicants and NRSROs.[1975]

One NRSRO stated that it supported the proposal to amend Instruction H as it relates to Exhibit 8 to Form NRSRO,[1976] and the Commission is adopting it as proposed.

c. Clarification With Respect to Exhibits 10 Through 13

Before today's amendments, paragraph (i) of Rule 17g–1 required an NRSRO to make its current Form NRSRO and information and documents submitted in Exhibits 1 through 9 to Form NRSRO publicly available on its Internet Web site, or through another comparable, readily accessible means within ten business days after the date of the Commission order granting an initial application for registration or an application to register for an additional class of credit ratings and within ten business days after submitting a Form NRSRO under paragraph (e), (f), or (g) of Rule 17g–1 (an update of registration, an annual certification, or a withdrawal from registration).[1977] An NRSRO is not required to make Exhibits 10 through 13 to Form NRSRO publicly available or update them after registration. Instead, an NRSRO must provide similar information in the annual reports required to be filed with the Commission under Rule 17g–3.[1978] In the past, some NRSROs have submitted the annual reports required by Rule 17g–3 in the form of Exhibits 10 through 13, on a confidential basis, as part of the annual certification. Consequently, the Commission proposed amending Instruction H as it relates to Exhibits 10 through 13 to add a ''Note'' instructing that after registration, Exhibits 10 through 13 should not be updated with the filing of the annual certification, but that similar information must be filed with the Commission not more than ninety days after the end of each fiscal year under Rule 17g–3.[1979]

One NRSRO supported the proposal to amend Instruction H as it relates to Exhibits 10 through 13 to Form NRSRO,[1980] and the Commission is adopting it as proposed.

5. Economic Analysis

This section builds on the economic analysis in section I.B. of this release by presenting a focused analysis of the potential economic effects that may derive from the additional amendments to several NRSRO rules made in response to amendments the Dodd-Frank Act made to sections of the Exchange Act that authorize or otherwise are relevant to these rules and to clarify certain provisions of the NRSRO rules.[1981] Many of these amendments clarify what is required of NRSROs by making terms in Commission rules applicable to NRSROs consistent with the amendments that the Dodd-Frank Act made to terms in section 15E of the Exchange Act. These clarifying amendments—including the replacement of ''furnish'' with ''file'' with respect to updates of registration and annual certifications and the amended definitions of *nationally recognized statistical rating organization* and *asset-backed security*—should result in no incremental costs and may benefit NRSROs by removing the potential ambiguity caused by inconsistent terms.

As discussed above, beyond these clarifying amendments made for consistency with section 15E of the Exchange Act, the Commission has adopted amendments to replace the word ''furnish'' with the word ''file'' in paragraphs (a), (b), and (c) of Rule 17g–1 (which address initial applications for registration as an NRSRO, applications to register for an additional class of credit ratings, and supplementing an application, respectively) based on its belief, as stated in the proposing release, that the failure to make this replacement in section 15E(a) of the Exchange Act was an inadvertent omission and that the legislative history of the Dodd-Frank Act states that the statute requires all references to ''furnish'' to be replaced with ''file.''[1982] These replacements of ''furnish'' with ''file'' may cause applicants for registration as an NRSRO and NRSROs applying to register for an additional class of credit ratings to take the same care in composing these applications as they would in any updates of registration and annual certifications (which are required to be ''filed'' under the baseline), given that section 18 of the Exchange Act imposes liability for material misstatements or omissions contained in reports and other information filed with the Commission, which may result in marginal incremental costs to these applicants.

The amendments discussed in section II.M.4. of this release regarding clarifications to the instructions to Form NRSRO should benefit users of credit ratings. The use by NRSROs of different approaches to computing the numbers of outstanding credit ratings, credit rating analysts, and credit rating analyst supervisors reported in Form NRSRO—without disclosing the method employed—has made it difficult to interpret and compare these numbers in the past.[1983] The amendments therefore

[1973] *See S&P Letter.*

[1974] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33489, 33555.

[1975] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33489.

[1976] *See DBRS Letter.*

[1977] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33489.

[1978] *See* 17 CFR 240.17g–3.

[1979] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33489, 33559–33560.

[1980] *See DBRS Letter.*

[1981] The economic analysis in section I.B. of this release discusses the primary economic impacts that may derive from the amendments and new rules being adopted today.

[1982] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33485.

[1983] *See, e.g.,* GAO Report 10–782, p. 46–47. In its review of the disclosure of outstanding credit ratings, the GAO concluded that ''[b]ecause of the inconsistencies in how the NRSROs count their total outstanding ratings, users cannot rely on the disclosures to assess how broad an NRSRO's coverage is within a particular class of credit ratings.'' The GAO also found that NRSROs did not disclose the methodologies applied to count credit ratings, ''so users have no way of knowing that these differences exist.''

will improve the ability of users of credit ratings to interpret this information regarding the breadth of NRSRO coverage and NRSRO staffing and compare the information across NRSROs. Also, the amendments will allow the Commission to develop a clearer picture of the NRSROs and their activities and thus facilitate the Commission's oversight, which may indirectly lead to enhancements in the quality of credit ratings to the benefit of users of credit ratings. The amendments may impose one-time costs on NRSROs because they may need to adjust their calculations of their numbers of outstanding credit ratings, credit rating analysts, and credit rating analyst supervisors. However, the Commission believes these costs will be *de minimis.*

III. Effective Dates

As discussed below, the Commission is establishing effective dates for the amendments to existing rules and new rules that are intended to take into account the period of time NRSROs, issuers, underwriters, and providers of third-party due diligence services will need in order to establish new, or adapt existing, policies, procedures, controls, systems, standards, and practices to comply with the new requirements. If any provision of these amendments or new rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

A. Amendments Effective Sixty Days After Publication In the ***Federal Register***

The following amendments to existing rules are effective sixty days after this release is published in the **Federal Register**: The amendment to Rule 101 of Regulation S–T; the amendments to paragraphs (e), (f), and (g) of Rule 17g–1; and new paragraph (d) of Rule 17g–3. These amendments require Form NRSRO and applicable exhibits (in the case of an update of registration, an annual certification, or a withdrawal from registration) and the annual reports under Rule 17g–3 to be submitted to the Commission electronically as PDF documents using the Commission's EDGAR system. However, these Forms NRSRO (and applicable exhibits) and the annual reports should continue to be submitted to the Commission in paper form until the Commission provides notice that the EDGAR system is ready to receive the forms and reports and specifies a date on or after which the forms and reports must be submitted through the EDGAR system.

Also effective sixty days after publication in the **Federal Register** are: (1) The amendments to paragraphs (a), (b), (c), (e), and (f) of Rule 17g–1 and paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of Rule 17g–3 replacing the word ''furnish'' with the word ''file;'' (2) the amendments to paragraphs (a), (b), (c), and (d) of Rule 17g–1 requiring two paper copies of submissions; the amendment to paragraph (i) of Rule 17g–1 requiring NRSROs to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of their corporate Internet Web sites and to provide a paper copy of Exhibit 1 to individuals who request a paper copy; (3) the amendments to paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2, the note to paragraph (a)(6) of Rule 17g–3, paragraphs (a)(3) and (b)(9) of Rule 17g–5, and paragraph (a)(4) of Rule 17g–6, which delete the term ''or mortgage-backed'' from the identification of structured finance products; (4) new paragraph (b)(12) of Rule 17g–2, which identifies the internal control structure an NRSRO must establish, maintain, enforce, and document under section 15E(c)(3)(A) of the Exchange Act as a record that must be retained; (5) the amendment to paragraph (c) of Rule 17g–2, which identifies each record an NRSRO must retain until three years after it is replaced with an updated record; (6) the amendment to paragraph (d) of Rule 17g–2, which repeals paragraph (d)(2) (the 10% Rule); (7) new paragraph (a)(8) of Rule 17g–3, which identifies the annual report of the designated compliance officer as one of the unaudited reports that must be filed with the Commission under that rule; (8) new paragraph (e) of Rule 17g–3, which relates to information submitted on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules; (9) new paragraph (f) of Rule 17g–5, which provides that upon written application by an NRSRO, the Commission may exempt, either unconditionally or on specified terms and conditions, the NRSRO from paragraph (c)(8) if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation of the production of credit ratings from sales and marketing activities and the exemption is in the public interest; (10) new paragraph (g) of Rule 17g–5, which provides for penalties the Commission may impose on an NRSRO in a proceeding in which the Commission finds that the NRSRO has violated rules under section 15E(h) of the Exchange Act and the violation affected a credit rating; and (11) the amendments to paragraphs (h) and (i) of Rule 17g–1, paragraphs (b)(1) and (b)(11) of Rule 17g–2, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (b)(1) of Rule 17g–3 and the heading thereof, and paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii)(A), (a)(3)(iii)(B), (a)(3)(iii)(C), (a)(3)(iii)(D), and (e) of Rule 17g–5, which are minor amendments such as wording changes. The Commission did not receive comments specifically addressing the effective date for these amendments and does not believe that additional time is needed in order to prepare for the changes that will result from these amendments.

B. Amendments Effective on January 1, 2015

The Commission is delaying the effective date for new paragraphs (a)(7) and (b)(2) of Rule 17g–3 and the amendments to Form NRSRO until January 1, 2015. The Commission intends that the practical effect of having these amendments become effective on January 1, 2015 is that the first internal controls report required to be submitted by an NRSRO will cover the fiscal year that ends on or after January 1, 2015, and the first annual certification on Form NRSRO that follows the amended instructions for Exhibit 1 relating to performance statistics and the amended instructions to Item 7.A relating to the number of credit ratings outstanding will be required for the annual certifications filed after the end of the 2015 calendar year.

Paragraph (a)(7) of Rule 17g–3 requires an NRSRO to include an additional report—a report on the NRSRO's internal control structure established under section 15E(c)(3)(A) of the Exchange Act—with its annual submission of reports to the Commission pursuant to Rule 17g–3, and paragraph (b)(2) requires the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions to provide a signed statement that must be attached to the report.

One NRSRO stated that the Commission should not require the internal controls report to be submitted until ''the Commission publishes its guidance and provides a reasonable time for the implementation of this guidance to be completed and timely exam feedback is provided.'' [1984] The Commission notes that, in addition to the guidance provided above in section

[1984] *See Morningstar Letter.*

II.A.3. of this release, the final amendment provides more specificity than the proposed rule as to the information that must be included in the internal controls report in terms of assessing the effectiveness of the NRSRO's internal control structure. Moreover, the final amendment specifies when the NRSRO is not permitted to conclude that its internal control structure is effective and includes a description of when a material weakness exists, which will provide greater certainty to NRSROs in terms of how to assess the effectiveness of the internal control structure. The delayed effective date will provide NRSROs with time to prepare processes to obtain the evidentiary matter necessary to make the assessments necessary to support the information that must be provided in the report. Consequently, an NRSRO must begin filing with the Commission an annual internal controls report no later than ninety calendar days after the end of the NRSRO's fiscal year that ends on or after January 1, 2015.[1985]

The amendments to Form NRSRO include the following: (1) The amendment to the instructions for Form NRSRO adding new Instruction A.10, which provides notice to credit rating agencies applying for registration as NRSROs, and NRSROs, that an NRSRO is subject to the fine and penalty provisions and other available sanctions in sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act for violations of the securities laws; (2) the amendment to the instructions for Form NRSRO requiring that Form NRSRO and Exhibits 1 through 9 to Form NRSRO, as applicable, under paragraph (e), (f), or (g) of Rule 17g–1 (an update of registration, an annual certification, or a withdrawal from registration, respectively) be submitted to the Commission electronically as PDF documents using the Commission's EDGAR system;[1986] (3) the clarifying amendments with respect to Items 6 and 7 of Form NRSRO, which elicit information concerning the number of credit ratings an applicant or NRSRO has outstanding in each class of credit ratings for which the applicant is applying to be registered or for which the NRSRO is registered;[1987] (4) the amendments to the instructions for Exhibit 1 to Form NRSRO, which requires standardized ''Transition/Default Matrices'' and prescribes the method of calculating transition and default rates;[1988] and (5) the amendments to Form NRSRO not discussed above, including technical amendments.

C. Amendments and New Rules Effective Nine Months After Publication In the ***Federal Register***

The Commission is delaying the effective date for new paragraphs (a)(9), (b)(13), (b)(14), and (b)(15) of Rule 17g–2, new paragraphs (a)(3)(iii)(E) and (c)(8) of Rule 17g–5, the amendments to paragraphs (c)(6) and (c)(7) of Rule 17g–5, the amendments to paragraphs (a) and (b) of Rule 17g–7, paragraphs (a), (b), (c), and (d) of new Rule 17g–8, new Rule 17g–9, new Rule 17g–10, new Form ABS Due Diligence–15E, new Rule 15Ga–2, and the amendment to Form ABS–15G until nine months after this release is published in the **Federal Register**. This delayed effective date is intended to provide time for NRSROs, issuers, underwriters, and providers of third-party due diligence services to prepare for the changes that will result from these new requirements.

Paragraph (c)(8) of Rule 17g–5 prohibits an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations. The amendments to paragraphs (c)(6) and (c)(7) of Rule 17g–5 remove an ''or'' after paragraph (c)(6) and add an ''or'' after paragraph (c)(7) because of the addition of paragraph (c)(8) to the rule.

The amendments to paragraph (a) of Rule 17g–7 require NRSROs, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action and any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.

One NRSRO urged the Commission to provide ''sufficient lead time'' of ''at least one year'' for complying with the proposed amendments to paragraph (a) of Rule 17g–7 to enable NRSROs to ''employ a rigorous process for developing and testing the changes to software and systems needed to implement the requirement,'' stating that several processes and technological systems would need to be updated and implemented.[1989] Another NRSRO stated that it would take at least 270 days to achieve compliance with the requirements of the proposed rule.[1990] The Commission agrees that NRSROs may need several months to establish new, or adapt existing, policies, procedures, controls, systems, and practices to comply with the new requirements related to the form and certifications to accompany credit ratings. Accordingly, the Commission is delaying the effective date for the amendments to paragraph (a) of Rule 17g–7 until nine months after this release is published in the **Federal Register**.

The amendments to paragraph (b) of Rule 17g–7 recodify requirements formerly prescribed in paragraph (d)(3) of Rule 17g–2 and substantially enhance the requirements, requiring NRSROs to disclose rating history information in XBRL format for free on an easily accessible portion of their Web sites, add more rating histories to the disclosure, provide more information about each rating action, and not remove a rating history from the

[1985] Based on the most recent submissions of Form NRSRO, eight of the NRSROs have December 31 fiscal year ends. Consequently, for these firms, the first internal controls report of the NRSRO must be filed no later than ninety days after December 31, 2015. One NRSRO has a fiscal year end of November 30 and, consequently, the first internal controls report for this firm must be filed no later than ninety days after November 30, 2015. Another NRSRO has a fiscal year end of March 31 and, consequently, the first internal controls report for this firm must be filed no later than ninety days after March 31, 2015. If an NRSRO's fiscal year ends in 2015 before December 31, the NRSRO may submit an internal controls report for that fiscal year that covers the period beginning on January 1, 2015 through the end of the NRSRO's then-current fiscal year. Alternatively, the NRSRO may instead elect to have the report cover its entire fiscal year. *See Frequently Asked Questions Concerning the July 30, 2013 Amendments to the Broker-Dealer Financial Reporting Rule* (Apr. 4, 2014), *available at http://www.sec.gov/divisions/marketreg/amendments-to–broker-dealer-reporting–rule-faq.htm* (providing guidance to broker-dealers with respect to the transition period for a similar reporting requirement).

[1986] As discussed above, NRSROs should continue to submit Forms NRSRO and applicable exhibits to the Commission in paper form until the Commission provides notice that the EDGAR system is ready to receive the forms and specifies a date on and after which the forms and reports must be submitted through the EDGAR system.

[1987] The Commission notes that although the amendments to the instructions for Item 7.A of Form NRSRO will not be effective on December 31, 2014, an NRSRO may elect to use the instructions for Item 7.A that are in effect on that date for purposes of submitting an annual certification covering calendar year 2014.

[1988] The Commission notes that although the amendments to the instructions for Exhibit 1 to Form NRSRO will not be effective on December 31, 2014, an NRSRO may elect to use the instructions for Exhibit 1 that are in effect on that date for purposes of submitting an annual certification covering calendar year 2014.

[1989] *See Moody's Letter; see also Morningstar Letter.*

[1990] *See DBRS Letter.*

disclosure until fifteen years after the NRSRO withdraws the rating.

One NRSRO stated that implementing the changes required in proposed paragraph (b) of Rule 17g–7 would generally require ''significant lead time,'' [1991] and another NRSRO stated that it would take at least 270 days to achieve compliance with the proposed rule.[1992] A third NRSRO requested that the Commission provide more time to comply with the proposed new requirements to NRSROs offering subscription-based services which include frequent surveillance.[1993] The Commission agrees that NRSROs may need several months to establish new, or adapt existing, policies, procedures, controls, systems, and practices to comply with the new requirements relating to rating histories disclosures. Accordingly, the Commission is delaying the effective date for the amendments to paragraph (b) of Rule 17g–7 until nine months after this release is published in the **Federal Register**. The Commission believes that this delayed effective date provides a sufficient amount of time for all NRSROs, including those with a subscription-based business model, to comply with the new requirements.

Paragraph (a) of Rule 17g–8 requires an NRSRO to establish, maintain, enforce, and document policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings, and new paragraph (b)(13) of Rule 17g–2 identifies the policies and procedures with respect to the procedures and methodologies used to determine credit ratings that an NRSRO must document pursuant to paragraph (a) of new Rule 17g–8 as a record that must be retained.

Paragraph (b) of Rule 17g–8 requires an NRSRO to establish, maintain, enforce, and document policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings, and new paragraph (b)(14) of Rule 17g–2 identifies the policies and procedures with respect to credit rating symbols, numbers, or scores that an NRSRO must document under paragraph (b) of Rule 17g–8 as a record that must be retained.

One NRSRO stated that proposed paragraph (b) of Rule 17g–8 could require some NRSROs to change their rating symbol systems for certain categories of obligors or obligations and requested a compliance deadline of at least twenty-four months for any such change.[1994] The Commission does not believe that all NRSROs will need to change their rating symbol systems in order to comply with new requirements relating to universal rating symbols. If an NRSRO must make such change, however, the Commission believes that the delayed effective date of nine months after this release is published in the **Federal Register** provides sufficient time for such NRSRO to comply with the new requirements in paragraph (b) of new Rule 17g–8 and new paragraph (b)(14) of Rule 17g–2.

Paragraph (c) of Rule 17g–8 requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act with respect to look-back reviews must address instances in which a look-back review determines that a conflict of interest influenced a credit rating by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO takes certain steps reasonably designed to ensure the credit rating is no longer influenced by the conflict and that the existence and an explanation of the conflict is disclosed. New paragraph (a)(9) of Rule 17g–2 identifies the policies and procedures of an NRSRO with respect to look-back reviews as a record that must be made and retained.

Paragraph (d) of Rule 17g–8 requires an NRSRO to consider certain prescribed factors when establishing, maintaining, enforcing, and documenting an effective internal structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings pursuant to section 15E(c)(3)(A) of the Exchange Act.

Rule 17g–9 requires NRSROs to establish, maintain, enforce, and document standards of training, experience, and competence for their credit analysts that are reasonably designed to achieve the objective that the NRSROs produce accurate credit ratings in the classes of credit ratings for which they are registered. The rule identifies four factors the NRSRO must consider when designing the standards and provides that the standards must include a requirement for periodic testing and a requirement that at least one individual with an appropriate level of experience in performing credit analysis, but not less than three years, must participate in the determination of a credit rating. New paragraph (b)(15) of Rule 17g–2 requires that NRSROs retain a record of the standards required to be documented under Rule 17g–9.

One NRSRO stated that the compliance date for proposed Rule 17g–9 should take into account that it will take a significant amount of time to develop, test, and implement the standards.[1995] The Commission agrees that it may take several months for NRSROs to establish new, or adapt existing, policies, procedures, controls, systems, and practices to comply with the requirements relating to the standards of training, experience, and competence for credit analysts. Accordingly, the Commission is delaying the effective date for Rule 17g–9 and paragraph (b)(15) of Rule 17g–2 until nine months after this release is published in the **Federal Register**.

Rule 17g–10 requires that the written certification a provider of third-party due diligence services must provide to an NRSRO be made on Form ABS Due Diligence–15E. New paragraph (a)(3)(iii)(E) of Rule 17g–5 requires an NRSRO to obtain an additional representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.

One commenter suggested that proposed Rule 17g–10 should have at least a nine-month transition period because implementation ''will require coordination among market participants . . . as well as the development of industry standards.'' [1996] Another commenter stated that a ''reasonable transition period'' should be provided to allow adequate time ''to assess the applicability of the new requirements . . . and to implement appropriate processes and procedures.'' [1997] A third commenter stated a compliance date of at least 180 days following publication in the **Federal Register** would be required ''in order to get necessary systems and procedures in place.'' [1998] The Commission agrees that market participants may need several months to establish new, or adapt existing,

[1991] *See S&P Letter.*

[1992] *See DBRS Letter.*

[1993] *See Morningstar Letter.*

[1994] *See Moody's Letter.*

[1995] *See S&P Letter.*

[1996] *See ABA Letter.*

[1997] *See Deloitte Letter.*

[1998] *See ASF Letter* (''We also note that a 180-day period will minimize the possibility that a TPDDS Provider might issue a report prior to the publication date of the final rules, which would later be subject to the requirement for a TPDDS Provider Certification because it was provided to and used by an NRSRO in connection with a rating.'').

policies, procedures, controls, systems, and practices to comply with the new requirements related to third-party due diligence for asset-backed securities. Accordingly, the Commission is delaying the effective date for the requirements relating to Rule 17g–10 and new Form ABS Due Diligence–15E until nine months after this release is published in the **Federal Register**.

Finally, new Rule 15Ga–2 generally requires an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter at least five business days prior to the first sale in the offering.[1999]

One commenter suggested that Rule 15Ga–2 should have at least a nine-month transition period because implementation ''will require coordination among market participants . . . as well as the development of industry standards.'' [2000] Another commenter stated that a ''reasonable transition period'' should be provided to allow adequate time ''to assess the applicability of the new requirements . . . and to implement appropriate processes and procedures.'' [2001] A third commenter stated there should be a single compliance date of not less than 180 days following publication in the **Federal Register**.[2002] The Commission agrees that market participants may need several months to establish new, or adapt existing, policies, procedures, controls, systems, and practices to comply with the new requirements related to third-party due diligence for asset-backed securities. Accordingly, the Commission is delaying the effective date for Rule 15Ga–2 and the amendments to Form ABS–15G until nine months after this release is published in the **Federal Register**.

IV. Paperwork Reduction Act

Certain provisions of the rule amendments and new rules contain new ''collection of information'' requirements within the meaning of the PRA.[2003] The Commission solicited comment on the estimated burden associated with the proposed collection of information requirements in the proposing release.[2004] The Commission submitted the proposed collection of information requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11.

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The titles and OMB control numbers for the collections of information are:

(1) Rule 17g–1, Application for registration as a nationally recognized statistical rating organization; Form NRSRO, and Form NRSRO Instructions (OMB Control Number 3235–0625);

(2) Rule 17g–2, Records to be made and retained by nationally recognized statistical rating organizations (OMB Control Number 3235–0628);

(3) Rule 17g–3, Annual financial reports to be furnished by nationally recognized statistical rating organizations [2005] (OMB Control Number 3235–0626);

(4) Rule 17g–5, Conflicts of interest (OMB Control Number 3235–0649);

(5) Rule 17g–7, Disclosure requirements (OMB Control Number 3235–0656);

(6) Rule 17g–8, Policies and procedures (a new collection of information);

(7) Rule 17g–9, Standards of training, experience, and competence for credit analysts (a new collection of information);

(8) Rule 17g–10, Certification of providers of third-party due diligence services in connection with asset-backed securities; Form ABS Due Diligence–15E (a new collection of information);

(9) Form ABS–15G (OMB Control Number 3235–0675);

(10) Rule 15Ga–2 (a new collection of information);

(11) Regulation S–T, General Rules and Regulations for Electronic Filing (OMB Control Number 3235–0424); and

(12) Form ID (OMB Control Number 3235–0328).

As discussed above, the Commission received a number of comments regarding the proposal. Some of these comments relate directly or indirectly to the estimates of the burden associated with the collection of information requirements within the meaning of the PRA. These comments are addressed below. In part in response to these comments, the Commission has modified the amendments and new rules being adopted today from the proposals. The impact on the Commission's burden estimates of these modifications, as well as adjustments to reflect updated information used to make the estimates, are also discussed below.

A. Summary of the Collection of Information Requirements

The Commission is adopting amendments to existing rules and new rules that apply to NRSROs, providers of third-party due diligence services for Exchange Act-ABS, and issuers and underwriters of Exchange Act-ABS. The following rule amendments and new rules contain collections of information within the meaning of the PRA.

1. Amendments to Rule 17g–1

The Commission is amending Rule 17g–1. First, the Commission is amending paragraph (i) of Rule 17g–1.[2006] The amendments require an NRSRO to make Form NRSRO and Exhibits 1 through 9 to the form publicly and freely available on an easily accessible portion of its corporate Internet Web site (eliminating an option to make the form and exhibits available ''through another comparable, readily accessible means'') and to make its most recent Exhibit 1 freely available in writing to any individual who requests a copy of the exhibit.

Second, the Commission is amending paragraphs (e), (f), and (g) of Rule 17g–1 to require NRSROs to use the Commission's EDGAR system to electronically submit Forms NRSRO and required exhibits to the form to the Commission as PDF documents in the format required by the EDGAR Filer

[1999] The Commission today is providing no–action relief for municipal issuers and underwriters with regard to the required disclosures under the provisions of section 15E(s)(4)(A) of the Exchange Act for any municipal Exchange Act-ABS issued prior to the effective date of Rule 15Ga–2. Municipal issuers and underwriters are excluded from the application of Rule 15Ga–2, but will have to comply with the statutory requirement in section 15E(s)(4)(A) of the Exchange Act to make the findings and conclusions of any third-party due diligence reports publicly available commencing with the effective date of Rule 15Ga–2. The Commission believes it is appropriate to provide such no–action relief because it proposed to include municipal issuers and underwriters within the scope of Rule 15Ga–2, but has determined not to do so.

[2000] *See ABA Letter.*

[2001] *See Deloitte Letter.*

[2002] *See ASF Letter* (''We believe this amount of time, at a minimum, will be required in order to get necessary systems and procedures in place, especially in light of other regulatory changes in the securitization markets coming into effect in the near term. In the event that the Commission does not use a single compliance date, we note that the compliance date for Rule 15Ga–2 must be no earlier than the compliance date for Rules 17g–7 and 17g–10.'').

[2003] 44 U.S.C. 3501 *et seq.*

[2004] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33490–33511.

[2005] The Commission is amending the title of Rule 17g–3 to read, ''Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations.''

[2006] *See* section II.E.2. of this release (providing a more detailed discussion of the amendments).

Manual, as defined in Rule 11 of Regulation S–T.[2007]

2. Amendments to Instructions for Exhibit 1 to Form NRSRO

The Commission is amending the instructions for Exhibit 1 to Form NRSRO.[2008] The amendments standardize the production and presentation of the 1-year, 3-year, and 10-year transition and default statistics that an NRSRO must disclose in the exhibit. The performance statistics must be presented in a format specified in the instructions, which include a sample ''Transition/Default Matrix.'' The amendments also enhance the information to be disclosed by, for example, requiring statistics to be produced and presented for subclasses of structured finance products and for credit ratings where the obligation was paid off or the credit rating was withdrawn for reasons other than a default or the obligation was paid off.

3. Amendments to Rule 17g–2

The Commission is amending Rule 17g–2. First, the Commission is adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures with respect to look-back reviews an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8 as a record that must be made and retained.[2009] Second, the Commission is adding paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[2010] Third, the Commission is adding paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures with respect to the procedures and methodologies used to determine credit ratings an NRSRO is required to establish, maintain, enforce, and document pursuant to paragraph (a) of Rule 17g–8 as a record that must be retained.[2011] Fourth, the Commission is adding paragraph (b)(14) to Rule 17g–2 to identify the policies and procedures with respect to credit rating symbols, numbers, or scores an NRSRO must establish, maintain, enforce, and document pursuant to paragraph (b) of Rule 17g–8 as a record that must be retained.[2012] Fifth, the Commission is adding paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to Rule 17g–9 as a record that must be retained.[2013] In addition, the Commission is amending paragraph (c) of Rule 17g–2 to provide that records identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 must be retained until three years after the date the record is replaced with an updated record, instead of three years after the record is made or received, which is the retention period for other records identified in paragraphs (a) and (b) of Rule 17g–2.[2014] The Commission also repealed paragraph (d)(2) of Rule 17g–2 (the 10% Rule) and has re-codified (with significant amendments) the requirements in paragraph (d)(3) of Rule 17g–2 (the 100% Rule) in paragraph (b) of Rule 17g–7.[2015]

4. Amendments to Rule 17g–3

The Commission is amending Rule 17g–3. First, the Commission is amending paragraphs (a) and (b) of Rule 17g–3.[2016] The amendment to paragraph (a) adds paragraph (a)(7) to require an NRSRO to include an unaudited report—a report on the NRSRO's internal control structure—with its annual submission of reports to the Commission pursuant to Rule 17g–3.[2017] The amendment to paragraph (b) of Rule 17g–3 requires that the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, must provide a signed statement attesting to information in the internal controls report that must be attached to the report.[2018]

Second, the Commission is adding paragraph (d) to Rule 17g–3 to require that the annual reports required to be submitted to the Commission pursuant to Rule 17g–3 be submitted electronically through the Commission's EDGAR system as PDF documents.[2019]

Third, the Commission is adding paragraph (a)(8) to Rule 17g–3 to identify the report of the NRSRO's designated compliance officer that an NRSRO is required to file with the Commission pursuant to section 15E(j)(5)(B) of the Exchange Act as a report that must be filed with the other annual reports.[2020] This requirement will not result in a collection of information because the statute requires the NRSRO to file the report with the Commission *and* to file the report with the other annual reports.[2021] Consequently, paragraph (a)(8) of Rule 17g–3 standing alone does not impose a burden. Moreover, the Commission is not adding any additional requirements with respect to the filing other than the requirement that this report and the other annual reports be submitted through the EDGAR system and the burden for filing the reports through the EDGAR system is being allocated to Rule 17g–1.[2022]

5. Amendments to Rule 17g–5

The Commission is amending Rule 17g–5. First, the Commission is adding paragraph (a)(3)(iii)(E) to Rule 17g–5 to require an NRSRO to obtain a representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.[2023]

Second, the Commission is adding paragraph (c)(8) to Rule 17g–5 to prohibit an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[2024]

Third, the Commission is adding paragraph (f) to Rule 17g–5, which provides that upon written application by an NRSRO the Commission may

[2007] *See* section II.L. of this release (providing a more detailed discussion of the amendments).

[2008] *See* section II.E.1. of this release (providing a more detailed discussion of the amendments).

[2009] *See* section II.C.2. of this release (providing a more detailed discussion of this amendment).

[2010] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment).

[2011] *See* section II.F.2. of this release (providing a more detailed discussion of this amendment).

[2012] *See* section II.J.2. of this release (providing a more detailed discussion of this amendment).

[2013] *See* section II.I.2. of this release (providing a more detailed discussion of this amendment).

[2014] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment).

[2015] *See* section II.E.3. of this release (providing a more detailed discussion of this amendment).

[2016] *See* section II.A.3. of this release (providing a more detailed discussion of these amendments).

[2017] *See* paragraph (a)(7) of Rule 17g–3.

[2018] *See* paragraph (b)(2) of Rule 17g–3.

[2019] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2020] *See* section II.K. of this release (providing a more detailed discussion of this amendment).

[2021] *See* 15 U.S.C. 78o–7(j)(5)(B).

[2022] *Compare* 15 U.S.C. 78o–7(j)(5)(B), *with* paragraph (a)(8) of Rule 17g–3.

[2023] *See* sections II.G.5. and II.H.2. of this release (providing more detailed discussions of this amendment).

[2024] *See* section II.B.1. of this release (providing a more detailed discussion of this amendment).

exempt, either conditionally or unconditionally, the NRSRO from paragraph (c)(8) if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[2025]

6. Amendments to Rule 17g–7

The Commission is amending Rule 17g–7. First, the Commission is incorporating the disclosure requirement in Rule 17g–7 regarding representations, warranties, and enforcement mechanisms available to investors in asset-backed securities that existed before today's amendments into paragraph (a) of the rule and is adding significant disclosure provisions to paragraph (a) of the rule that require an NRSRO, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[2026] The amendments prescribe: (1) The types of rating actions that trigger the requirement to publish the form and, if applicable, any due diligence certifications;[2027] (2) the format of the form;[2028] (3) the content of the form (which must include certain qualitative and quantitative information relating to the credit rating);[2029] and (4) an attestation requirement for the form.[2030]

Second, the Commission is re-codifying in paragraph (b) of Rule 17g–7 the requirements to disclose rating histories that were contained in paragraph (d)(3) of Rule 17g–2 before today's amendments.[2031] The amendments to Rule 17g–7 also increase the amount of information that must be disclosed by expanding the scope of the credit ratings that must be included in the histories and by adding additional data elements that must be disclosed in the rating history for a particular credit rating.

7. New Rule 17g–8

The Commission is adopting Rule 17g–8, which requires an NRSRO to establish, maintain, enforce, and document certain types of policies and procedures and to consider certain prescribed factors when establishing, maintaining, enforcing, and documenting an effective internal structure pursuant to section 15E(c)(3)(A) of the Exchange Act.

Specifically, paragraph (a) of Rule 17g–8 requires an NRSRO to establish, maintain, enforce, and document policies and procedures with respect to the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings.[2032] The required policies and procedures include policies and procedures relating to: (1) Board approval of the procedures and methodologies for determining credit ratings;[2033] (2) the development and modification of the procedures and methodologies for determining credit ratings;[2034] (3) applying material changes to the procedures and methodologies for determining credit ratings;[2035] (4) publishing material changes to and notices of significant errors in the procedures and methodologies for determining credit ratings;[2036] and (5) disclosing the version of a procedure or methodology for determining credit ratings used with respect to a particular credit rating.[2037]

Paragraph (b) of Rule 17g–8 requires an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[2038] The required policies and procedures include policies and procedures relating to: (1) Assessing the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments in accordance with the terms of the security or money market instrument;[2039] (2) clearly defining each symbol, number, or score in the rating scale used by the NRSRO and including the definitions in Exhibit 1 to Form NRSRO;[2040] and (3) applying any symbol, number, or score in the rating scale used by the NRSRO in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[2041]

Paragraph (c) of Rule 17g–8 requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act with respect to look-back reviews must address instances in which a look-back review determines that a conflict of interest influenced a credit rating by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO takes certain steps reasonably designed to ensure the credit rating is no longer influenced by the conflict and that the existence and an explanation of the conflict is disclosed.[2042]

Paragraph (d) of Rule 17g–8 requires an NRSRO to consider certain prescribed factors when establishing, maintaining, enforcing, and documenting an effective internal structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings pursuant to section 15E(c)(3)(A) of the Exchange Act. This requirement does not contain a collection of information requirement within the meaning of the PRA.

8. New Rule 17g–9

The Commission is adopting Rule 17g–9. Rule 17g–9 requires an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the NRSRO produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[2043] Paragraph (b) identifies four factors the NRSRO must consider when designing the standards.[2044] Paragraph (c)(1) requires NRSROs to include a requirement for periodic testing in their standards.[2045] Paragraph (c)(2) provides that the standards must include a requirement that at least one

[2025] *See* section II.B.2. of this release (providing a more detailed discussion of this amendment).

[2026] *See* section II.G. of this release (providing a more detailed discussion of these amendments).

[2027] *See* section II.G.1. of this release (providing a more detailed discussion of these amendments). As discussed in section II.G.1. of this release, the Commission is adopting an exemption from the requirements of paragraph (a) for certain non-U.S. rating actions.

[2028] *See* section II.G.2. of this release (providing a more detailed discussion of these amendments).

[2029] *See* section II.G.3. of this release (providing a more detailed discussion of these amendments).

[2030] *See* section II.G.4. of this release (providing a more detailed discussion of these amendments).

[2031] *See* section II.E.3. of this release (providing a more detailed discussion of these amendments). The Commission also is repealing paragraph (d)(2) of Rule 17g–2 (the 10% Rule).

[2032] *See* section II.F.1. of this release (providing a more detailed discussion of this paragraph).

[2033] *See* paragraph (a)(1) of Rule 17g–8.

[2034] *See* paragraph (a)(2) of Rule 17g–8.

[2035] *See* paragraph (a)(3) of Rule 17g–8.

[2036] *See* paragraph (a)(4) of Rule 17g–8.

[2037] *See* paragraph (a)(5) of Rule 17g–8.

[2038] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph).

[2039] *See* paragraph (b)(1) of Rule 17g–8.

[2040] *See* paragraph (b)(2) of Rule 17g–8.

[2041] *See* paragraph (b)(3) of Rule 17g–8.

[2042] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph).

[2043] *See* section II.I.1.a. of this release (providing a more detailed discussion of this paragraph).

[2044] *See* section II.I.1.b. of this release (providing a more detailed discussion of this paragraph).

[2045] *See* section II.I.1.c. of this release for (providing a more detailed discussion of this paragraph).

individual with an ''appropriate level of experience in performing credit analysis, but not less than three years'' must participate in the determination of a credit rating.[2046]

9. New Rule 17g–10 and New Form ABS Due Diligence–15E

The Commission is adopting Rule 17g–10 and Form ABS Due Diligence–15E.[2047]Paragraph (a) of Rule 17g–10 provides that the written certification providers of third-party due diligence services must provide to NRSROs pursuant to section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence–15E.[2048]Paragraph (b) of Rule 17g–10 provides that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[2049] Paragraph (c) of Rule 17g–10 provides a ''safe harbor'' for a provider of third-party due diligence services to meet its obligation under section 15E(s)(4)(B).[2050] Paragraph (d) of Rule 17g–10 contains four definitions to be used for the purposes of section 15E(s)(4)(B) and Rule 17g–10; namely, definitions of *due diligence services*,[2051] *issuer*,[2052] *originator*,[2053] and *securitizer*. [2054]

Form ABS Due Diligence–15E contains five line items identifying information the provider of third-party due diligence services must provide.[2055] It also contains a signature line with a corresponding representation.[2056] Item 1 elicits the identity and address of the provider of third-party due diligence services.[2057] Item 2 elicits the identity and address of the issuer, underwriter, or NRSRO that paid the provider to provide the services.[2058] Item 3 requires the provider of the due diligence services to identify each NRSRO whose published criteria for performing due diligence the third party intended to satisfy in performing the due diligence review.[2059] Item 4 requires the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.[2060] Item 5 requires the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.[2061]

10. New Rule 15Ga–2 and Amendments to Form ABS–15G

The Commission is adopting Rule 15Ga–2 and amendments to Form ABS–15G.[2062] Rule 15Ga–2 requires an issuer or underwriter of certain Exchange Act-ABS that are to be rated by an NRSRO to furnish a Form ABS–15G on the Commission's EDGAR system containing the findings and conclusions of any third-party ''due diligence report'' obtained by the issuer or underwriter at least five business days prior to the first sale in the offering. These requirements do not apply to issuers or underwriters of certain offshore offerings of Exchange Act-ABS.[2063] The rule and form also do not apply to issuers and underwriters of municipal Exchange Act-ABS but section 15E(s)(4)(A) of the Exchange Act requires an issuer or underwriter of these securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. Based on staff experience, the Commission estimates that many of these issuers and underwriters are likely to satisfy this obligation by furnishing Form ABS–15G on EMMA. Rule 15Ga–2 defines *third-party due diligence report* as any report containing findings and conclusions relating to *due diligence services* as defined in Rule 17g–10 performed by a third party.[2064]Under the rule, the disclosure must be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. However, if the disclosure required by Rule 15Ga–2 has been made in the applicable prospectus, the issuer or underwriter may refer to that section of the prospectus in Form ABS–15G rather than providing the findings and conclusions directly on the form.[2065]

11. Amendments to Regulation S–T

As stated above, the Commission is requiring that certain Forms NRSRO and all Rule 17g–3 annual reports be submitted to the Commission electronically using the Commission's EDGAR system as PDF documents.[2066] In order to implement this requirement, the Commission is adopting amendments to Rule 101 of Regulation S–T to require that Forms NRSRO and Exhibits 1 through 9 submitted pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted pursuant to Rule 17g–3 be submitted through the EDGAR system as PDF documents.[2067]

12. Form ID

NRSROs will need to submit Forms NRSRO and the required exhibits to the forms under paragraphs (e), (f), and (g) of Rule 17g–1 and their annual reports under Rule 17g–3 to the Commission through the EDGAR system. NRSROs will need to file a Form ID with the Commission in order to gain access to the Commission's EDGAR system to make electronic submissions to the Commission.[2068]

Issuers and underwriters of Exchange Act-ABS also will need to furnish Form ABS–15G to the Commission through the EDGAR system pursuant to Rule 15Ga–2. The Commission believes that these issuers and underwriters already have access to the EDGAR system because, for example, they need such access for purposes of Rule 15Ga–1.

[2046] *See* section II.I.1.c. of this release for (providing a more detailed discussion of this paragraph).

[2047] *See* section II.H.2. of this release (providing a more detailed discussion of Rule 17g–10); section II.H.3. of this release (providing a more detailed discussion of Form ABS Due Diligence–15E).

[2048] *See* paragraph (a) of Rule 17g–10.

[2049] *See* paragraph (b) of Rule 17g–10.

[2050] *See* paragraphs (c)(1) and (2) of Rule 17g–10. *See also* paragraph (a)(3)(iii)(E) of Rule 17g–5 (provisions under which the issuer or underwriter must promptly post the form on the Rule 17g–5 Web site).

[2051] *See* paragraph (d)(1) of Rule 17g–10.

[2052] *See* paragraph (d)(2) of Rule 17g–10.

[2053] *See* paragraph (d)(3) of Rule 17g–10.

[2054] *See* paragraph (d)(4) of Rule 17g–10.

[2055] *See* section II.H.3. of this release (providing a more detailed discussion of the information to be reported in the form).

[2056] *See* Form ABS Due Diligence–15E.

[2057] *See* Item 1 of Form ABS Due Diligence–15E.

[2058] *See* Item 2 of Form ABS Due Diligence–15E.

[2059] *See* Item 3 of Form ABS Due Diligence 15E.

[2060] *See* Item 4 of Form ABS Due Diligence 15E.

[2061] *See* Item 5 of Form ABS Due Diligence 15E.

[2062] *See* section II.H.1. of this release (providing a more detailed discussion of the rule and form).

[2063] *See* paragraph (e) of Rule 15Ga–2.

[2064] *See* paragraph (d)(1) of Rule 17g–10.

[2065] *See* section II.H.1. of this release (providing a more detailed discussion of this rule).

[2066] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2067] *See* paragraph (a)(xiv) of Rule 101 of Regulation S–T.

[2068] *See* section II.L. of this release (providing a more detailed discussion of these requirements).

B. Use of Information

1. Amendments to Rule 17g–1

The amendments to Rule 17g–1 that require an NRSRO to use the EDGAR system to file Form NRSRO and Exhibits 1 through 9 and to make the form and exhibits freely available on an easily accessible portion of the NRSRO's corporate Internet Web site are designed to make the information disclosed in the form and exhibits more readily accessible to investors and other users of credit ratings.[2069]In addition, the filing of the Forms NRSRO and the exhibits on the EDGAR system will allow Commission examiners to more easily retrieve the submissions of a specific NRSRO to prepare for an examination. Furthermore, having the forms filed and stored through the EDGAR system will assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper filings that must be manually processed and stored.

2. Amendments to Instructions for Exhibit 1 to Form NRSRO

The amendments to the instructions for Exhibit 1 to Form NRSRO that standardize the production and presentation of the 1-year, 3-year, and 10-year transition and default statistics an NRSRO must disclose in the exhibit and enhance the information disclosed about these statistics will allow users of credit ratings to evaluate the accuracy of credit ratings and compare the performance of credit ratings by different NRSROs.[2070] As the Commission stated when originally adopting Form NRSRO, the information provided in Exhibit 1 is an important indicator of the performance of an NRSRO in terms of its ability to assess the creditworthiness of issuers and obligors and, consequently, will be useful to users of credit ratings in evaluating an NRSRO.[2071] The amendments to the instructions for Exhibit 1 to Form NRSRO are designed to make the required disclosure of an NRSRO's performance statistics more useful to those who use or might use credit ratings, including investors and creditors.

In addition, the amendments should improve the Commission's ability to carry out its oversight of NRSROs, which, in turn, will benefit investors. Improving and standardizing performance statistics provided in an applicant's initial application for registration and in an NRSRO's Form NRSRO could aid the Commission in, among other things, reviewing an applicant's or NRSRO's performance and consistency of performance, which, in turn, could aid in assessing whether the applicant or NRSRO has adequate financial and managerial resources to consistently produce credit ratings with integrity.[2072]

3. Amendments to Rule 17g–2

The requirement to make and retain a record of the policies and procedures identified in paragraph (a)(9) of Rule 17g–2 will promote better understanding of the policies and procedures among individuals within the NRSRO and, therefore, promote compliance with such policies and procedures.[2073] The requirement that the internal controls structure, policies and procedures, and standards identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15), respectively, be retained will subject these records to the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g–2.[2074] The Commission staff will use these records to examine an NRSRO's compliance with the provisions of the securities laws requiring the NRSRO to establish, maintain, enforce, and document these controls, policies, procedures, and standards.[2075] The amendment to paragraph (c) of Rule 17g–2 requiring that these records must be retained until three years after the date the record is replaced with an updated record, rather than three years after the record is made or received, will help the Commission better perform its oversight function. For example, if the three-year retention period in Rule 17g–2 began to run when the record is made, an NRSRO could discard the record that is replaced with an updated record if that update occurred more than three years after the replaced record was made. This could prevent the Commission from reviewing whether the NRSRO adhered to its previous internal control structure, policies and procedures, or standards.

4. Amendments to Rule 17g–3

The amendments to Rule 17g–3 requiring an NRSRO to submit to the Commission an annual internal controls report will be used by the Commission to perform its NRSRO oversight function.[2076] For example, section 15E(c)(3)(A) of the Exchange Act requires an NRSRO to ''establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.'' [2077] Paragraph (a)(7) of Rule 17g–3 requires that the report describe material weaknesses identified in the internal control structure and how they were addressed and that it state whether the internal control structure was effective as of the end of the NRSRO's

[2069] *See* section II.E.2. of this release (providing a more detailed discussion of the requirement to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of the NRSRO's corporate Internet Web site) and section II.L. of this release (providing a more detailed discussion of the requirement to use the EDGAR system to file Form NRSRO and Exhibits 1 through 9).

[2070] *See* section II.E.1. of this release (providing a more detailed discussion of the amendments).

[2071] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574; *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6474 (''The amendments to the instructions for Exhibit 1 to Form NRSRO will require NRSROs to provide more detailed performance statistics and, thereby, make it easier for users of credit ratings to compare the performance of the NRSROs. In addition, these amendments will make it easier for an NRSRO to demonstrate that it has a superior ratings methodology or competence and, thereby, attract clients.'').

[2072] *See, e.g.,* 15 U.S.C. 78o–7(a)(2)(C) (setting forth grounds to deny an initial application); 15 U.S.C. 78o–7(d)(1)(E) and (d)(2) (setting forth grounds to sanction an NRSRO, including revoking the NRSRO's registration); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33612 (''Form NRSRO requires that a credit rating agency provide information required under Section 15E(a)(1)(B) of the Exchange Act and certain additional information. The additional information will assist the Commission in making the assessment regarding financial and managerial resources required under Section 15E(a)(2)(C)(2)(ii)(I) of the Exchange Act.'').

[2073] *See* section II.C.2. of this release (providing a more detailed discussion of this amendment).

[2074] *See* section II.C.2. of this release (providing a more detailed discussion of paragraph (a)(9) of Rule 17g–2); section II.A.2. of this release (providing a more detailed discussion of paragraph (b)(12) of Rule 17g–2); section II.F.2. of this release (providing a more detailed discussion of paragraph (b)(13) of Rule 17g–2); section II.J.2. of this release (providing a more detailed discussion of paragraph (b)(14) of Rule 17g–2); section II.I.2. of this release (providing a more detailed discussion of paragraph (b)(15) of Rule 17g–2).

[2075] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007) (''The Commission designed [Rule 17g–2] based on its experience with recordkeeping rules for other regulated entities. These other books and records rules have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws. Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act and the rules thereunder.'') (footnotes omitted).

[2076] *See* section II.A.3. of this release (providing a more detailed discussion of these amendments).

[2077] 15 U.S.C. 78o–7(c)(3)(A).

fiscal year. Consequently, the Commission can use the information provided in the report as part of reviewing whether the NRSRO is complying with the requirement in section 15E(c)(3)(A) of the Exchange Act. An NRSRO also can use the report to evaluate the effectiveness of its internal control structure.

The amendment to Rule 17g–3 requiring that NRSROs use the Commission's EDGAR system to file the annual reports as PDF documents will assist the Commission in performing its oversight function.[2078] For example, Commission examiners will be able to more easily retrieve the reports of an NRSRO to prepare for an examination. Moreover, having these reports submitted and stored through the EDGAR system will assist the Commission from a records management perspective by establishing a more automated storage process and reducing the volume of paper submissions that must be manually processed and stored.

5. Amendments to Rule 17g–5

The collection required under the amendment adding paragraph (a)(3)(iii)(E) to Rule 17g–5 will be used by the providers of third-party due diligence services to meet their statutory obligation to deliver the certification to any NRSRO that produces a credit rating to which the services relate.[2079] Furthermore, disclosing these certifications on the Rule 17g–5 Web sites will make them available to NRSROs that may not otherwise be aware that third-party due diligence services are being employed with respect to an Exchange Act-ABS because, for example, they are not hired to rate the Exchange Act-ABS.

The amendment adding paragraph (c)(8) to Rule 17g–5 will require an NRSRO to update its policies and procedures for addressing and managing conflicts of interest to account for this new absolutely prohibited conflict of interest.[2080] The updated policies and procedures will be used by the NRSRO to address this conflict and comply with Rule 17g–5. Furthermore, Exhibit 7 to Form NRSRO requires an applicant for registration as an NRSRO or an NRSRO to provide a copy in the exhibit of the written policies and procedures an applicant or NRSRO must establish, maintain, and enforce to address and manage conflicts of interest pursuant to section 15E(h) of the Exchange Act.[2081] This disclosure by an NRSRO can be reviewed by investors and other users of credit ratings to evaluate the NRSRO's policies and procedures (including those addressing the new absolutely prohibited conflict) and to compare them with the policies and procedures of other NRSROs.

The amendment adding paragraph (f) to Rule 17g–5 to provide a means for an NRSRO to seek an exemption from the Commission because of its small size from the provision establishing the new absolutely prohibited conflict will be used by NRSROs to seek conditional or unconditional exemptions from the new requirement.[2082]

6. Amendments to Rule 17g–7

The amendments to paragraph (a) of Rule 17g–7 that require an NRSRO, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating will be used by investors and other users of credit ratings to better understand the credit rating issued by the NRSRO.[2083] In addition, the disclosure of the certification will allow investors and other users of credit ratings to determine the adequacy and level of due diligence services provided by the third party executing the certification.[2084]

The amendments to Rule 17g–7 (codified in paragraph (b) of the rule) that require an NRSRO to disclose rating histories may be used by investors and other users of credit ratings to evaluate the performance of the NRSRO's credit ratings.[2085] As the Commission stated when adopting the original rating history disclosure requirement, the ''intent of the rule is to facilitate comparisons of credit rating accuracy across all NRSROs—including direct comparisons of different NRSROs' treatment of the same obligor or instrument—in order to enhance NRSRO accountability, transparency, and competition.'' [2086] The amendments also are designed to provide persons (such as market participants and academics and other market observers) with the ''raw data'' necessary to generate statistical information about the performance of each NRSRO's credit ratings.[2087] The information disclosed pursuant to the amendments also may be used by economists to study the performance of NRSRO credit ratings. The Commission also may use the information as part of its oversight function.

7. New Rule 17g–8

Paragraph (a) of Rule 17g–8 requires an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.[2088] These policies and procedures will be used by the NRSRO to achieve the objectives identified in section 15E(r) of the Exchange Act,[2089] namely, that the NRSRO:

- Determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board; [2090]
- determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies; [2091]

[2078] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2079] *See* sections II.G.5. and II.H.2. of this release (providing a more detailed discussion of this amendment, which will require an NRSRO to obtain a representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument).

[2080] *See* section II.B.1. of this release (providing a more detailed discussion of this amendment).

[2081] *See* instructions for Exhibit 7 to Form NRSRO.

[2082] *See* section II.B.2. of this release (providing a more detailed discussion of this amendment).

[2083] *See* section II.G. of this release (providing a more detailed discussion of these amendments).

[2084] *See* 15 U.S.C. 78o–7(s)(4)(D).

[2085] *See* section II.E.3. of this release (providing a more detailed discussion of these amendments).

[2086] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63838 (Dec. 4, 2009) (''Ratings history information for outstanding credit ratings is the most direct means of comparing the performance of two or more NRSROs. It allows an investor or other user of credit ratings to compare how all NRSROs that maintain a credit rating for a particular obligor or instrument initially rated that obligor or instrument and, thereafter, how and when they adjusted their credit rating over time.'').

[2087] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63838 (''The raw data to be provided by NRSROs pursuant to the new ratings history disclosure requirements . . . will enable market participants to develop performance measurement statistics that would supplement those required to be published by NRSROs themselves in Exhibit 1, tapping into the expertise of credit market observers and participants in order to create better and more useful means to compare the credit ratings performance of NRSROs.'').

[2088] *See* section II.F.1. of this release (providing a more detailed discussion of this paragraph).

[2089] *See* 15 U.S.C. 78o–7(r)(1) through (3).

[2090] *See* 15 U.S.C. 78o–7(r)(1)(A).

[2091] *See* 15 U.S.C. 78o–7(r)(1)(B).

• when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), applies the changes consistently to all credit ratings to which the changed procedures and methodologies apply; [2092]

• when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), to the extent that changes are made to credit rating surveillance procedures and methodologies, applies the changes to then-current credit ratings within a reasonable time period determined by the Commission, by rule; [2093]

• when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), the NRSRO publicly discloses the reason for the change; [2094]

• notifies users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating; [2095]

• notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input; [2096]

• notifies users of credit ratings when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; [2097] and

• notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input, of the likelihood the change will result in a change in current credit ratings.[2098]

Paragraph (b) of Rule 17g–8 requires an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[2099] These policies and procedures will be used by the NRSRO to achieve the objectives identified in sections 938(a)(1) through (3) of the Dodd-Frank Act; [2100] namely, that the NRSRO establishes, maintains, and enforces written policies and procedures to: (1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; [2101] (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating; [2102] and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[2103]

Paragraph (c) of Rule 17g–8 requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act with respect to look-back reviews must address instances in which a look-back review determines that a conflict of interest influenced a credit rating by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO takes certain steps reasonably designed to ensure the credit rating is no longer influenced by the conflict and that the existence and an explanation of the conflict is disclosed.[2104] These policies and procedures will be used by the NRSRO to achieve the objective specified in section 15E(h)(4)(A)(ii) of the Exchange Act to revise a credit rating, if appropriate, when a look-back review determines the credit rating was influenced by the conflict of interest of the credit analyst seeking employment with the person subject to the credit rating or the issuer, underwriter, or sponsor of a security or money market instrument subject to the credit rating.[2105]

8. New Rule 17g–9

The Commission is adopting Rule 17g–9, which requires an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings.[2106] These standards will be used by the NRSRO to achieve the objectives specified in sections 936(1) and (2) of the Dodd-Frank Act that any person employed by the NRSRO to perform credit ratings produces accurate ratings for the categories of issuers whose securities the person rates and is tested for knowledge of the credit rating process.[2107] The requirement that the standards be documented in writing will be used by the NRSRO to promote an understanding of the standards within the NRSRO and will be used by the Commission to examine the NRSRO's compliance with Rule 17g–9.

9. New Rule 17g–10 and New Form ABS Due Diligence–15E

The disclosure of information about third-party due diligence services on Form ABS Due Diligence–15E pursuant to Rule 17g–10 will be used by NRSROs, investors, and other market participants to evaluate the adequacy and level of the reviews of the assets underlying an Exchange Act-ABS performed by the third party.[2108]

10. New Rule 15Ga–2 and Amendments to Form ABS–15G

Users of credit ratings who may or may not be investors may use the disclosure of information about third-party due diligence services on Form ABS–15G pursuant to Rule 15Ga–2 to evaluate the adequacy and level of the reviews of the assets underlying an Exchange Act-ABS performed by the third party.[2109]

11. Amendments to Regulation S–T

The amendments to Rule 101 of Regulation S–T, as part of implementing the requirement that NRSROs use the EDGAR system to submit Forms NRSRO and their annual reports under Rule 17g–3 to the Commission, will be used by the Commission as part of its oversight of NRSROs.[2110] In addition, the submission of the Forms NRSRO using the EDGAR system will be used by investors and other users of credit ratings to evaluate and compare NRSROs.

12. Form ID

NRSROs will need to file a Form ID with the Commission in order to gain access to the Commission's EDGAR system to file Form NRSRO (including applicable exhibits) and their annual reports with the Commission.[2111] The Commission will use the filings of this

[2092] *See* 15 U.S.C. 78o–7(r)(2)(A).

[2093] *See* 15 U.S.C. 78o–7(r)(2)(B).

[2094] *See* 15 U.S.C. 78o–7(r)(2)(C).

[2095] *See* 15 U.S.C. 78o–7(r)(3)(A).

[2096] *See* 15 U.S.C. 78o–7(r)(3)(B).

[2097] *See* 15 U.S.C. 78o–7(r)(3)(C).

[2098] *See* 15 U.S.C. 78o–7(r)(3)(D).

[2099] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph).

[2100] *See* Public Law 111–203, 938(a)(1) through (3).

[2101] *See* Public Law 111–203, 938(a)(1).

[2102] *See* Public Law 111–203, 938(a)(2).

[2103] *See* Public Law 111–203, 938(a)(3).

[2104] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph).

[2105] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii).

[2106] *See* section II.I.1. of this release (providing a more detailed discussion of this rule).

[2107] *See* Public Law 111–203, 936(1) and (2).

[2108] *See* section II.H.2. (providing a more detailed discussion of Rule 17g–10) and section II.H.3. of this release (providing a more detailed discussion of Form ABS Due Diligence–15E).

[2109] *See* section II.H.1. of this release (providing a more detailed discussion of the rule and form).

[2110] *See* section II.L. of this release (providing a more detailed discussion of these amendments).

[2111] *See* section II.L. of this release (providing a more detailed discussion of this requirement).

form to process NRSRO requests for access to the EDGAR system.

C. Respondents

In adopting the first rules under the Rating Agency Act of 2006, the Commission estimated that approximately thirty credit rating agencies ultimately would be registered as NRSROs.[2112] Currently, ten credit rating agencies are registered with the Commission as NRSROs.[2113] This number has remained fairly constant for several years.[2114] Consequently, while the Commission believes several more credit rating agencies may become registered as NRSROs over the next few years, the Commission stated in the proposing release that it believed that the actual number of NRSROs should be used for purposes of the burden estimates under the PRA.[2115] The Commission did not receive comments regarding this statement, and the number of credit rating agencies registered with the Commission as NRSROs has not changed since the proposal was published in 2011. Therefore, the Commission is estimating that there are ten credit rating agencies registered with the Commission as NRSROs for purposes of the burden estimates.

In the proposing release, the Commission stated that it believed that there were approximately 270 unique ''securitizers'' that would be subject to the requirements of Rule 17g–10, Form ABS Due Diligence–15E, Rule 15Ga–2, and the amendments to Form ABS–15G.[2116] In using the term *securitizer,* the Commission meant the person who organizes and initiates the Exchange Act-ABS, rather than the issuing entity.[2117] As discussed above, in this release, the *issuer* of a structured finance product can mean, depending on the context, the issuing entity or the person that organizes and initiates the offering of the structured finance product (for example, the sponsor or depositor). Consequently, for consistency in this release, the Commission is referring to the respondents as *issuers* (rather than *securitizers*) but in doing so means the person that organizes and initiates the offering of the Exchange Act-ABS. This is consistent with the Commission's intention in referring to these respondents as *securitizers* in the proposing release. Further, the Commission is adjusting its estimate of the number of unique securitizers (now referred to as *issuers*) from approximately 270 to approximately 336.[2118] This estimate includes issuers of municipal Exchange Act-ABS.[2119]

The Commission also stated in the proposing release that it believed that there were approximately ten firms that provide, or would begin providing, third-party due diligence services to issuers and underwriters of Exchange Act-ABS and, therefore, be subject to the requirements of Rule 17g–10 and Form ABS Due Diligence–15E.[2120] However, the Commission now estimates that there are approximately fifteen providers of third-party due diligence services.[2121]

D. Total Initial and Annual Recordkeeping and Reporting Burdens

NRSROs vary, in terms of size and complexity, from small entities that employ fewer than ten credit analysts to complex global organizations that employ over a thousand credit analysts.[2122] Given the significant variance in size between the largest and the smallest NRSROs, certain estimates described below are averages across all NRSROs that will be affected by the amendments and new rules being adopted today.

The Commission stated in the proposing release that it believed that it was reasonable to base some of its burden estimates on the approximate number of NRSRO credit ratings outstanding or the number of credit analysts employed by NRSROs, based on the most recent annual certifications submitted to the Commission by the NRSROs.[2123] An NRSRO objected to this method of estimating the burden attributable to the proposal, stating that ''to properly evaluate the actual burden of the rules, particularly as they relate to the seven NRSROs that must compete with the largest three NRSROs, the burden analysis must take into account not only the number of ratings or analysts in isolation, but also must include the amount of legal and compliance resources necessary to implement systemic and simultaneous changes'' and that ''the investments will not be diminished relative to financial resources because an NRSRO may have fewer analysts or credit ratings issued.'' [2124] Similarly, another NRSRO stated that ''the burden on smaller rating agencies may be even more severe than the Commission's numbers suggest'' and that ''[w]hile some aspects of the proposals (such as disclosures and updates) scale in a linear fashion with the number of published ratings, other costs (such as the development of new disclosure templates and implementing new systems) are fixed.'' [2125] The commenter stated that these ''fixed costs have a disproportionate impact on smaller firms.'' [2126] As discussed below, the Commission based some of its burden estimates for three of the proposed amendments or new rules on the number of NRSRO credit ratings outstanding or the number of credit analysts employed by NRSROs and has reviewed these estimates to determine whether they should be modified in response to these comments.

First, the Commission based its estimate of the one-time and annual burden associated with the amendments to the instructions for Exhibit 1 to Form NRSRO on the number of NRSRO credit ratings outstanding. In response to the above comments, the Commission is adding to its one-time burden estimate to account for aspects of the burden that do not depend on the number of NRSRO credit ratings outstanding. For example, some of the burden associated with establishing systems for determining performance statistics according to the amended instructions may not depend on the number of credit ratings in the start-date cohort.[2127]

Second, the Commission based its estimate of the annual burden associated with publishing the form and due diligence certifications with the

[2112] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33607.

[2113] *See* section I.B.2.a. of this release (discussing the economic baseline with respect to NRSROs).

[2114] One NRSRO—R&I—withdrew its registration as an NRSRO effective November 27, 2011. *See Notice of Effectiveness of Rating and Investment Information, Inc.'s (''R&I'') Withdrawal from Registration as a Nationally Recognized Statistical Rating Organization (''NRSRO''), available at http://www.sec.gov/news/digest/2011/dig112811.htm#rinotice.* HR Ratings registered as an NRSRO on November 5, 2012.

[2115] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33499.

[2116] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33499.

[2117] Section 15G(a)(3) of the Exchange Act defines the term *securitizer* to mean: ''(A) an issuer of an asset-backed security; or (B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.'' *See* 15 U.S.C. 78o–9(a)(3).

[2118] *See* section I.B.2.b. of this release (discussing the economic baseline with respect to issuers and providers of third-party due diligence services).

[2119] Based on the Asset-Backed Alert database, the Commission estimates there were nine unique issuers of municipal Exchange Act-ABS in 2013.

[2120] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33499.

[2121] *See* section I.B.2.b. of this release.

[2122] *See* 2013 Annual Staff Report on NRSROs, pp. 13–14.

[2123] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33500.

[2124] *See A.M. Best Letter.*

[2125] *See DBRS Letter.*

[2126] *See id.*

[2127] *See* section IV.D.2. of this release (discussing the PRA burden resulting from the amendments to the instructions for Exhibit 1 to Form NRSRO).

taking of a rating action under paragraph (a) of Rule 17g–7, as proposed, in part, on its estimate of the number of rating actions taken by NRSROs. The annual burden estimate also included a component representing the time an NRSRO would spend to update its standard disclosures and to tailor disclosures to particular rating actions. In addition, the Commission estimated a one-time burden to develop the standardized disclosures and to create the systems, protocols, and procedures for generating the forms to accompany rating actions. However, while the Commission agrees that its estimate in the proposal may have been low, as discussed in detail below (and above in section II.G. of this release), the Commission has modified the proposed requirements in a number of ways that will mitigate to some degree the burden of compliance with the requirements. The Commission is therefore not increasing its estimate of the annual and one-time burdens to update disclosures and create systems and procedures to comply with the rule.[2128]

Third, the Commission based its estimate of the one-time and annual burden attributable to establishing, maintaining, enforcing, and documenting standards of training, experience, and competence for the individuals it employs to determine credit ratings pursuant to Rule 17g–9, as proposed, on the number of credit analysts employed by NRSROs. In response to the above comments, the Commission is adding to its burden estimate for this rule to account for a fixed burden that does not depend on the number of credit analysts employed by an NRSRO, in recognition of the fact that the burden associated with establishing, maintaining, enforcing, and documenting standards of training, experience, and competence for credit analysts may not be directly proportional to the number of credit analysts employed by an NRSRO.[2129]

The Commission is updating its estimates of the number of NRSRO credit ratings outstanding and the number of NRSRO credit analysts based on more recent information submitted to the Commission by the NRSROs on Form NRSRO. The Commission now estimates that NRSROs have a total of 2,437,046 credit ratings outstanding in all classes of credit ratings.[2130] The Commission further estimates that NRSROs employ a total of 4,218 credit analysts.[2131]

Finally, in the proposing release, the Commission based some of its estimates for purposes of the PRA on the number of Exchange Act-ABS offerings per year.[2132] For purposes of these estimates, the Commission estimated that there would be approximately 2,067 Exchange Act-ABS offerings per year.[2133] The Commission estimates that in calendar year 2013 there were approximately 715 offering of Exchange Act-ABS.[2134] The Commission believes that the more recent data on the number of offerings of Exchange Act-ABS should be used for purposes of the PRA estimates given significant difference between the 715 offerings per year estimate (which is based on data for calendar year 2013) and the 2,067 offerings per year estimate (which was derived from older data).[2135] Consequently, the Commission is revising the estimate from 2,067 offerings per year to 715 offerings per year.

1. Amendments to Rule 17g–1

The Commission is amending paragraph (i) of Rule 17g–1 to require that an NRSRO make Form NRSRO and Exhibits 1 through 9 to Form NRSRO freely available on an easily accessible portion of its corporate Internet Web site.[2136] The amendment removes the option for an NRSRO to make the form publicly available ''through another comparable, readily accessible means'' as an alternative to Internet Web site disclosure.

As stated above, the Commission believes that a Form NRSRO and Exhibits 1 through 9 will be ''easily accessible'' if they can be accessed through a clearly and prominently labeled hyperlink (including through a hyperlink labeled ''Regulatory Disclosures'') on the homepage of the NRSRO's corporate Internet Web site. NRSROs may need to make changes to their corporate Internet Web sites to place clearly and prominently labeled hyperlinks to Form NRSRO and Exhibits 1 through 9 on the Web sites.[2137] In the proposing release, the Commission estimated that reconfiguring a corporate Internet Web site for this purpose would take an average of approximately five hours (and would be accomplished by NRSROs using their corporate Internet Web site administrators), resulting in an estimated industry-wide one-time burden of approximately fifty hours.[2138] The Commission did not receive comment on this estimate and is adopting the amendment as proposed. Therefore, the Commission is retaining this estimate without revision.

The Commission also is amending paragraph (i) of Rule 17g–1 to require that NRSROs make their most recent Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit to implement the rulemaking mandated in section 15E(q)(2)(D) of the Exchange Act.[2139]

In the proposing release, the Commission stated that it believed that NRSROs would need to establish procedures and protocols for receiving and processing these requests and that this would take an average of approximately forty-eight hours per NRSRO, resulting in an industry-wide one-time hour burden of approximately 480 hours.[2140] The Commission did not receive comment on this estimate and is adopting the amendments as proposed. Therefore, the Commission is retaining this estimate without revision.

The Commission also estimated that each NRSRO would on average receive approximately 200 requests per year and would spend an average of twenty minutes processing each request, resulting in an industry-wide annual hour burden of approximately 670 hours.[2141] The Commission did not receive comments on this estimate and is adopting the amendments as

[2128] *See* section IV.D.6. of this release (discussing the PRA burden resulting from the amendments to Rule 17g–7).

[2129] *See* section IV.D.8. of this release (discussing the PRA burden resulting from Rule 17g–9).

[2130] *See* Table 2 in section I.B.2.a. of this release. In the proposing release, the Commission estimated that NRSROs had a total of 2,905,824 credit ratings outstanding in all classes of credit ratings. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33500.

[2131] *See* Table 1 in section I.B.2.a. of this release. In the proposing release, the Commission estimated that NRSROs employed a total of 3,520 credit analysts. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33500.

[2132] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33506, 33509–33510.

[2133] *See id.* at 33506, 33509–33510. *See also Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (providing an estimate of 2,067 upon which the estimate in the proposing release was based).

[2134] *See* Table 6 in section I.B.2.b. of this release.

[2135] *Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4508, n.217 (noting that the 2,067 estimate was based, in part, on the average number of registered and Rule 144A offerings of asset-backed securities over the period 2004–2009).

[2136] *See* section II.E.2. of this release (providing a more detailed discussion of this amendment).

[2137] *See* section II.E.2. of this release.

[2138] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33501 (5 hours × 10 NRSROs = 50 hours).

[2139] *See* 15 U.S.C. 78o–7(q)(2)(D).

[2140] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33501 (10 NRSROs × 48 hours = 480 hours).

[2141] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33501 (200 requests × 20 minutes per request = 67 hours per year; 10 NRSROs × 67 hours per year = 670 hours per year).

proposed. Therefore, the Commission is retaining this estimate without revision.

In response to comments stating that NRSROs should be able to charge the requesting individual postage and handling fees,[2142] the Commission agrees, as stated above, that an NRSRO may charge a reasonable postage and handling fee.[2143] Because NRSROs may choose not to pass the postage costs on to persons requesting the exhibit in writing, the Commission estimates that the cost of postage will be approximately two dollars per request, for an industry-wide annual cost of approximately $4,000.[2144]

The Commission is also amending paragraphs (e), (f), and (g) of Rule 17g–1 to require NRSROs to use the Commission's EDGAR system to electronically submit Form NRSRO and the required exhibits to the form to the Commission as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[2145] NRSROs currently submit these documents to the Commission in paper form.

The Commission estimated in the proposing release that each NRSRO would spend an average of approximately four and ¾ hours becoming familiar with the EDGAR filing system, resulting in an estimated industry-wide one-time hour burden of forty-seven and a half hours.[2146]

An NRSRO stated that it would have no objection to the proposal, that providing the information as PDF documents would be ''the most preferred and simplest'' way to provide the information, and that providing the information in and XBRL or XML format would not provide additional analytical benefit and could make it more difficult for users to access Form NRSRO.[2147] Another NRSRO, however, stated that the Commission's estimate of the cost of the proposal ''accounts for only a small fraction of the expected cost of compliance'' as ''an NRSRO will have to familiarize itself with the roughly 35 Rules of Regulation S–T as well as the first two volumes of the EDGAR Filer Manual (which currently total more than 600 pages) and related EDGAR technical guidance.'' [2148] This commenter also stated that the Commission did not estimate ''the expense an NRSRO would incur in compiling Form NRSRO, its exhibits, and the annual reports into an EDGAR-acceptable format.'' [2149] However, the commenter did not provide a different estimate of the costs associated with the proposal.

In response to the comment from an NRSRO that the Commission's proposed cost estimate for the proposal ''accounts for only a small fraction of the expected cost of compliance'' and that instead PDF copies of the required submissions should be transmitted via email,[2150] the Commission notes that it has modified the proposed amendments to require that the electronic submissions be made on EDGAR as PDF documents, which, as noted above, another NRSRO described as ''the most preferred and simplest'' way to provide the information.[2151] The Commission also points out that not all of Regulation S–T or the EDGAR Filer Manual applies to NRSRO submissions, in particular, as these submissions will be made as PDF documents.[2152] Moreover, having the reports submitted via the EDGAR system—rather than to a Commission email box—will assist the Commission staff in storing and accessing these records in furtherance of the Commission's NRSRO oversight function.

In response to the comment that the Commission underestimated the burden of becoming familiar with the EDGAR system,[2153] the Commission is revising its estimate, based on staff experience, from 4 and ¾ hours on a one-time basis as the amount of time, on average, an NRSRO would need to spend to become familiar with the EDGAR system to sixteen hours, for an industry-wide one-time burden of approximately 160 hours.[2154] This includes developing an understanding of how to use the system for both submitting Forms NRSRO (and applicable exhibits) and for submitting the Rule 17g–3 annual reports. The Commission is allocating this one-time hour burden and corresponding cost solely to Rule 17g–1.

The Commission stated in the proposing release that it did not believe that changing the method of submitting Form NRSRO and Exhibits 1 through 9 from a paper submission to an electronic submission would increase the current annual hour burden for Rule 17g–1.[2155] An NRSRO stated that the Commission failed to consider the significant ongoing expenses of monitoring changes in EDGAR filing requirements.[2156] Because the amendments to Rule 17g–1 require the submission to be made in PDF (the simplest process), the Commission does not believe that changes to the EDGAR filer manual generally will impact the NRSROs. However, the Commission agrees with the commenter that NRSROs will need to spend some time each year reviewing changes to the EDGAR filer manual to determine whether they relate to the NRSRO's submissions.[2157] Consequently, the Commission now estimates, based on Commission staff experience, that each NRSRO will spend an average of approximately two hours per year monitoring changes in EDGAR filing requirements, resulting in a total industry-wide annual hour burden of approximately twenty hours.[2158] This includes monitoring changes in EDGAR filing requirements for both submitting Forms NRSRO and for submitting the Rule 17g–3 annual reports.

The Commission is allocating the one-time and annual hour burdens and corresponding costs of the requirement to submit Form NRSRO and the Rule 17g–3 annual reports to the Commission electronically on EDGAR as PDF documents solely to Rule 17g–1.

The Commission therefore estimates that the total industry-wide one-time hour burden resulting from the amendments to Rule 17g–1 is approximately 690 hours [2159] to reconfigure NRSROs' corporate Internet Web sites, to establish procedures and protocols for receiving and processing requests for a paper copy of Exhibit 1, and for becoming familiar with the EDGAR system, and the total industry-wide annual burden is approximately

[2142] *See DBRS Letter; S&P Letter.*

[2143] *See* section II.E.2. of this release.

[2144] 200 requests × $2.00 = $400; 10 NRSROs × $400 = $4,000.

[2145] *See* section II.L. of this release (providing a more detailed discussion of these amendments).

[2146] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33501 (10 NRSROs × 4.75 hours = 47.5 hours).

[2147] *See S&P Letter.*

[2148] *See DBRS Letter.*

[2149] *See id.*

[2150] *See DBRS Letter.*

[2151] *See S&P Letter.*

[2152] *See EDGAR Filer Manual, available at http://www.sec.gov/info/edgar/edmanuals.htm.* Significant portions of the manual relate to public company filing of information on various Commission forms and to filing forms in formats other than PDF (ASCII, HTML, XML, or XBRL). The third volume of the manual relates to the filing of Form N–SAR by investment management companies registered with the Commission.

[2153] *See DBRS Letter.*

[2154] 16 hours × 10 NRSROs = 160 hours. In addition, as discussed below in section IV.D.12. of this PRA analysis, the Commission estimates that the one-time industry-wide burden resulting from filing Form ID to gain access to the EDGAR system to be approximately two and half hours, for a total industry-wide one-time burden of approximately 162.5 hours.

[2155] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33501.

[2156] *See DBRS Letter.*

[2157] *See, e.g., Adoption of Updated EDGAR Filer Manual,* Securities Act Release No. 9600 (June 16, 2014), 79 FR 35280 (June 20, 2014); *Adoption of Updated EDGAR Filer Manual,* Securities Act Release No. 9554 (Mar. 4, 2014), 79 FR 13216 (Mar. 10, 2014). The Commission succinctly summarizes the updates to the EDGAR filer manual in these releases, which are less than ten pages long.

[2158] 10 NRSROs × 2 hours = 20 hours.

[2159] 50 hours + 480 hours + 160 hours = 690.

690 hours to process requests for a paper copy of Exhibit 1 and to monitor changes in EDGAR filing requirements.[2160] The Commission further estimates that the total industry-wide annual external cost to NRSROs resulting from the amendments to Rule 17g–1 is approximately $4,000.

2. Amendments to Form NRSRO Instructions

The Commission is amending the instructions for Exhibit 1 to Form NRSRO.[2161] The amendments standardize the production and presentation of the 1-year, 3-year, and 10-year transition and default statistics that an NRSRO must disclose in the exhibit. The performance statistics must be presented in a format specified in the instructions, which include a sample ''Transition/Default Matrix.'' The amendments also will enhance the information to be disclosed by, for example, requiring statistics to be produced and presented for subclasses of structured finance products and for credit ratings where the obligation was paid off or the credit rating was withdrawn for reasons other than a default or the obligation was paid off.

In the proposing release, the Commission stated that it believed that the burdens attributable to the amendments to the instructions for Exhibit 1 should be based on the number of NRSRO credit ratings outstanding (which, based on annual certifications submitted by the NRSROs for the 2009 calendar year end, totaled 2,905,824 credit ratings outstanding across the ten NRSROs), that the one-time hour burden would be approximately three seconds per outstanding credit rating, and that the annual hour burden would be approximately one and a half seconds per outstanding credit rating, for an industry-wide one-time burden of approximately 2,420 hours and an industry-wide annual burden of approximately 1,210 hours.[2162]

An NRSRO stated that collecting the data required for purposes of the proposed amendments to the instructions for Exhibit 1 to Form NRSRO would be burdensome, and this NRSRO suggested that NRSROs be exempt from the requirement to include historical data to the extent that the NRSRO does not already capture such information ''in a readily retrievable format.'' [2163] Another NRSRO stated that the definition of *paid off* as applied to obligors ''is not practicable'' because some obligors do not have rated debt outstanding and it would be difficult to track whether all obligations of an obligor are paid off.[2164] In addition, an NRSRO objected to basing burden estimates on the number of credit ratings outstanding or the number of credit analysts employed by NRSROs, stating that the burden estimates ''must include the amount of legal and compliance resources necessary to implement systemic and simultaneous changes.'' [2165]

As discussed in section II.E.1. of this release, in response to comment, the Commission has modified the proposed instructions for Exhibit 1 to Form NRSRO. The final amendments provide that, except for the issuers of asset-backed securities class of credit ratings, to determine the number of credit ratings outstanding as of the beginning of the applicable period, the NRSRO must include only credit ratings assigned to an obligor as an entity or, if there is no such credit rating, the credit rating of the obligor's senior unsecured debt, instead of all of the credit ratings of individual securities or money-market instruments issued by the obligor. Because the Commission has narrowed the scope of the types of credit ratings that will have to be included in the performance statistics for four of the five classes of credit ratings, this should substantially reduce the amount of historical information that will need to be analyzed. The Commission has also revised the standard definition of *paid off,* in response to comment,[2166] to eliminate the prong that applied to credit ratings of obligors as entities. The Commission has clarified that the rule does not require NRSROs to track the outcomes of obligors, securities, or money market instruments after the credit ratings assigned to them have been withdrawn, in response to comments from two NRSROs,[2167] one of which stated that ''the proposed requirement to separately track rating withdrawals, because of repayments and other reasons, likely would be impractical in many cases.'' [2168]

The Commission believes that it is appropriate to base some of the burden estimates attributable to the amendments to the instructions for Exhibit 1 on the number of NRSRO credit ratings outstanding, as the time required to retrieve information will depend on the number of credit ratings outstanding and the time required to calculate the performance statistics should be greater for a larger start-date cohort. However, as stated above, in response to comment, the Commission is adding to its one-time burden estimate to account for burden that does not depend on the number of NRSRO credit ratings outstanding.[2169] For example, some of the burden associated with establishing systems for determining performance statistics according to the amended instructions may not depend on the number of credit ratings outstanding. While commenters did not provide an estimate of the amount of one-time burden that would be unrelated to the number of credit ratings outstanding, the Commission is adding to the one-time hour burden estimated in the proposing release a one-time hour burden that is not linked to the number of credit ratings outstanding. Specifically, the Commission estimates, based on Commission staff experience, a one-time burden of approximately fifty hours per NRSRO, for an industry-wide total of approximately 500 hours on a one-time basis,[2170] attributable to the amendments to the instructions for Exhibit 1 that is in addition to the one-time burden based on the number of credit ratings outstanding.

In order to be conservative, the Commission is not revising its time per credit rating estimates as a result of the modifications to the proposed amendments to the instructions for Exhibit 1 in the final rule, although the modifications may result in lower burdens compared to those of the proposed amendments. However, the Commission is updating its estimate of the number of NRSRO credit ratings outstanding. Based on the annual certifications submitted by the NRSROs for the 2013 calendar year, there were approximately 2,437,046 credit ratings outstanding across all ten NRSROs.[2171] The Commission therefore estimates that the industry-wide one-time hour burden for NRSROs to establish systems to process the relevant information necessary to complete Exhibit 1 to Form NRSRO that is based on the number of outstanding credit ratings is approximately 2,031 hours [2172] and that

[2160] 670 hours + 20 hours = 690 hours.

[2161] *See* section II.E.1. of this release (providing a more detailed discussion of the amendments).

[2162] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33502.

[2163] *See Moody's Letter.*

[2164] *See S&P Letter.*

[2165] *See A.M. Best Letter. See also DBRS Letter.*

[2166] *See S&P Letter.*

[2167] *See Moody's Letter; S&P Letter.*

[2168] *See S&P Letter.*

[2169] *See A.M. Best Letter; DBRS Letter.*

[2170] 50 hours × 10 NRSROs = 500 hours.

[2171] *See* Table 2 in section I.B.2.a. of this release.

[2172] 2,437,046 credit ratings × 3 seconds = 2,030.9 hours (rounded to 2,031 hours).

the industry-wide annual burden is approximately 1,015 hours.[2173]

The Commission therefore estimates that the total industry-wide one-time hour burden to NRSROs resulting from the amendments to the instructions for Exhibit 1 to Form NRSRO is approximately 2,531 hours[2174] to establish systems for determining performance statistics according to the amended instructions and that the annual burden is approximately 1,015 hours to calculate and format the performance statistics according to the amended instructions.

3. Amendments to Rule 17g–2

The Commission is adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures with respect to look-back reviews an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8 as a record that must be made and retained.[2175] In addition, the Commission is adding the following paragraphs to Rule 17g–2 to identify records that must be retained: (1) Paragraph (b)(12) identifies the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to section 15E(c)(3)(A) of the Exchange Act;[2176] (2) paragraph (b)(13) identifies the policies and procedures with respect to the procedures and methodologies used to determine credit ratings an NRSRO is required to establish, maintain, enforce, and document pursuant to paragraph (a) of Rule 17g–8;[2177] (3) paragraph (b)(14) identifies the policies and procedures with respect to credit rating symbols, numbers, or scores an NRSRO must establish, maintain, enforce, and document pursuant to paragraph (b) of Rule 17g–8;[2178] and (4) paragraph (b)(15) identifies the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to Rule 17g–9.[2179] In addition, in a modification from the proposal, the Commission is amending paragraph (c) of Rule 17g–2 to provide that records identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 must be retained until three years after the date record is replaced with an updated record, instead of three years after the date the record is made or received (the retention period for other records identified in paragraphs (a) and (b) of Rule 17g–2).[2180]

With respect to paragraph (b)(12) of Rule 17g–2, one commenter stated that the requirement to document internal controls is burdensome, particularly for smaller NRSROs, and argued that an NRSRO should be allowed to establish its own documentation policies and procedures.[2181] However, the Commission is not imposing documentation requirements. Rather, section 15E(c)(3)(A) of the Exchange Act requires an NRSRO, among other things, to document its internal control structure.[2182]

The Commission is adding paragraph (a)(9) to Rule 17g–2 to require NRSROs to make and retain a record documenting the policies and procedures with respect to look-back reviews an NRSRO is required to establish, maintain, and enforce under section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of proposed Rule 17g–8. The Commission is providing estimates below in section IV.D.7. of this PRA analysis to address the burdens associated with Rule 17g–8, including the one-time and annual hour burdens that will result from establishing, maintaining, enforcing, and *documenting* the policies and procedures with respect to look-back reviews required by section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8.

Consequently, for purposes of Rule 17g–2, the Commission is providing estimates of the one-time and annual hour burdens resulting from the requirement to *retain* the records that are identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2. The Commission believes that the one-time hour burden will result from the NRSRO needing to update its record retention policies and procedures to incorporate these new records that will need to be retained. NRSROs already have a recordkeeping system in place to comply with the retention requirements of Rule 17g–2 before today's amendments. The Commission estimated in the proposing release that each NRSRO would spend an average of approximately twenty hours updating its record retention policies and procedures, resulting in an industry-wide one-time hour burden of approximately 200 hours.[2183] The Commission did not receive comment on this estimate.

The Commission estimated in the proposing release that it would take approximately one hour per record each year to retain updated versions of these records,[2184] for an annual hour burden for each NRSRO attributable to these proposals of approximately five hours,[2185] and an industry-wide annual hour burden of approximately fifty hours.[2186] The Commission did not receive comment on this estimate and, except for the amendment to paragraph (c) requiring that the record be retained until three years after the date the record is replaced with an updated record, is adopting the amendments to Rule 17g–2 as proposed. The Commission believes that the amendment to paragraph (c) of Rule 17g–2 will not affect the burdens estimated for Rule 17g–2 in the proposing release because the amendment removes an ambiguity in the proposal that could be read to make the retention period shorter than the Commission intended and shorter than the retention period upon which the Commission's estimate in the proposing release was based. Therefore, the Commission is retaining the one-hour per record estimate in the proposing release without revision.

The Commission is repealing paragraph (d)(2) of Rule 17g–2 (the 10% Rule) and re-codifying, with substantial amendments, the requirements in former paragraph (d)(3) of Rule 17g–2 in paragraph (b) of Rule 17g–7 (the 100% Rule).[2187] The one-time and annual hour burdens resulting from the enhancements to the 100% Rule are discussed below in section IV.D.6. of this release, which addresses the one-time and annual hour burdens resulting from the amendments to Rule 17g–7.

Consequently, the Commission estimates that the total industry-wide one-time hour burden for NRSROs resulting from the amendments to Rule 17g–2 to update their record retention policies and procedures to incorporate these new records that will need to be retained is approximately 200 hours and

[2173] 2,437,046 credit ratings × 1.5 seconds = 1015.4 hours (rounded to 1015 hours).

[2174] 500 hours + 2,031 hours = 2,531 hours.

[2175] *See* section II.C.2. of this release (providing a more detailed discussion of this amendment).

[2176] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment).

[2177] *See* section II.F.2. of this release (providing a more detailed discussion of this amendment).

[2178] *See* section II.J.2. of this release (providing a more detailed discussion of this amendment).

[2179] *See* section II.I.2. of this release (providing a more detailed discussion of this amendment).

[2180] *See* paragraph (c) of Rule 17g–2.

[2181] *See A.M. Best Letter.*

[2182] *See* 15 U.S.C. 78o–7(c)(3)(A).

[2183] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33503 (10 NRSROs × 20 hours = 200 hours).

[2184] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33503.

[2185] 5 records × 1 hour = 5 hours.

[2186] 10 NRSROs × 5 hours = 50 hours.

[2187] *See* section II.E.2. of this release (providing a more detailed discussion of these amendments).

the annual hour burden to retain the records is approximately fifty hours.[2188]

4. Amendments to Rule 17g–3

The Commission is amending paragraphs (a) and (b) of Rule 17g–3.[2189] The amendment to paragraph (a) adds paragraph (a)(7) to require an NRSRO to include an additional report—a report on the NRSRO's internal control structure—with its annual submission of reports to the Commission pursuant to Rule 17g–3. The amendment to paragraph (b) of Rule 17g–3 requires that the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, must provide a signed statement attesting to information in the report that must be attached to the report.

In the proposing release, the Commission stated that because NRSROs already should have developed processes and protocols to prepare the annual reports required by Rule 17g–3, the internal hour burden associated with the first submission of the report on the NRSRO's internal control structure would not be materially different than the hour burden associated with submitting subsequent reports, although the time required to prepare subsequent reports could decrease incrementally over time as the NRSRO gains experience with the requirement.[2190] The Commission stated that an NRSRO likely would engage outside counsel to analyze the requirements for the report and to assist in drafting and reviewing the first report, that the time outside counsel would spend on this work would depend on the size and complexity of the NRSRO, and that an attorney would spend an average of approximately 100 hours assisting an NRSRO and its CEO or other qualified individual in drafting and reviewing the first report, resulting in an industry-wide external one-time hour burden of approximately 1,000 hours.[2191] Based on industry sources, the Commission estimated that the cost of outside counsel would be approximately $400 per hour,[2192] and that the average one-time cost to an NRSRO would be approximately $40,000,[2193] resulting in an industry-wide one-time cost of approximately $400,000.[2194]

In connection with the proposed amendments to Rule 17g–7, an NRSRO stated that the Commission underestimated the hourly rate for retaining outside counsel.[2195] The commenter, however, did not provide alternative estimate of the hourly rate. Based on staff experience, the Commission is retaining the hourly rate without revision.[2196]

In terms of the annual burden relating to the submission of the reports, the Commission estimated, based on staff experience, that each NRSRO would spend on average approximately 150 hours preparing the internal controls report, resulting in an industry-wide annual burden of approximately 1,500 hours.[2197]

In addition, the Commission stated that an NRSRO likely would continue to engage outside counsel to assist in preparing the reports (after filing the first report) and that the time outside counsel would spend assisting in the preparation of subsequent reports would be less than the time spent on preparing the first report, since the counsel's work will not need to include an initial analysis of the new requirements. Consequently, the Commission estimated that an attorney would spend an average of approximately fifty hours assisting an NRSRO and its CEO or other qualified individual in drafting and reviewing the report, resulting in an industry-wide annual hour burden of approximately 500 hours.[2198] As stated above, the Commission estimated that the cost of outside counsel would be approximately $400 per hour.[2199] For these reasons, the Commission estimated that the average annual cost to an NRSRO to comply with this requirement would be approximately $20,000,[2200] resulting in an industry-wide annual cost of approximately $200,000.[2201] The Commission did not receive comment on the hour estimates. As proposed, paragraph (a)(7) of Rule 17g–3 would require that the internal controls report contain a description of the responsibility of management in establishing and maintaining an effective control structure and an assessment of the effectiveness of the internal control structure. In response to comment, paragraph (a)(7), as adopted, has been modified from the proposal to require that the report describe material weaknesses identified in the internal control structure during the fiscal year and how they were addressed and to state whether the internal control structure was effective as of the end of the fiscal year.[2202] In order to include an assessment of the effectiveness of the NRSRO's internal control structure in the annual internal controls report, the NRSRO will need to identify any material weaknesses in the internal control structure. In addition, since the statute requires that the internal control structure be ''effective,'' the NRSRO will have to remediate any such weaknesses to comply with the statutory requirement.[2203] Therefore, the Commission does not believe the modifications discussed above necessitate adjusting the burdens from those that were proposed.

However, the modifications to the amendment from the proposal also require that the internal controls report include a description of material weaknesses identified during the fiscal year and how they were remediated. The Commission believes that documenting these items for inclusion

[2188] The adjusted industry-wide annual hour burden for Rule 17g–2 before today's amendments was 4,000 hours. The elimination of the requirements in paragraph (d)(2) of Rule 17g–2 will subtract seventy hours from that amount. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6472. In addition, the re-codification of paragraph (d)(3) of Rule 17g–2 in paragraph (b) of Rule 17g–7 will subtract an additional 450 hours from the adjusted industry-wide annual hour burden for Rule 17g–2 and that burden will be attributed to the industry-wide annual hour burden for Rule 17g–7. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63853; section IV.D.6. of this release. Consequently, after these subtractions, the adjusted industry-wide annual hour burden for Rule 17g–2 will be 3,480 hours (4,000 hours − 70 hours − 450 hours = 3,480 hours). The amendments to add paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) to Rule 17g–2 being adopted today will, as discussed above, add approximately fifty hours to the adjusted industry-wide annual hour burden resulting in a total adjusted industry-wide annual hour burden of 3,530 hours (3,480 hours + 50 hours = 3,530 hours).

[2189] *See* section II.A.3. of this release (providing a more detailed discussion of these amendments).

[2190] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33504.

[2191] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33504 (10 NRSROs × 100 hours = 1,000 hours).

[2192] *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (providing an estimate of $400 per hour to engage outside counsel).

[2193] 100 hours × $400 = $40,000.

[2194] 10 NRSROs × $40,000 = $400,000.

[2195] *See DBRS Letter.*

[2196] *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63889 (''Based on industry sources, the Commission estimates that the cost of outside counsel would be approximately $400 per hour'').

[2197] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33504 (10 NRSROs × 150 hours = 1,500 hours).

[2198] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33504 (10 NRSROs × 50 hours = 500 hours). The Commission is adopting paragraph (a)(7) of Rule 17g–3 as proposed. Accordingly, this estimate remains unchanged from the Commission's preliminary estimate in the proposing release.

[2199] *See also Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (''Based on industry sources, the Commission estimates that the cost of outside counsel would be approximately $400 per hour'').

[2200] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33504 (50 hours × $400 = $20,000).

[2201] *See id.* (10 NRSROs × $20,000 = $200,000).

[2202] *See* section II.A.3. of this release (providing a more detailed discussion of these modifications).

[2203] *See* 15 U.S.C. 78o–7(c)(3)(A).

in the internal controls report will take NRSROs an average of approximately fifteen hours per year, resulting in an internal burden of approximately 165 hours per NRSRO per year for preparing the internal controls report, resulting in a total industry-wide annual burden of approximately 1,650 hours.[2204]

As discussed above in section IV.D.1. of this release, the amendments to Rule 17g–3 also require that the annual reports be submitted electronically on the Commission's EDGAR system.[2205] The discussion of the Commission's estimates of the burdens associated with the requirement to submit the Rule 17g–3 annual reports electronically through the EDGAR system in the proposing release, relevant comments on those burdens, the Commission's responses to those comments, and the Commission's final burden estimates (which are revised in response to comments) are discussed in section IV.D.1. of this release. Further, as discussed below in section IV.D.12. of this release, the Commission estimates there will be burdens to complete Form ID for purposes of submitting Form NRSRO (and Exhibits 1 through 9) and the Rule 17g–3 annual reports electronically through EDGAR. For purposes of this PRA analysis, the Commission is allocating the burdens discussed above to Rule 17g–1 and Form ID.

The Commission therefore estimates that the amendments to Rule 17g–3 will result in a total industry-wide one-time cost for NRSROs of approximately $400,000 to engage outside counsel to analyze the requirements for the internal controls report, a total industry-wide annual hour burden of approximately 1,650 hours to prepare the internal controls report, and a total industry-wide annual cost of approximately $200,000 to engage outside counsel to assist in the preparation of the annual internal controls report.

5. Amendments to Rule 17g–5

The Commission is adding paragraph (a)(3)(iii)(E) to Rule 17g–5 to require an NRSRO to obtain an additional representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security.[2206] This provision, which was not included in the proposal, may require NRSROs to redraft the agreement templates they use with respect to obtaining representations from issuers, sponsors, or underwriters as required under Rule 17g–5. Based on staff experience, the Commission estimates that an NRSRO will spend approximately two hours on a one-time basis to redraft these templates, for a total industry-wide one-time burden of approximately 6,720 hours.[2207] In addition, based on the Commission's estimate that there will be 715 offerings of Exchange Act-ABS per year,[2208] the Commission estimates that issuers, sponsors, and underwriters will need to post approximately 715 Forms ABS Due Diligence–15E on Rule 17g–5 Web sites per year (in addition to the information that is already posted to the Web sites). Based on staff experience, the Commission estimates that it will take the issuer, sponsor, or underwriter approximately ten minutes to upload each form and post it to the Web site, for a total industry-wide annual burden of approximately 119 hours.[2209]

The Commission is adding paragraph (c)(8) to Rule 17g–5 to prohibit an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[2210] As a consequence of the new absolute prohibition, the Commission believes that an NRSRO will need to update the written policies and procedures to address and manage conflicts of interest the NRSRO must establish, maintain, and enforce under section 15E(h) of the Exchange Act and Rule 17g–5. The Commission estimates below that it will take an NRSRO an average of approximately 100 hours to establish and make a record of its policies and procedures with respect to look-back reviews.[2211] Based on Commission staff experience, the Commission estimates that updating the conflicts of interest policies and procedures would take an NRSRO an average of approximately 100 hours, for an industry-wide one-time burden of approximately 1,000 hours.[2212]

Exhibit 7 to Form NRSRO requires an NRSRO to provide a copy of the written policies and procedures in the exhibit. Paragraph (e) of Rule 17g–1 requires an NRSRO to promptly file with the Commission an update of its registration on Form NRSRO when information on the form is materially inaccurate. The update of registration must be filed electronically on the Commission's EDGAR system. The Commission estimates, based on staff experience, that it would take an NRSRO an average of approximately twenty-five hours on a one-time basis to prepare and file the update of registration to account for the update of the NRSRO's written policies and procedures to address and manage conflicts of interest, for an industry-wide one-time burden of approximately 250 hours and a total industry-wide one-time burden of approximately 1,250 hours to update the NRSRO's conflicts of interest policies and procedures and to prepare and file an update of registration to account for the update of the NRSRO's written policies and procedures.[2213]

The Commission is adding paragraph (f) to Rule 17g–5, which provides that upon written application by an NRSRO the Commission may exempt, either unconditionally or on specified terms and conditions, the NRSRO from paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation of the production of credit ratings from sales and marketing activities and the exemption is in the public interest.[2214]

[2204] 150 hours + 15 hours = 165 hours; 165 hours × 10 NRSROs = 1,650 hours.

[2205] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2206] *See* sections II.G.5. and II.H.2. of this release (providing a more detailed discussion of this provision).

[2207] 336 issuers, sponsors, and underwriters × 2 hours = 672 hours; 672 hours × 10 NRSROs = 6,720 hours.

[2208] *See* Table 6 in section I.B.2.b. of this release. Issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, the Commission believes that providers of third-party due diligence services are used primarily for RMBS transactions. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS.

[2209] 715 Forms ABS Due Diligence–15E per year × 10 minutes = 119.17 hours, rounded to 119 hours.

[2210] *See* section II.B.1. of this release (providing a more detailed discussion of this provision).

[2211] *See* section IV.D.7. of this release.

[2212] 100 hours × 10 NRSROs = 1,000 hours.

[2213] 10 NRSROs × 25 hours = 250 hours; 1,000 hours + 250 hours = 1,250 hours. *See also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33614 (providing a PRA estimate of twenty-five hours for an NRSRO to prepare and furnish an update of its registration).

[2214] *See* section II.B.2. of this release (providing a more detailed discussion of this provision).

Based on staff experience, the Commission believes that an NRSRO applying for the exemption would likely engage outside counsel to assist in drafting an exemption request, that counsel would spend an average of approximately fifty hours for a cost of approximately $20,000 to assist in drafting the request, and that the NRSRO would likely spend an average of approximately 150 hours to draft and submit the application to the Commission.[2215]

6. Amendments to Rule 17g–7

The Commission is incorporating the disclosure requirement with respect to representations, warranties, and enforcement mechanisms in Rule 17g–7 before today's amendments into paragraph (a) of Rule 17g–7 and is adding to paragraph (a) significant disclosure provisions that require an NRSRO, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[2216]

With respect to the one-time burden attributable to paragraph (a) of Rule 17g–7, the Commission estimated in the proposing release that an NRSRO would spend an average of approximately 5,000 hours to develop the standardized disclosures and create the systems, protocols, and procedures for populating the form with information generated and collected during the rating process, allocated 75% of these burden hours (3,750 hours) to internal burden and 25% of these burden hours (1,250 hours) to external burden, and estimated a $400 per hour cost for outside professionals such as counsel and information technology consultants, resulting in an industry-wide one-time hour burden of approximately 50,000 hours and an industry-wide one-time cost of approximately $5,000,000.[2217] As discussed below, the Commission is not modifying its estimate with respect to the one-time burden attributable to paragraph (a) of Rule 17g–7. Further, as stated above, in response to a comment stating that the Commission's estimate of $400 per hour for retaining outside counsel is too low,[2218] the Commission notes that the commenter did not provide an alternative estimate of the hourly rate. Based on staff experience, the Commission is retaining the hourly rate without revision.[2219]

With respect to the annual hour burden for paragraph (a) of Rule 17g–7, the Commission stated in the proposing release that it believed that the estimate should be divided into two components: The amount of time an NRSRO would spend to update its standardized disclosures and to tailor disclosures to particular rating actions and asset classes; and the amount of time the NRSRO would spend generating and publishing each form and attaching the required certifications to the form.[2220] With regard to the first component, the Commission estimated that an NRSRO would spend an average of approximately 500 hours per year updating the standardized disclosures, for an industry-wide annual hour burden of 5,000 hours.[2221] The Commission stated that it believed that the burden attributable to the second component should be based on the number of rating actions taken per year by the NRSROs because the requirement to generate and publish the form and attach the certifications will be triggered upon the taking of a rating action.[2222] The Commission further estimated that the ten NRSROs take approximately 2,909,958 credit rating actions per year,[2223] and estimated that the time it would take to generate a form with the required disclosures and to publish the form with the credit rating would be an average of approximately fifteen minutes, for an industry-wide annual hour burden of approximately 727,490 hours, which would be allocated to the NRSROs based on the number of credit ratings they have outstanding.[2224]

The Commission received comments from NRSROs stating that the Commission underestimated these costs and time burdens.[2225] However, these commenters did not provide estimates of the costs and time burden. Another NRSRO generally objected to the use of the number of credit ratings outstanding to estimate the burden of the proposed amendments and new rules, because ''the burden analysis must take into account not only the number of ratings or analysts in isolation, but also must include the legal and compliance resources necessary to implement systemic and simultaneous changes.'' [2226]

In part in response to comments,[2227] the Commission has modified paragraph (a) of Rule 17g–7 from the proposal in a number of ways to reduce burdens.[2228] For example, the Commission narrowed the scope of rating actions that will trigger the disclosure requirement and provided an exemption for certain rating actions involving foreign obligors or foreign-issued securities or money market instruments. The Commission also significantly reduced the reporting requirements relating to representations, warranties, and enforcement mechanisms. All of these modifications were made in response to concerns about burdens raised by commenters.[2229] Based on the comments above, the Commission believes it underestimated the amount of the burden in the proposing release. However, the Commission also believes the modifications discussed above will ease the burden to the extent that they will compensate for the amount by which the Commission underestimated the burden. Consequently, the Commission is retaining the original burden estimate.

The Commission continues to believe that the estimate of the time required to

[2215] 50 hours × $400 per hour for outside counsel = $20,000.

[2216] *See* section II.G. of this release (providing a more detailed discussion of these amendments).

[2217] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33505. This estimate was based on the Commission's estimate for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507. The Commission significantly increased the estimate for Form ABS–15G because the form required pursuant to Rule 17g–7 contains substantially more qualitative information.

[2218] *See DBRS Letter.*

[2219] *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63889 (''Based on industry sources, the Commission estimates that the cost of outside counsel would be approximately $400 per hour''); *Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (providing an estimate of $400 an hour to engage outside professionals).

[2220] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33505.

[2221] *See id.*

[2222] *See id.*

[2223] Based on information submitted to the Commission by NRSROs, the Commission estimated that NRSROs took approximately 2,000,000 rating actions in 2009, consisting of upgrades, downgrades, placements on credit watch, and withdrawals of credit ratings. The Commission also estimated that NRSROs would issue expected or preliminary ratings primarily with respect to new issuances of structured finance products, which the Commission estimated at 2,067 per year, plus other issuances, for a total of 4,134 preliminary ratings per year. The Commission also estimated that approximately 415,117 initial credit ratings are issued per year and that 490,707 affirmations are issued per year. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33505–33506

[2224] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33505–33506.

[2225] *See A.M. Best Letter; DBRS Letter; Morningstar Letter.*

[2226] *See A.M. Best Letter. See also DBRS Letter.*

[2227] *See A.M. Best Letter; DBRS Letter; Morningstar Letter.*

[2228] *See* section II.G. of this release (providing a more detailed discussion of these modifications).

[2229] *See A.M. Best Letter; ASF Letter; Better Markets Letter; CFA/AFR Letter; DBRS Letter; Deloitte Letter; FSR Letter; Moody's Letter; S&P Letter.*

generate and publish the form and attach the certifications should be based on the number of rating actions taken per year by the NRSROs because the requirement will be triggered upon the taking of a rating action. Based on staff experience, the Commission believes that expected or preliminary credit ratings are published primarily (but not exclusively) with respect to new issuances of structured finance products. The Commission estimates that there will be approximately 715 offerings of structured finance products per year.[2230] As stated in the proposing release, the Commission, based on staff experience, believes that expected or preliminary credit ratings are used in other types of offerings as well and, therefore, is increasing that estimate by 100%, to 1,430 preliminary or expected credit ratings per year.[2231]

In terms of estimating the number of initial credit ratings, as stated above, the Commission estimates that there are approximately 2,437,046 credit ratings outstanding across all ten NRSROs.[2232] Based on staff experience, as stated in the proposing release, the Commission estimates that the average maturity of rated securities and money market instruments is approximately seven years.[2233] Consequently, assuming 2,437,046 is the approximate average number of credit ratings outstanding at any given time, the Commission estimates that approximately 348,149 initial credit ratings are issued per year.[2234]

Based on information submitted to the Commission by NRSROs pursuant to paragraph (a)(6) of Rule 17g–3,[2235] the Commission estimates that in calendar year 2013 NRSROs made a total of approximately 236,521 credit rating upgrades and downgrades, placed 176,374 credit ratings on credit watch, and withdrew 191,062 credit ratings. However, the Commission notes that the definition of *rating action* in the prefatory text of paragraph (a) of Rule 17g–7, as adopted, has been modified from the proposed definition to exclude placements of credit ratings on credit watch and to only include an affirmation or withdrawal of an existing credit rating if the affirmation or withdrawal is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the NRSRO using applicable procedures and methodologies for determining credit ratings. The Commission estimates that virtually all withdrawals of credit ratings by NRSROs are in connection with routine debt maturities, calls, or redemptions in which case the withdrawal would result from the extinguishment of the debtor's obligation and not from an analysis of the debtor's creditworthiness. Consequently, virtually all withdrawals would not result from the application of the NRSRO's rating procedure or methodology to analyze the creditworthiness of the debtor. Therefore, virtually all withdrawals under the modified definition of *rating action* would not trigger the requirements of paragraph (a) of Rule 17g–7. Consequently, the Commission is excluding the number of withdrawals per year from the total number of rating actions per year that will trigger the requirements of paragraph (a) of Rule 17g–7.

Finally, with respect to affirmations of existing credit ratings, the Commission believes that NRSROs generally affirm existing credit ratings at least once a year. Consequently, the Commission estimates that the number of affirmations would be the total number of credit ratings outstanding (2,437,046), less the number of credit ratings that are upgraded and downgraded (236,521), placed on credit watch (176,374), withdrawn (191,062), and paid off during the year (348,149), for a total of 1,485,940 estimated NRSRO affirmations of existing credit ratings.

Based on these estimates, the Commission estimates that the ten NRSROs take an aggregate of approximately 2,071,040 credit rating actions per year, according to the definition of *rating action* in paragraph (a) of Rule 17g–7, as adopted.[2236] The Commission notes that the exemption in the rule for rating actions involving certain foreign obligors, securities, or money market instruments could reduce the number of rating actions that trigger the requirement to publish the form and any applicable due diligence certifications. However, in light of the comments arguing that the Commission underestimated the burden of the rule, taken in conjunction with the modifications from the proposal that reduce the number of rating actions covered, the Commission is not adjusting the number of rating actions for the purposes of these estimates.

The Commission preliminarily estimated that it would take approximately fifteen minutes on average to generate a form by populating it with the required disclosures and to publish the form. Commenters made general statements that the rule would result in significant burden [2237] or that the Commission underestimated the burden.[2238] Commenters, however, did not provide alternative estimates of the burden. Nonetheless, the Commission is revising its estimate, based on staff experience and in light of the comments, to twenty minutes on average for each rating action, resulting in an industry-wide annual hour burden of approximately 690,347 hours.[2239]

The Commission is not revising its estimate of the amount of time an NRSRO would spend to update its standardized disclosures and to tailor disclosures to particular rating actions and asset classes. The Commission therefore estimates an annual burden per NRSRO of approximately 500 hours and an industry-wide annual hour burden of approximately 5,000

[2230] *See* Table 6 in section I.B.2.b. of this release.

[2231] 715 × 2 = 1,430. *See also Nationally Recognized Statistical Rating Organizations,* 76 FR at 33506.

[2232] *See* Table 2 in section I.B.2.a. of this release.

[2233] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33506.

[2234] 2,437,046 credit ratings/7 = 348,149 credit ratings. In other words, the Commission estimates that issuers pay in full all outstanding principal and interest outstanding with respect to approximately 348,149 rated securities or money market instruments and, consequently, the credit ratings for these securities and money market instruments are withdrawn. Those withdrawn credit ratings, in turn, are replaced by 348,149 initial (or new) credit ratings. Outstanding credit ratings assigned to securities and money market instruments are withdrawn for other reasons, including that the security or money market instrument went into default. In addition, a percent of the outstanding credit ratings are assigned to obligors as entities and, therefore, these credit ratings would not be withdrawn because an obligation was extinguished. However, the credit ratings might be withdrawn for other reasons, including that the obligor went into default. Nonetheless, the Commission continues to believe these estimates are reasonable approximations of the number of initial credit ratings determined per year. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33506, n.1011.

[2235] *See* paragraph (a)(6) of Rule 17g–3.

[2236] 236,521 upgrades and downgrades + 1,484,940 affirmations + 348,149 initial credit ratings + 1,430 preliminary or expected credit ratings = 2,071,040 rating actions per year. For purposes of paragraph (a) of Rule 17g–7, credit ratings placed on credit watch and withdrawn credit ratings are not included in this calculation due to the definition of *rating action.*

[2237] *See A.M. Best Letter* (''We believe that expanding 17g–7 disclosure requirements to non-asset-backed ratings is extremely overly-burdensome . . .'').

[2238] *See DBRS Letter* (''DBRS believes that the Commission has grossly underestimated . . . the amount of time it will take to compile a disclosure form for each rating action''); *Morningstar Letter* (''We disagree with the Commission's estimation that the form of these certificates will be largely standardized and take 15 minutes to complete per rating action. We believe that the Commission's estimation is too low since proposed provisions will not be able to be standardized across rating actions or asset class types and will still require an individual analysis of the securities transaction.'') (footnote omitted).

[2239] 2,071,040 rating actions × ⅓ hour = 690,346.67 hours, rounded to 690,347 hours.

hours.[2240] Based on staff experience, the Commission believes that the update process will be handled by the NRSROs internally.

The Commission is also amending paragraph (b) to Rule 17g–7 to re-codify the requirements to disclose rating histories that were contained in paragraph (d)(3) of Rule 17g–2 before today's amendments (the 100% Rule) and increases the amount of information that must be disclosed by expanding the scope of the credit ratings that must be included in the histories and by adding additional data elements that must be disclosed in the rating history for a particular credit rating.[2241]

In the proposing release, the Commission estimated that the average one-time burden attributable to the enhancements to the 100% Rule per NRSRO would be approximately 135 hours to program existing systems and initially add the ratings histories for all outstanding credit ratings as of June 26, 2007, for an industry-wide one-time burden of approximately 1,350 hours, and that the average annual burden per NRSRO to comply with the increased requirements, including updating and administering the database, would be approximately forty-five hours per year, for an industry-wide annual burden of approximately 450 hours.[2242]

One NRSRO stated that constantly updating the database for the 100% Rule ''would impose an unwarranted burden on NRSROs.'' [2243] Another NRSRO stated that NRSROs may not have, or may find it difficult to obtain, the additional information required by the amendments.[2244] A third NRSRO stated that because it does not consider affirmations, confirmations, placement of credit ratings on watch or review, and assignment of default status to be credit rating actions and does not subdivide withdrawn credit ratings into the subcategories of withdrawn due to default, withdrawn because paid in full, and ''other,'' it does not capture some of that information in a format that is readily retrievable and therefore it recommends that the rule exempt NRSROs from providing historical data to the extent it does not already capture the data in a readily retrievable format.[2245] One NRSRO that generally supported the amendments also stated that NRSROs may not be able to provide XBRL information as of June 26, 2007, since those rating actions are beyond the scope of the 3-year record retention requirement.[2246] Three NRSROs objected to the requirement to disclose the legal name and CIK number of the rated obligor or issuer of the security or money market instrument and the CUSIP of the security or money market instrument.[2247] One NRSRO stated that it was ''unnecessarily burdensome'' to require the use of identifiers that may become obsolete, that require NRSROs to pay a fee, or that may not be used outside the United States, as long as NRSROs ''use some kind of identifier system sufficient to identify the rated obligor and obligation,'' for example, ''an internationally recognized LEI [Legal Entity Identifier] system.'' [2248]

In response to these comments, the Commission notes that it has modified paragraph (b) of Rule 17g–7 from the proposal to reduce the burden.[2249] To focus the disclosure of rating histories on the rating actions that are most relevant to evaluating performance, the final amendments eliminate the proposed requirement to include placements on watch and affirmations (and the required data associated with these actions) in the rating histories.[2250] The final amendments also significantly shorten the time horizon of historical information that must be retrieved for inclusion in the rating histories. In particular, the proposed requirement to include information for all credit ratings outstanding on or after June 26, 2007 has been replaced with a standard three-year backward looking requirement that applies irrespective of when the NRSRO is registered in a class of credit ratings. This, together with the elimination of two types of rating actions that would trigger a requirement to add information to a credit rating's history—placements of the security on credit watch or review and affirmations of the credit rating—should significantly mitigate the costs of retrieving and analyzing historical information for the purposes of making the rating histories disclosures.[2251] The modifications also should mitigate to some extent concerns about having to obtain information that was not traditionally retained by the NRSRO as it will significantly narrow the scope of such information that will need to be included in the rating histories. Further, the modifications should reduce the burden of updating the XBRL data file with new information. The final amendments also specify a standard for updating the file—no less frequently than monthly—in response to a suggestion by a commenter.[2252] This will make the costs resulting from the requirement lower than if the file needed to be updated more frequently. In addition, the final rule prioritizes identifier disclosure to an LEI and then to a CIK, if the LEI is not available.[2253] Finally, the final amendments modify the proposal to reduce the time period a credit rating history must be retained after the credit rating is withdrawn from twenty years to fifteen years. This should reduce the data retention and maintenance costs associated with the final rule as compared to the proposed rule.

The modifications are expected to reduce the burden associated with the rule. However, the Commission is not decreasing the burden estimates, notwithstanding the modifications to the rule that reduce the burdens from the rule as proposed, in light of comments that the estimates in the proposal were too low.

In summary, the Commission estimates that the burden associated with paragraph (a) of Rule 17g–7 will result in a total industry-wide one-time hour burden to develop the standardized disclosures and create the systems, protocols, and procedures for populating the form with information generated and collected during the rating process of approximately 37,500 hours and a total industry-wide one-time cost of approximately $5,000,000 to engage outside professionals such as counsel and information technology consultants to assist in developing the standardized disclosures and programming existing systems, and a total industry-wide annual hour burden to update standardized disclosures, to tailor disclosures to particular rating actions and asset classes, and to generate and publish each form and attach the required certifications to the form, of approximately 695,347 hours.[2254] With respect to the amendments to paragraph (b) of Rule 17g–7, the Commission estimates that

[2240] 500 hours × 10 NRSROs = 5,000 hours.

[2241] *See* section II.E.3. of this release (providing a more detailed discussion of these provisions).

[2242] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33506.

[2243] *See DBRS Letter.*

[2244] *See S&P Letter.*

[2245] *See Moody's Letter.*

[2246] *See Morningstar Letter.*

[2247] *See DBRS Letter; Moody's Letter; S&P Letter.*

[2248] *See Moody's Letter.* As discussed in section II.E.3. of this release, the Commission believes the requirement to disclose the CUSIP of the security or money market instrument that is the subject of the rating action is necessary to make the disclosures readily searchable.

[2249] *See* section II.E.3. of this release (providing a more detailed discussion of the modifications). *See also DBRS letter* (stating that the 100% Rule ''would impose an unwarranted burden on NRSROs''); *Moody's Letter* (stating that collecting data for past rating actions ''would require tens of thousands of hours of analysis'').

[2250] *See Moody's Letter* (stating that it does not consider these activities to be rating actions).

[2251] *See Moody's Letter, Morningstar Letter, S&P Letter.*

[2252] *See DBRS Letter.*

[2253] *See DBRS Letter; Moody's Letter; S&P Letter.*

[2254] 5,000 hours + 690,347 hours = 695,347 hours.

the burden associated with the enhancements to the 100% Rule will result in a total industry-wide one-time hour burden of approximately 1,350 hours to program existing systems and initially add the ratings histories for all applicable outstanding credit ratings and a total industry-wide annual hour burden to comply with the increased requirements, including updating and administering the database, of approximately 450 hours.[2255]

7. New Rule 17g–8

Paragraph (a) of Rule 17g–8 requires an NRSRO to establish, maintain, enforce, and document policies and procedures with respect to the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings.[2256] In the proposing release, the Commission estimated that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 2,000 hours,[2257] and that an NRSRO would spend an average of approximately fifty hours per year reviewing the policies and procedures, updating them (if necessary), and enforcing them, resulting in an industry-wide annual hour burden of approximately 500 hours.[2258] The Commission did not receive comments on these estimates and is adopting the amendments to paragraph (a) of Rule 17g–8 substantially as proposed. The Commission does not believe the modifications will change the burden estimates as they either remove ambiguities or make minor wording revisions. Consequently, the Commission is retaining the estimates without revision.

In addition, the Commission estimates that it will take an NRSRO an average of approximately twenty hours to promptly publish on an easily accessible portion of its Internet Web site information about material changes to its procedures and methodologies to determine credit ratings and the likelihood such changes will result in changes to any current credit ratings, or a notice of significant errors identified in a procedure or methodology.

Paragraph (b) of Rule 17g–8 requires an NRSRO to establish, maintain, enforce, and document policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[2259] In the proposing release, the Commission estimated that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 2,000 hours,[2260] and that an NRSRO would spend an average of approximately fifty hours per year reviewing the policies and procedures, updating them (if necessary), and enforcing them, resulting in an industry-wide annual hour burden of approximately 500 hours.[2261] The Commission did not receive comment on these estimates and is adopting the amendments to paragraph (b) of Rule 17g–8 substantially as proposed. The Commission does not believe the modifications will change the burden estimates as they are minor wording revisions. Consequently, the Commission is retaining the estimates without revision.

Paragraph (c) of Rule 17g–8 requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act with respect to look-back reviews must address instances in which a look-back review determines that a conflict of interest influenced a credit rating by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO takes certain steps reasonably designed to ensure the credit rating is no longer influenced by the conflict and that the existence and an explanation of the conflict is disclosed in the form required under paragraph (a) of Rule 17g–7.[2262] In the proposing release, the Commission estimated that an NRSRO would spend an average of approximately 100 hours establishing and making a record of the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 1,000 hours,[2263] and that an NRSRO would spend an average of approximately twenty-five hours per year reviewing, and, if necessary, updating the policies and procedures and its record documenting the policies and procedures, maintaining and enforcing the policies and procedures, and taking steps pursuant to the policies and procedures when a look-back review determines that a credit rating was influenced by a conflict, resulting in an average industry-wide annual hour burden of approximately 250 hours.[2264] The Commission did not receive comment on these estimates and is adopting the amendments to paragraph (c) of Rule 17g–8 with modifications that reduce the burden in terms of the steps an NRSRO must take pursuant to the policies and procedures when a look-back review determines that a credit rating was influenced by a conflict. However, the PRA burden accounts for the time an NRSRO will spend establishing, reviewing and updating, and documenting the policies and procedures. The time spent establishing, reviewing, updating, and documenting the policies and procedures will not change because of the modifications to the rule from the proposal. Consequently, the Commission is retaining these estimates without revision.

The Commission therefore estimates that the total industry-wide one-time hour burden to the NRSROs resulting from Rule 17g–8, as adopted, is approximately 5,000 hours to: (1) Establish and document policies and procedures with respect to an NRSRO's procedures and methodologies to determine credit ratings; (2) establish and document policies and procedures with respect to the symbols, numbers, or scores an NRSRO uses to denote credit ratings; and (3) establish and make a record of its policies and procedures with respect to look-back reviews.[2265] The Commission estimates that the total industry-wide annual hour burden resulting from Rule 17g–8, as adopted, is approximately 1,250 hours to: (1) Maintain, review, update (if necessary), and enforce an NRSRO's policies and procedures with respect to an NRSRO's procedures and methodologies to determine credit ratings; (2) maintain, review, update (if necessary), and enforce its procedures and methodologies with respect to the symbols, numbers, or scores it uses to denote credit ratings; and (3) maintain, review, update (if necessary), and enforce its policies and procedures with respect to look-back reviews and its record documenting the policies and

[2255] As stated above in section IV.D.3. of this release, the re-codification of paragraph (d)(3) of Rule 17g–2 (the 100% Rule before today's amendments) in paragraph (b) of Rule 17g–7 will subtract 450 hours from the industry-wide annual hour burden for Rule 17g–2. This burden will be attributed to the industry-wide annual hour burden for Rule 17g–7.

[2256] *See* section II.F.1. of this release (providing a more detailed discussion of this paragraph).

[2257] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33507.

[2258] *See id.*

[2259] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph).

[2260] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33507.

[2261] *See id.*

[2262] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph).

[2263] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33507.

[2264] *See id.*

[2265] 2,000 hours + 2,000 + 1,000 hours = 5,000 hours. The burden associated with retaining the record documenting the procedures is attributed to Rule 17g–2.

procedures and take steps when a look-back review determines that a credit rating was influenced by a conflict.[2266]

8. New Rule 17g–9

The Commission is adopting Rule 17g–9, which requires an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings.[2267]

The Commission stated in the proposing release that in order to account for the significant variance in the size and complexity of NRSROs, the one-time and annual hour burden estimates attributable to Rule 17g–9 should be based on the number of credit analysts employed by the NRSROs.[2268] Based on 2009 annual certifications, the Commission estimated that NRSROs employed approximately 3,520 credit analysts and that the one-time burden to establish the standards required under proposed Rule 17g–9 would be approximately five hours per credit analyst, resulting in an industry-wide one-time hour burden of 17,600 hours.[2269] In addition, the Commission allocated 75% of these burden hours (13,200 hours) to internal burden and 25% of these burden hours (4,400 hours) to external burden to hire outside professionals to assist in setting up training programs.[2270] The Commission stated in the proposing release that it believed that the annual hour burden to comply with Rule 17g–9 would be less than the one-time hour burden since NRSROs will have established the standards of training, experience, and competence for the individuals they employ to determine credit ratings. The Commission estimated that the industry-wide annual hour burden to update the standards and to enforce them would be approximately one hour per credit analyst employed, resulting in an industry-wide annual hour burden of approximately 3,520 hours and allocated 75% of the burden hours (2,640 hours) to internal burden and the remaining 25% of the burden hours (880 hours) to external burden.[2271] The Commission did not receive comment on these allocation percentages and is retaining them as proposed.

However, as stated above, an NRSRO objected to using the number of credit ratings or credit analysts in estimating the burdens associated with the proposal, stating that the burden must also ''include the amount of legal and compliance resources necessary to implement system and simultaneous changes'' and that ''the investments will not be diminished relative to financial resources because an NRSRO may have fewer analysts or credit ratings issued.'' [2272] In response to this comment, the Commission is adding to its burden estimate for Rule 17g–9 to account for burdens that do not depend on the number of credit analysts employed by an NRSRO. For example, the cost of establishing, maintaining, enforcing, and documenting standards of training, experience, and competence for credit analysts, establishing testing programs, and administering training and testing programs may not be directly proportional to the number of credit analysts employed by an NRSRO. The Commission believes that it is appropriate, however, to retain the burdens based on the number of credit analysts employed by NRSROs as some of the burden attributable to Rule 17g–9 (for example, the burden associated with testing credit analysts on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings) may be proportional to the number of credit analysts employed by an NRSRO.

Based on staff experience, the Commission estimates that the additional burden attributable to Rule 17g–9 that does not depend on the number of credit analysts employed by an NRSRO is approximately 400 hours per NRSRO on a one-time basis and approximately 100 hours per NRSRO annually, for an industry-wide one-time hour burden of approximately 4,000 hours and an industry-wide annual hour burden of approximately 1,000 hours. The Commission continues to believe that it is appropriate to allocate 75% of the one-time and annual burden hours to internal burden and the remaining 25% to external burden to hire outside professionals to assist in establishing and updating credit analyst training programs. Of the totals, therefore, 3,000 hours are allocated to internal one-time burden,[2273] 1,000 hours are allocated to external one-time burden,[2274] 750 hours are allocated to internal annual burden,[2275] and 250 hours are allocated to external annual burden.[2276] The Commission estimated that it would cost $400 per hour to retain outside professionals, resulting in industry-wide one-time costs of approximately $400,000 [2277] and industry-wide annual costs of approximately $100,000.[2278]

As stated above, the burdens the Commission estimated above that do not depend on the number of credit analysts are additional to the burdens that depend on the number of credit analysts. In addition, the Commission believes that the modifications to Rule 17g–9 from the proposal will not affect the burden per credit analyst or the allocation of that burden to internal and external burdens that the Commission estimated in the proposing release, as those modifications should not affect the burdens associated with establishing, maintaining, enforcing, and documenting the standards. However, the Commission is revising the total number of credit analysts employed by the NRSROs based on updated information. The Commission now estimates that NRSROs employ a total of approximately 4,218 credit analysts.[2279] Therefore, the Commission estimates the industry-wide one-time hour burden based on the number of credit analysts employed by the NRSROs to be approximately 21,090 hours.[2280] Of this total, 15,818 hours are allocated to internal burden and 5,272 hours are allocated to external burden.[2281] The Commission estimates that it would cost $400 per hour for retaining outside professionals, resulting in an industry-wide one-time cost of approximately $2,108,800.[2282]

Similarly, the Commission now estimates an industry-wide annual hour burden based on the number of credit analysts employed by the NRSROs of approximately 4,218 hours.[2283] The Commission is allocating 75% of these burden hours (3,164 hours) to internal burden and 25% these burden hours

[2266] 500 hours + 500 hours + 250 hours = 1,250 hours. The burden associated with retaining the record documenting the procedures is attributed to Rule 17g–2.

[2267] *See* section II.I.1. of this release (providing a more detailed discussion of this rule).

[2268] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33508.

[2269] *See id.*

[2270] *See id.*

[2271] *See id.*

[2272] *See A.M. Best Letter. See also DBRS Letter.*

[2273] 4,000 hours × .75 = 3,000 hours.

[2274] 4,000 hours × .25 = 1,000 hours.

[2275] 1,000 hours × .75 = 750 hours.

[2276] 1,000 hours × .25 = 250 hours.

[2277] 1,000 hours × $400 = $400,000. *See Nationally Recognized Statistical Rating Organizations,* 76 FR 33508. *See also Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (providing an estimate of $400 an hour engage outside professionals).

[2278] 250 hours × $400 = $100,000.

[2279] *See* Table 1 in section I.B.2.a. of this release.

[2280] 4,218 credit analysts × 5 hours = 21,090 hours.

[2281] 21,090 hours × 0.75 = 15,818 hours; 21,090 hours × 0.25 = 5,272 hours. These allocations remain unchanged from the Commission's preliminary allocation in the proposing release.

[2282] 5,272 hours × $400 = $2,108,800.

[2283] 4,218 credit analysts × 1 hour = 4,218 hours.

(1,054 hours) to external burden to hire outside professionals to assist in reviewing and updating training and testing programs.[2284] The Commission continues to estimate a cost of $400 per hour for retaining outside professionals, which results in an industry-wide annual cost of $421,600.[2285] Finally, although larger NRSROs may realize economies of scale, the Commission believes that the industry-wide annual and one-time hour burdens and external costs would be allocated to each NRSRO based on the number of credit analysts the firm employs.[2286]

Accordingly, the Commission estimates that Rule 17g–9 will result in a total industry-wide one-time hour burden for NRSROs to establish and document the standards of training, experience, and competence for their credit analysts required under the rule and to establish testing programs of approximately 18,818 hours,[2287] a total industry-wide one-time cost of approximately $2,508,800 to hire outside professionals to assist in setting up training and testing programs,[2288] a total industry-wide annual hour burden to maintain, review, update (if necessary), and enforce the standards and to administer the training and testing programs of approximately 3,914 hours,[2289] and a total industry-wide annual external cost of approximately $521,600 to hire outside professionals to assist in reviewing and updating training and testing programs.[2290]

In addition, the Commission estimates that NRSROs will spend approximately five hours per credit analyst per year to conduct periodic testing of their credit analysts, for a total industry-wide annual hour burden to NRSROs of approximately 21,090 hours.[2291]

9. New Rule 17g–10 and New Form ABS Due Diligence–15E

The Commission is adopting Rule 17g–10 and Form ABS Due Diligence–15E. Rule 17g–10 provides that the written certification a provider of third-party due diligence services must provide to an NRSRO must be made on Form ABS Due Diligence–15E.[2292]

In the proposing release, the Commission estimated that there would be ten providers of third-party due diligence services and each would spend an average of approximately 300 hours per firm developing certain processes and protocols to provide the required information and submit the certifications, and that 75% of these burden hours (225 hours) would be internal burden and 25% of these burden hours (75 hours) would be external burden to hire outside counsel to provide legal advice on the requirements of the new rule and form.[2293] The Commission did not receive comment on these estimates. Further, the modifications to Rule 17g–10 and Form ABS Due Diligence–15E from the proposal will not impact the one-time hour burden or allocation of that burden to internal and external burdens because the modifications—which create a ''safe harbor'' from the requirement to provide the forms to NRSROs—do not require the third party due diligence provider to expend more effort to meet the statutory requirement because they will make the process more certain and efficient. Consequently, the processes and protocols to meet the safe harbor should be no more complex than would have been the case if the provider of third-party due diligence services had to determine each NRSRO that was producing a credit rating in order to provide the NRSRO with the certification as required by 15E(s)(4)(B) of the Exchange Act. For these reasons, the Commission is not revising the estimated one-time and annual hour burdens for the providers of third-party due diligence services.

However, the Commission now estimates that there are approximately fifteen providers of third-party due diligence services.[2294] Accordingly, the Commission estimates that providers of third-party due diligence services will spend an average of approximately 300 hours per firm developing these processes and protocols, resulting in an industry-wide one-time hour burden for providers of third-party due diligence services of approximately 4,500 hours.[2295] In addition, the Commission allocates 75% of these burden hours (3,375 hours) to internal burden and 25% of these burden hours (1,125 hours) to external burden to hire outside counsel to provide legal advice on the requirements of Rule 17g–10 and Form ABS Due Diligence–15E.[2296] The Commission estimates $400 per hour for external costs for retaining outside counsel, resulting in an industry-wide one-time cost of $450,000.[2297]

With respect to the annual burden, the Commission stated in the proposing release that the estimate should be based on the number of issuances per year of Exchange Act-ABS because the requirement to produce the certification and provide it to NRSROs and issuers or underwriters will be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services. The Commission estimated that a provider of third-party due diligence services would spend approximately thirty minutes to complete and transmit Form ABS Due Diligence–15E and that there would be an average of 2,067 Exchange Act-ABS offerings per year, for an industry-wide annual burden of approximately 1,034 hours.[2298] The Commission did not receive comments on this estimate. The Commission believes that the modification to the proposal creating the ''safe harbor'' will decrease the annual burden as compared to the burden estimated in the proposal. In particular, the provider of third-party due diligence services in many cases may need to submit only one certification to another party; namely, to the issuer or underwriter that maintains the Rule 17g–5 Web site. Without a safe harbor, the third party would have needed to submit the certification to each NRSRO producing a credit rating

[2284] 4,218 hours × 0.75 = 3,164 hours; 4,218 hours × 0.25 = 1,054 hours.

[2285] 1,054 hours × $400 = $421,600. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (providing an estimate of $400 an hour engage outside professionals).

[2286] *See* Table 1 in section I.B.2.a. of this release.

[2287] 3,000 + 15,818 = 18,818.

[2288] $400,000 + $2,108,800 = $2,508,800.

[2289] 750 + 3,164 = 3,914.

[2290] $100,000 + $421,600 = $521,600.

[2291] 4,218 credit analysts × 5 hours = 21,090 hours.

[2292] *See* sections II.H.2. and II.H.3. of this release (providing a more detailed discussion of this rule and form).

[2293] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33509.

[2294] *See* section I.B.2.b. of this release.

[2295] 15 providers of third-party due diligence services × 300 hours = 4,500 hours. The estimate of 300 hours remains unchanged from the Commission's preliminary estimate in the proposing release. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33509. This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506. The Commission, however, has reduced the hour estimate of 850 hours used for Form ABS–15G by approximately two–thirds because information required to be provided in proposed Form ABS Due Diligence–15E is substantially less detailed and complex than the information required in Form ABS–15G.

[2296] 4,500 hours × 0.75 = 3,375 hours; 4,500 hours × 0.25 = 1,150 hours. This allocation remains unchanged from the Commission's preliminary allocation in the proposing release.

[2297] 1,125 hours × $400 = $450,000. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (providing an estimate of $400 per hour to engage outside counsel).

[2298] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33509 (2,067 offerings × 30 minutes = 1,034 hours).

for the Exchange Act-ABS, which frequently would include two or more hired NRSROs and possibly additional non-hired NRSROs. Moreover, the certainty of meeting the ''safe harbor'' provisions will eliminate the additional time a third party may have spent seeking to determine whether it has identified all NRSROs producing a credit rating and provided them with the certification in accordance with its statutory obligation to provide the certification to every NRSRO rating the applicable Exchange Act-ABS. For these reasons, the Commission believes, based on staff experience, that the modifications will reduce the burden attributable to Form ABS Due Diligence–15E from thirty minutes to twenty minutes to complete and transmit Form ABS Due Diligence–15E.

The Commission estimates that there will be 715 Exchange Act-ABS offerings per year.[2299] For these reasons, the Commission estimates that the industry-wide annual hour burden for providers of third-party due diligence services resulting from Rule 17g–10 and Form ABS Due Diligence–15E is approximately 238 hours.[2300]

In summary, the Commission estimates that Rule 17g–10 and Form ABS Due Diligence–15E will result in a total industry-wide one-time burden for providers of third-party due diligence services to develop processes and protocols to provide the required information and submit the certifications of approximately 3,375 hours, a total industry-wide one-time cost to hire outside counsel to provide legal advice on the requirements of the new rule and form of approximately $450,000, and a total industry-wide annual hour burden to provide the required information and submit the certifications of approximately 238 hours.

10. New Rule 15Ga–2 and Amendments to Form ABS–15G

The Commission is adopting Rule 15Ga–2 and amendments to Form ABS–15G. [2301] Rule 15Ga–2 requires an issuer or underwriter of certain Exchange Act-ABS that are to be rated by an NRSRO to furnish the Commission with a Form ABS–15G on the Commission's EDGAR system containing the findings and conclusions of any third-party ''due diligence report'' obtained by the issuer or underwriter at least five business days prior to the first sale in the offering. Under the rule, the disclosure will be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS.

The final rule has been modified from the proposal to provide that if the disclosure required by Rule 15Ga–2 has been made in the applicable prospectus, the issuer or underwriter may refer to that section of the prospectus in Form ABS–15G rather than providing the findings and conclusions directly in the form. It also has been modified to provide an exemption for certain offshore issuances of Exchange Act-ABS. Further, the final rule has been modified so that it does not apply to issuers or underwriters of municipal Exchange Act-ABS, but section 15E(s)(4)(A) of the Exchange Act nonetheless requires an issuer or underwriter of these securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

The Commission estimated in the proposing release that the new rule and amended form would result in a one-time hour burden to issuers and underwriters in offerings of registered and unregistered Exchange Act-ABS in connection with developing processes and protocols to provide the required information to comply with the statutory disclosure requirement and Rule 15Ga–2, as applicable, including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2.[2302] The Commission also estimated that 270 unique issuers would be required to file the form.[2303] Finally, the Commission estimated that each issuer would require approximately 100 hours to develop processes and protocols to comply with Rule 15Ga–2 and to modify their existing Form ABS–15G processes and protocols to provide for the disclosure of the information required pursuant to Rule 15Ga–2 and that this work would be done internally by issuers and underwriters.[2304]

The Commission did not receive comments on these estimates. Further, the Commission does not believe the modifications to the rule from the proposal will impact the one-time burden because issuers and underwriters will still need to develop processes and protocols to provide the required information to comply with Rule 15Ga–2, or section 15E(s)(4)(A) of the Exchange Act in the case of issuers or underwriters of municipal Exchange Act-ABS, including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2 or the statute, as applicable. The Commission, however, is adjusting its estimate of the number of unique issuers from approximately 270 to approximately 336 unique issuers that will be required to file the form.[2305] Moreover, this estimate includes issuers and underwriters of municipal Exchange Act-ABS because, even though these offerings are excluded from Rule 15Ga–2, the statutory disclosure requirements apply to them.[2306] Consequently, the Commission estimates an industry-wide one-time burden of approximately 33,600 hours.[2307]

The annual PRA burden associated with Form ABS–15G reflects the burden associated with preparing and furnishing the form on EDGAR. As noted above, the amendment to Form ABS–15G will require that it be furnished by issuers and underwriters in offerings of certain registered and unregistered Exchange Act-ABS. Consequently, the Commission believes that the estimate of the annual hour burden for furnishing Form ABS–15G should be based on an estimate of the number of Exchange Act-ABS offerings per year. In the proposing release, the Commission estimated that, on average, there would be approximately 2,067 Exchange Act-ABS offerings per year.[2308] As discussed above, the

[2299] *See* Table 6 in section I.B.2.b. of this release.

[2300] 715 Exchange Act-ABS offerings × 20 minutes = 238.33 hours, rounded to 238 hours.

[2301] *See* section II.H.1. of this release (providing a more detailed discussion of this rule and form).

[2302] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510.

[2303] *See id. See also Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4506.

[2304] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510. This estimate was based on the Commission's estimate for the amount of time it would take a securitizer to set up a system to make the disclosures required by Form ABS–15G as originally adopted by the Commission. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506. The Commission, however, estimated that the hour burden for amending existing Form ABS–15G processes and protocols will be significantly lower than the estimate of 850 hours used to initially develop those processes and protocols. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510, n.1069.

[2305] *See* Table 6 in section I.B.2.b. of this release. The Commission recognizes that underwriters also have a requirement to furnish Form ABS–15G. However, for purposes of calculating PRA numbers, this discussion is limited to issuers because, as discussed above in section II.H.1. of this release, only a single Form ABS–15G is required to be furnished when the issuer and/or one or more underwriters have obtained the same third-party due diligence report. *See* paragraph (b) of Rule 15Ga–2.

[2306] Based on the Asset-Backed Alert database, the Commission estimates there were nine unique sponsors of municipal Exchange Act-ABS in 2013.

[2307] 336 unique issuers × 100 hours = 33,600 hours.

[2308] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510. *See also Disclosure*

Commission now estimates that there will be approximately 715 Exchange Act-ABS offerings.[2309] Further, the exemption for certain foreign issued Exchange Act-ABS should reduce the number of Exchange Act-ABS offerings that trigger the disclosure requirement. However, to be conservative, the Commission is retaining its estimate of 2,067 Exchange Act offerings per year for purposes of the burden estimates. Moreover, this estimate includes offerings of municipal Exchange Act-ABS because, even though these offerings are excluded from Rule 15Ga–2, the statutory disclosure requirement does apply to them.[2310]

In the proposing release, the Commission estimated that an issuer or underwriter would spend approximately one hour completing and submitting Form ABS–15G for purposes of meeting the requirement in Rule 15Ga–2 and that this work would be performed internally.[2311] The Commission based this estimate on the fact that Form ABS–15G will elicit much less information when used solely for the purpose of complying with Rule 15Ga–2.[2312] In addition, the Commission based this estimate on the fact that the information required in the form could be drawn directly from the due diligence reports the Commission expects providers of third-party due diligence services to generate with respect to their performance of due diligence services.[2313]

The Commission did not receive comments on these estimates. The Commission believes that the modification to the proposal providing that issuers and underwriters will not need to provide the findings and conclusions directly in Form ABS–15G if the Rule 15Ga–2 disclosures are included in the applicable prospectus may decrease slightly the hour burden for issuers and underwriters. However, this reduction in burden could be offset to the extent that issuers and underwriters decide that they should keep a record to support their reliance on the off-shore exemption and because the Commission eliminated the proposed ability for an issuer or underwriter to rely on a representation from an NRSRO. Further, although Rule 15Ga–2 excludes issuers and underwriters of municipal Exchange Act-ABS, issuers and underwriters of these securities will still incur costs to comply with the statutory disclosure obligation. Based on staff experience, the Commission estimates that many of these issuers and underwriters are likely to satisfy this obligation by furnishing Form ABS–15G on EMMA and that the time to prepare and submit the form will be one hour (the same as the time to prepare and submit the form on EDGAR). However, to the extent that these issuers and underwriters use another means to make the required information publicly available, such as through a Web site, the burden could be incrementally more or less, depending on the method chosen to disclose the information. Accordingly, the Commission estimates that the industry-wide annual hour burden resulting from Rule 15Ga–2 and the amendments to Form ABS–15G is approximately 715 hours.[2314]

For the foregoing reasons, the Commission estimates that Rule 15Ga–2, the amendments to Form ABS–15G, and section 15E(s)(4)(A) of the Exchange Act will result in a total industry-wide one-time hour burden to develop processes and protocols to provide the required information to comply with Rule 15Ga–2 and/or section 15E(s)(4)(A), including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2, of approximately 33,600 hours and a total industry-wide annual hour burden to prepare and make the required disclosures of approximately 715 hours for issuers and underwriters.

11. Amendments to Regulation S–T

The Commission is requiring that certain Forms NRSRO (and applicable exhibits to the form) and all Rule 17g–3 annual reports be submitted to the Commission electronically using the Commission's EDGAR system.[2315] In order to implement this requirement, the Commission is adopting amendments to Rule 101 of Regulation S–T to require the electronic submission using the EDGAR system of Form NRSRO (and applicable exhibits to the form) pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and annual reports pursuant to Rule 17g–3.[2316]

The Commission is adopting Rule 15Ga–2, which will require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[2317]

The amendments revise Regulation S–T. However, the collection of information requirements are reflected in the burden hours estimated for Rule 17g–1 and Rule 15Ga–2. The rules in Regulation S–T do not impose any separate burden. Consistent with historical practice, the Commission has retained an estimate of one burden hour to Regulation S–T for administrative convenience.

12. Form ID

NRSROs will need to file a Form ID with the Commission in order to gain access to the EDGAR system. Form ID is used to request the assignment of access codes to make submissions on EDGAR. The current OMB approved hour burden for Form ID is fifteen minutes per respondent.[2318] Thus, the Commission estimates that the total industry-wide one-time hour burden resulting from filing Form ID will be approximately two and a half hours.[2319]

The Commission believes that the issuers and underwriters of Exchange Act-ABS that will need to furnish Form ABS–15G to the Commission through the EDGAR system pursuant to proposed Rule 15Ga–2 already have access to the EDGAR system because, for example, they need such access for the purpose of Rule 15Ga–1. Consequently, they will not need to execute and file Form ID as a result of Rule 15Ga–2.

for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR at 4507–4508. As noted above, issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, the Commission believes that providers of third-party due diligence services are used primarily for RMBS transactions. *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33471. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS.

[2309] *See* Table 6 in section I.B.2.b. of this release.

[2310] Based on the Asset-Backed Alert database, the Commission estimates there were eleven separate offerings of municipal Exchange Act-ABS in 2013.

[2311] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510.

[2312] *See id. See also Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507 (estimating thirty hours to prepare the form when filed pursuant to Rule 15Ga–1).

[2313] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33510.

[2314] 715 Exchange Act-ABS transactions × 1 hour = 715 hours.

[2315] The Commission is allocating the one-time and annual hour burdens and costs of these requirements solely to Rule 17g–1. *See* section IV.D.1. of this release.

[2316] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2317] *See* section II.H.1. of this release (providing a more detailed discussion of this rule and form).

[2318] *See* Form ID (OMB Number 3235–0328).

[2319] 10 NRSROs × 15 minutes = 150 minutes; 150 minutes/60 minutes = 2.5 hours.

13. Total Paperwork Burdens

Based on the foregoing, the Commission estimates that the total burden for purposes of the PRA for NRSRO respondents resulting from the rule amendments and new rules will be approximately 74,062 industry-wide one-time hours,[2320] $7,908,800 industry-wide external one-time costs,[2321] 725,456 industry-wide annual hours,[2322] and $725,600 industry-wide external annual costs.[2323] In addition, as discussed above, the Commission estimates that the burden resulting from a request for an exemption under paragraph (f) of Rule 17g–5 will be approximately 150 hours in internal burden and $20,000 in external costs; and the burden resulting from publishing information about material changes to an NRSRO's credit rating procedures and methodologies or a notice of significant errors identified in a procedure or methodology as described in paragraph (a)(4) of Rule 17g–8 will be approximately twenty hours in internal burden.

Based on the foregoing, the Commission estimates that the total burden for purposes of the PRA for respondents that are providers of third-party due diligence services resulting from the rule amendments and new rules will be approximately 3,375 industry-wide one-time hours, $450,000 industry-wide external one-time costs, and 238 industry-wide annual hours.

Based on the foregoing, the Commission estimates that the total burden for purposes of the PRA for issuer and underwriter respondents resulting from the rule amendments and new rules will be approximately 33,600 industry-wide one-time hours and 834 industry-wide annual hours.[2324]

E. Collection of Information Is Mandatory

The collections of information pursuant to the rule amendments and new rules are mandatory, as applicable, for NRSROs, providers of third-party due diligence services, and issuers and underwriters.

F. Confidentiality

The Forms ABS–15G furnished to the Commission by issuers and underwriters of offerings of asset-backed securities under Rule 15Ga–2 will be publicly available on the Commission's EDGAR system.

The Forms NRSRO and Exhibits 1 through 9 to the form an NRSRO must submit to the Commission electronically under the amendments to Rule 17g–1, Form NRSRO, and Regulation S–T will be publicly available on the Commission's EDGAR system. In addition, an NRSRO must make its current Form NRSRO and Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet Web site and must make its most recently filed Exhibit 1 freely available in writing to any individual who requests a copy under Rule 17g–1, as amended.

The records that an NRSRO must make and retain or retain under the amendments to Rule 17g–2 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings.

The annual internal controls report an NRSRO must file with the Commission under amendments to Rule 17g–3 will be generated from the internal records of the NRSRO. Under paragraph (e) to Rule 17g–3, information in a report filed under Rule 17g–3 on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be afforded confidential treatment to the extent permitted by law.

The Forms ABS Due Diligence–15E that an issuer, sponsor, or underwriter of an asset-backed security posts on the password-protected Rule 17g–5 Web site under the amendments to Rule 17g–5 will be made available to other NRSROs that provide the Commission with a certification agreeing, among other things, to keep the information confidential. The representations the issuer, sponsor, or underwriter provides to the NRSRO regarding the Rule 17g–5 Web site will not be made public, unless the parties choose to make them public.

An NRSRO may need to update its policies and procedures to address and manage conflicts of interest in connection with the new absolutely prohibited conflict related to sales and marketing in Rule 17g–5. An NRSRO is required to disclose its policies and procedures for addressing and managing conflicts of interest in Exhibit 7 to Form NRSRO. An NRSRO submitting an application for an exemption from the new absolutely prohibited conflict may request that the application be afforded confidential treatment for a specified period of time, not exceeding 120 days from the date of the Commission's response.[2325] Otherwise, the application for an exemption must be made public as soon as practicable after the response has been sent or given to the NRSRO requesting it.[2326] If the Commission grants an exemption, the Commission order granting the exemption will be publicly available on the Commission's Web site.

The form and certifications an NRSRO must publish when taking certain rating actions under paragraph (a) of Rule 17g–7 must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating. An NRSRO must publicly disclose credit rating histories under paragraph (b) of Rule 17g–7 for free on an easily accessible portion of its Internet Web site.

The policies and procedures an NRSRO must establish, maintain, enforce, and document with respect to its procedures and methodologies to determine credit ratings under paragraph (a) of Rule 17g–8 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings. These policies and procedures will be made public to the extent that an NRSRO is required to include them in Exhibit 2 to Form NRSRO, which requires a general description of the procedures and methodologies used by the NRSRO to determine credit ratings. In addition, under paragraph (a) of Rule 17g–8, an NRSRO must have policies and procedures reasonably designed to ensure that it promptly publishes on its Internet Web site material changes to the policies and procedures and notice of a significant error in a procedure or methodology that may result in a change to current credit ratings.

The policies and procedures an NRSRO must establish, maintain, enforce, and document with respect to credit rating symbols under paragraph (b) of Rule 17g–8 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings. Under paragraph (b) of Rule 17g–8, an NRSRO must have policies and procedures reasonably designed to include definitions of its credit rating symbols in Exhibit 1 to Form NRSRO, which is publicly available.

[2320] 690 + 2,531 + 200 + 6,720 + 1,250 + 37,500 + 1,350 + 5,000 + 18,818 + 2.5 = 74,061.5, rounded to 74,062.

[2321] $400,000 + $5,000,000 + $2,508,800 = $7,908,800.

[2322] 690 + 1,015 + 50 + 1,650 + 695,347 + 450 + 1,250 + 3,914 + 21,090 = 725,456.

[2323] $4,000 + $200,000 + $521,600 = $725,600.

[2324] 119 + 715 = 834.

[2325] *See* 17 CFR 200.81(b).

[2326] *See* 17 CFR 200.81(a).

The policies and procedures an NRSRO must establish, maintain, enforce, and document with respect to look-back reviews under paragraph (c) of Rule 17g–8 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings. If a look-back review determines that a credit rating was influenced by a conflict of interest, an NRSRO must promptly publish a revised credit rating or an affirmation of the credit rating, as appropriate, which must be published in the same manner as the credit rating that is the result or subject of the revision or affirmation and made available to the same persons who can receive or access the credit rating.

The standards of training, experience, and competence an NRSRO must establish, maintain, enforce, and document under Rule 17g–9 will be made available to the Commission and its representatives as required in connection with examinations, investigations, and enforcement proceedings.

Forms ABS Due Diligence–15E that third-party due diligence providers must provide to an NRSRO that produces a credit rating of an Exchange Act-ABS to which the due diligence services relate and to the issuer or underwriter of the security that maintains the Rule 17g–5 Web site must be published by the NRSRO with certain rating actions, including initial credit ratings, in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating under paragraph (a) of Rule 17g–7.

G. Retention Period of Recordkeeping Requirements

The records that must be retained by an NRSRO under paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 must be retained until three years after the date the record is replaced with an updated record. All other records that an NRSRO must retain under Rule 17g–2 must be retained for three years after the record is made or received.[2327]

There are no record retention requirements for providers of third-party due diligence services or for the records issuers and underwriters are required to make and furnish to the Commission pursuant to the requirements in Rule 15Ga–2 and the amendments to Form ABS–15G.

[2327] *See* paragraph (c) of Rule 17g–2 as adopted.

V. Implementation and Annual Compliance Considerations

The purpose of this section is to present the Commission's estimate of the costs of the PRA burdens attributable to the amendments and new rules being adopting today. As indicated in the discussion below, these costs include monitizations of PRA hour burdens and PRA external costs estimated in section IV.D. of this release. The costs included in this section are also noted and discussed in the focused economic analyses in section II of this release.[2328]

A. Internal Control Structure

The Commission is adding paragraph (a)(7) to Rule 17g–3. This paragraph requires an NRSRO to include an additional report—a report on the NRSRO's internal control structure established under section 15E(c)(3)(A) of the Exchange Act—with its annual submission of reports to the Commission pursuant to Rule 17g–3, and is amending paragraph (b) of Rule 17g–3 to require the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, to provide a signed statement that must be attached to the report.[2329] The Commission estimates that paragraph (a)(7) of Rule 17g–3 and the amendment to paragraph (b) of Rule 17g–3 will result in total industry-wide one-time costs for NRSROs to engage outside counsel to analyze the requirements for the internal controls report of approximately $400,000 [2330] and total industry-wide annual costs for NRSROs to prepare the internal controls report and to engage outside counsel to assist in the preparation of the report of approximately $667,000.[2331]

The Commission is adding paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO must establish, maintain, enforce, and document under section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[2332] Under the amendments to paragraph (c) of Rule 17g–2, the record must be retained until three years after the date the record is replaced with an updated record. The Commission estimates that paragraph (b)(12) of Rule 17g– will result in total industry-wide one-time costs for NRSROs to update their record retention policies and procedures to incorporate the new record of approximately $12,000 [2333] and total industry-wide annual costs for NRSROs to retain the record of approximately $3,000.[2334]

B. Conflicts of Interest Relating to Sales and Marketing

The Commission is adding paragraph (c)(8) to Rule 17g–5. This paragraph prohibits an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[2335] The Commission is also adding paragraph (f) to Rule 17g–5, which provides that upon written application by an NRSRO the Commission may exempt, either unconditionally or on specified terms and conditions, the NRSRO from paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation of the production of credit ratings from sales and marketing activities and the exemption is in the public interest.[2336]

[2328] The focused economic analyses are provided in sections II.A.4., II.B.4., II.C.3., II.D.2., II.E.4., II.F.3., II.G.6., II.H.4., II.I.3., II.J.3., II.K.2., II.L.2., and II.M.5. of this release. These sections cross-reference the costs estimated in this section.

[2329] *See* section II.A.3. of this release (providing a more detailed discussion of this amendment); section II.A.4. of this release (providing a focused economic analysis for this amendment).

[2330] *See* section IV.D.4. of this release (PRA analysis providing cost and hour burden estimates). The internal cost to the NRSRO to prepare and file the first internal controls report is included in the annual cost.

[2331] 1,650 hours × $283 per hour for a compliance manager = $466,950 + $200,000 = $666,950, rounded to $667,000. *See* section IV.D.4. of this release (PRA analysis providing cost and hour burden estimates). As noted earlier, the salary figures provided in this release are from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for a 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[2332] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment) section II.A.4. of this release (providing a focused economic analysis for this amendment).

[2333] 200 hours/5 records = 40 hours × $291 per hour for a senior systems analyst = $11,640, rounded to $12,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2334] 50 hours/5 records = 10 hours × $291 per hour for a senior systems analyst = $2,910, rounded to $3,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2335] *See* section II.B.1. of this release (providing a more detailed discussion of this amendment); section II.B.4. of this release (providing a focused economic analysis for this amendment).

[2336] *See* section II.B.2. of this release (providing a more detailed discussion of this provision); section II.B.4. of this release (providing a focused economic analysis for this amendment).

The Commission estimates that paragraph (c)(8) of Rule 17g–5 will impose total industry-wide one-time costs for NRSROs to update the NRSRO's conflicts of interest policies and procedures and to prepare and file an update of registration to account for the update of the written policies and procedures of approximately $354,000.[2337]

The Commission also estimates that the cost of drafting and submitting a written application to the Commission under paragraph (f) of Rule 17g–5, including the cost of engaging outside counsel to assist in drafting the application, would be approximately $62,000.[2338]

C. ''Look-Back'' Review

The Commission is adopting Rule 17g–8. Paragraph (c) of the rule contains requirements relating to the policies and procedures with respect to look-back reviews an NRSRO must establish, maintain, and enforce under section 15E(h)(4)(A) of the Exchange Act.[2339] The Commission is also adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures of an NRSRO with respect to look-back reviews as a record that must be made and retained.[2340] The Commission estimates that paragraph (c) of Rule 17g–8 will result in total industry-wide one-time costs for NRSROs to establish and make a record of the policies and procedures of approximately $283,000 [2341] and total industry-wide annual costs for NRSROs of approximately $71,000 [2342] to review, to update (if necessary) the policies and procedures and the record documenting the policies and procedures, to maintain and enforce the policies and procedures, and to take steps pursuant to the policies and procedures when a look-back review determines that a credit rating was influenced by a conflict.

The Commission estimates that paragraph (a)(9) of Rule 17g–2 will result in total industry-wide one-time costs for an NRSRO to update its record retention policies and procedures to incorporate the new record of approximately $12,000 [2343] and total industry-wide annual costs for an NRSRO to retain the record of approximately $3,000.[2344]

D. Fines and Other Penalties

The Commission is amending the instructions for Form NRSRO by adding instruction A.10, which provides notice to credit rating agencies applying for registration as NRSROs and NRSROs that an NRSRO is subject to the fine and penalty provisions and other available sanctions in sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act for violations of the securities laws.[2345] The Commission believes that this amendment will not result in additional regulatory obligations for NRSROs.

E. Enhancements to Disclosures of Performance Statistics

The Commission is amending the instructions for Exhibit 1 to Form NRSRO.[2346] The amendments standardize the production and presentation of the 1-year, 3-year, and 10-year transition and default statistics that an NRSRO must disclose in the Exhibit. The performance statistics must be presented in a format specified in the instructions, which include a sample ''Transition/Default Matrix.'' The amendments also will enhance the information to be disclosed by, for example, requiring statistics to be produced and presented for subclasses of structured finance products and for credit ratings where the obligor or obligation paid off or the credit rating was withdrawn for reasons other than a default or the obligor or obligation paying off.

The Commission estimates that the amendments to the instructions for Exhibit 1 requiring standardized ''Transition/Default Matrices'' and prescribing the method of calculating transition and default rates will result in total industry-wide one-time costs for NRSROs to establish systems for determining performance statistics according to the amended instructions of approximately $737,000 [2347] and total industry-wide annual costs for NRSROs to calculate and format the performance statistics according to the amended instructions for Exhibit 1 of approximately $295,000.[2348] The costs associated with calculating and presenting these performance statistics will depend in part on the number of obligors, securities, and money market instruments assigned credit ratings by the NRSRO.

Under the amendments to paragraph (i) of Rule 17g–1, NRSROs are required to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of their corporate Internet Web site and to provide a paper copy of Exhibit 1 to individuals who request a paper copy.[2349] The Commission estimates that re-configuring a corporate Internet Web site for this purpose will result in total industry-wide one-time costs for NRSROs of approximately $10,000.[2350] The Commission estimates that the requirement to send a paper copy of Exhibit 1 on request will result in total industry-wide costs for NRSROs to establish procedures and protocols for receiving and processing requests for a paper copy of Exhibit 1 of approximately $140,000 [2351] and total industry-wide annual costs for NRSROs to process requests for a paper copy of Exhibit 1 and for postage costs to send the paper copy of approximately $121,000.[2352]

[2337] 1,250 hours × $283 per hour for a compliance manager = $353,750, rounded to $354,000. *See* section IV.D.5. of this release (PRA analysis providing cost and hour burden estimates).

[2338] 150 hours × $283 per hour for a compliance manager = $42,450 + $20,000 to engage outside counsel = $62,450, rounded to $62,000. *See* section IV.D.5. of this release (PRA analysis providing cost and hour burden estimates).

[2339] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph); section II.C.3. of this release (providing a focused economic analysis for the requirements of this paragraph).

[2340] *See* section II.C.2. of this release (providing a more detailed discussion of this amendment); section II.C.3. of this release (providing a focused economic analysis for this amendment). Under the amendments to paragraph (c) of Rule 17g–2, the record must be retained until three years after the date it is replaced with an updated record.

[2341] 1,000 hours × $283 per hour for a compliance manager = $283,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2342] 250 hours × $283 per hour for a compliance manager = $70,750, rounded to $71,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2343] 200 hours/5 records = 40 hours × $291 per hour for a senior systems analyst = $11,640, rounded to $12,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2344] 50 hours/5 records = 10 hours × $291 per hour for a senior systems analyst = $2,910, rounded to $3,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2345] *See* section II.D. of this release (providing a more detailed discussion of this amendment).

[2346] *See* section II.E.1. of this release (providing a more detailed discussion of the amendments) section II.E.4. of this release (providing a focused economic analysis for these amendments).

[2347] 2,531 hours × $291 per hour for a senior systems analyst = $736,521, rounded to $737,000. *See* section IV.D.2. of this release (PRA analysis providing cost and hour burden estimates).

[2348] 1,015 hours × $291 per hour for a senior systems analyst = $295,365, rounded to $295,000. *See* section IV.D.2. of this release (PRA analysis providing cost and hour burden estimates).

[2349] *See* section II.E.2. of this release (providing a more detailed discussion of this amendment); section II.E.4. of this release (providing a focused economic analysis for this amendment).

[2350] 50 hours × $207 per hour for a webmaster = $10,350, rounded to $10,000. *See* section IV.D.1. of this release (PRA analysis providing cost and hour burden estimates).

[2351] 480 hours × $291 per hour for a senior systems analyst = $139,680, rounded to $140,000. *See* section IV.D.1. of this release (PRA analysis providing cost and hour burden estimates).

[2352] 670 hours × $175 per hour for a paralegal = $117,250, rounded to $117,000 + $4,000 for postage = $121,000. *See* section IV.D.1. of this release (PRA analysis providing cost and hour burden estimates).

F. Enhancements to Rating Histories Disclosures

The Commission is amending Rule 17g–7 to recodify, in paragraph (b) of Rule 17g–7, the requirements for NRSROs to disclose credit rating histories formerly prescribed in paragraph (d)(3) of Rule 17g–2 and to substantially enhance the requirements.[2353] Paragraph (b) of Rule 17g–7 also increases the amount of information that must be disclosed by expanding the scope of the credit ratings that must be included in the histories and by adding additional data elements that must be disclosed in the rating history for a particular credit rating.

The Commission estimates that the amendments will result in total industry-wide one-time costs for NRSROs registered with the Commission to program existing systems and initially add the ratings histories for all applicable outstanding credit ratings of approximately $393,000 [2354] and total industry-wide annual costs to comply with the increased requirements, including updating and administering the database, of approximately $131,000.[2355]

G. Credit Rating Methodologies

The Commission is adopting Rule 17g–8. Paragraph (a) of the rule requires an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.[2356] The Commission estimates that this requirement will result in total industry-wide one-time costs for NRSROs of approximately $566,000 [2357] to establish and document the policies and procedures and total industry-wide annual costs for NRSROs to maintain, review, update (if necessary), and enforce the policies and procedures of approximately $142,000.[2358]

In addition, the Commission estimates that an NRSRO will spend an average of approximately $5,700 [2359] to promptly publish on an easily accessible portion of its Web site information about material changes to procedures and methodologies and the likelihood such changes will result in changes to any current ratings, or notice of significant errors identified in a procedure or methodology.

The Commission is adding paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures with respect to the procedures and methodologies used to determine credit ratings an NRSRO must establish, maintain, enforce and document pursuant to paragraph (a) of Rule 17g–8 as a record that must be retained.[2360] The Commission estimates that paragraph (b)(13) of Rule 17g–2 will result in total industry-wide one-time costs for an NRSRO to update its record retention policies and procedures to incorporate the new record of approximately $12,000 [2361] and total industry-wide annual costs for an NRSRO to retain the record of approximately $3,000.

H. Form and Certification to Accompany Credit Ratings

The Commission is amending paragraph (a) of Rule 17g–7 to require NRSROs, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action and any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[2362] The Commission estimates that the amendments will result in total industry-wide one-time costs for NRSROs of approximately $15,613,000 to develop the standardized disclosures and create the systems, protocols, and procedures for populating the form with information generated and collected during the rating process, including the cost of engaging outside professionals (counsel and information technology consultants) to assist in developing the standardized disclosures and creating the systems, protocols, and procedures for populating the form with information generated and collected during the rating process,[2363] and total industry-wide annual costs for NRSROs of approximately $196,783,000 to update standardized disclosures, to tailor disclosures to particular rating actions and asset classes, and to generate and publish each form and attach the required certifications to the form.[2364]

I. New Rule 15Ga–2 and Amendments to Form ABS–15G

The Commission is adopting Rule 15Ga–2 and amendments to Form ABS–15G. Rule 15Ga–2 generally requires an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter at least five business days prior to the first sale in the offering.[2365] The rule does not apply to issuers or underwriters of municipal Exchange Act-ABS but section 15E(s)(4)(A) of the Exchange Act requires an issuer or underwriter of these securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

The Commission estimates that Rule 15Ga–2 and amendments to Form ABS–15G will result in total industry-wide one-time costs for issuers and underwriters to develop processes and protocols to provide the required information to comply with Rule 15Ga–2 and/or section 15E(s)(4)(A) of the Exchange Act, including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2, of

[2353] *See* section II.E.3. of this release (providing a more detailed discussion of this amendment); section II.E.4. of this release (providing a focused economic analysis for this amendment).

[2354] 1,350 hours × $291 per hour for a senior systems analyst = $392,850, rounded to $393,000. *See* section IV.D.6. of this release (PRA analysis providing for cost and hour burden estimates).

[2355] 450 hours × $291 per hour for a senior systems analyst = $130,950, rounded to $131,000. *See* section IV.D.6. of this release (PRA analysis providing cost and hour burden estimates).

[2356] *See* section II.F.1. of this release (providing a more detailed discussion of this paragraph); section II.F.3. of this release (providing a focused economic analysis for the requirements of this paragraph).

[2357] 2,000 hours × $283 per hour for a compliance manager = $566,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2358] 500 hours × $273 per hour for a compliance manager = $136,500, rounded to $137,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2359] 20 hours × $283 per hour for a compliance manager = $5,660, rounded to $5,700. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2360] *See* section II.F.2. of this release (providing a more detailed discussion of this amendment) section II.F.3. of this release (providing a focused economic analysis for the requirements of this paragraph). Under the amendments to paragraph (c) of Rule 17g–2, the record must be retained until three years after it is replaced with an updated record.

[2361] 200 hours/5 records = 40 hours × $291 per hour for a senior systems analyst = $11,640, rounded to $12,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2362] *See* section II.G. of this release (providing a more detailed discussion of this amendment); section II.F.3. of this release (providing a focused economic analysis for the requirements of this amendment).

[2363] 37,500 hours × $283 per hour for a compliance manager = $10,612,500; $10,612,500 + $5,000,000 to engage outside professionals = $15,612,500, rounded to $15,613,000. *See* section IV.D.6. of this release (PRA analysis providing cost and hour burden estimates).

[2364] 695,347 hours × $283 per hour for a compliance manager = $ 196,783,201, rounded to $196,783,000. *See* section IV.D.6. of this release (PRA analysis providing cost and hour burden estimates).

[2365] *See* section II.H.1. of this release (providing a more detailed discussion of this rule and form); section II.H.4. of this release (providing a focused economic analysis for the requirements of this rule and form).

approximately $9,509,000 [2366] and total industry-wide annual costs for issuers and underwriters to make the disclosures as required by Rule 15Ga–2 and/or section 15E(s)(4)(A) of the Exchange Act of approximately $202,000.[2367]

J. New Rule 17g–10 and New Form ABS Due Diligence–15E

The Commission is adopting Rule 17g–10 and Form ABS Due Diligence–15E, which requires that the written certification a provider of third-party due diligence services must provide to an NRSRO be made on Form ABS Due Diligence–15E.[2368]

The Commission estimates that Rule 17g–10 and Form ABS Due Diligence–15E will result in total industry-wide one-time costs for providers of third-party due diligence services of approximately $1,405,000 [2369] to develop processes and protocols to provide the required information and submit the certifications and to hire outside counsel to provide legal advice on the requirements of the new rule and form and total industry-wide annual costs for providers of third-party due diligence services of approximately $67,000 [2370] to provide the required information and submit the certifications.

The Commission is adding paragraph (a)(3)(iii)(E) to Rule 17g–5 to require an NRSRO to obtain an additional representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security.[2371] This provision, which was not included in the proposal, may require redrafting of NRSRO agreement templates. In addition, issuers, sponsors and underwriters will incur recurring costs resulting from posting the certifications to the Rule 17g–5 Web site. The Commission estimates paragraph (a)(3)(iii)(E) of Rule 17g–5 will result in total industry-wide one-time costs for NRSROs of approximately $1,902,000 [2372] to redraft the agreement templates they use with respect to obtaining representations from issuers, sponsors, or underwriters as required under Rule 17g–5 and total industry-wide annual costs for issuers, sponsors, and underwriters of approximately $34,000 to upload each form and post it to the Web site.[2373]

K. Standards of Training, Experience, and Competence

The Commission is adopting Rule 17g–9, which requires an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the NRSRO produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[2374]

The Commission estimates that Rule 17g–9 will result in total industry-wide one-time costs for NRSROs to establish and document the standards of training, experience, and competence for their credit analysts required under the rule and to establish testing programs, including the cost to hire outside professionals to assist in setting up training and testing programs, of approximately $7,834,000 [2375] and total industry-wide annual costs for NRSROs of approximately $1,629,000 to maintain, review, update (if necessary), and enforce the standards and to administer the training and testing programs, including the cost to hire outside professionals to assist in reviewing and updating training and testing programs.[2376] In addition, the Commission estimates that Rule 17g–9 will result in total industry-wide annual costs for NRSROs to conduct periodic testing of their credit analysts of approximately $5,990,000.[2377]

The Commission is adding paragraph (b)(15) of Rule 17g–2 to identify the records documenting the standards of training, experience, and competence as a record that must be retained.[2378] The Commission estimates that paragraph (b)(15) of Rule 17g–2 will result in total industry-wide one-time costs for NRSROs of approximately $12,000 [2379] and total industry-wide annual costs for NRSROs of approximately $3,000.[2380]

L. Universal Rating Symbols

The Commission is adopting paragraph (b) of Rule 17g–8, which requires an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[2381] The Commission estimates that paragraph (b) of Rule 17g–8 will result in total industry-wide one-time costs for NRSROs to establish and document the policies and procedures of approximately $566,000 [2382] and total industry-wide annual costs for NRSROs of approximately $142,000 to maintain, review, update (if necessary), and enforce the policies and procedures.[2383]

The Commission is adding paragraph (b)(14) to Rule 17g–2 to identify the

[2366] 33,600 hours × $283 per hour for a compliance manager = $9,508,800, rounded to $9,509,000. *See* section IV.D.10. of this release (PRA analysis providing cost and hour burden estimates).

[2367] 715 hours × $283 per hour for a compliance manager = $ 202,345, rounded to $202,000. *See* section IV.D.10. of this release (PRA analysis providing cost and hour burden estimates).

[2368] *See* section II.H.2. and section II.H.3. of this release (providing a more detailed discussion of this rule and form).

[2369] 3,375 hours × $283 per hour for a compliance manager = $955,125; $955,125 + $450,000 to engage outside counsel = $1,405,125, rounded to $1,405,000. *See* section IV.D.9. of this release (PRA analysis providing cost and hour burden estimates).

[2370] 238 hours × $283 per hour for a compliance manager = $67,354, rounded to $67,000. *See* section IV.D.9. of this release (PRA analysis providing cost and hour burden estimates).

[2371] *See* sections II.G.5. and II.H.2. of this release (providing a more detailed discussion of this provision).

[2372] 6,720 hours × $283 per hour for a compliance manager = $1,901,760, rounded to $1,902,000. *See* section IV.D.5. of this release (PRA analysis providing cost and hour burden estimates).

[2373] 119 hours × $283 per hour for a compliance manager = $33,677, rounded to $34,000. *See* section IV.D.5. of this release (PRA analysis providing cost and hour burden estimates).

[2374] *See* section II.I.1. of this release (providing a more detailed discussion of this rule); section II.I.3. of this release (providing a focused economic analysis for the requirements of this rule).

[2375] 18,818 hours × $283 per hour for a compliance manager = $5,325,494; $5,325,494 + $2,508,800 to engage outside professionals = $7,834,294, rounded to $7,834,000. *See* section IV.D.8. of this release (PRA analysis providing cost and hour burden estimates).

[2376] 3,914 hours × $283 per hour for a compliance manager = $1,107,662; $1,107,662 + $521,600 to engage outside professionals = $1,629,262, rounded to $1,629,000. *See* section IV.D.8. of this release (PRA analysis providing cost and hour burden estimates).

[2377] 21,090 hours × $284 per hour for a fixed income research analyst (intermediate) = $5,989,560, rounded to $5,990,000.

[2378] *See* section II.I.2. of this release (providing a more detailed discussion of this amendment); section II.I.3. of this release (providing a focused economic analysis for this amendment). Under the amendments to paragraph (c) of Rule 17g–2, the record must be retained until three years after the date the record is replaced with an updated record.

[2379] 200 hours/5 records = 40 hours × $291 per hour for a senior systems analyst = $11,640, rounded to $12,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2380] 50 hours/5 records = 10 hours × $291 per hour for a senior systems analyst = $2,910, rounded to $3,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2381] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph); section II.I.3. of this release (providing a focused economic analysis for this the requirements of this paragraph).

[2382] 2,000 hours × $283 per hour for a compliance manager = $566,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

[2383] 500 hours × $283 per hour for a compliance manager = $141,500, rounded to $142,000. *See* section IV.D.7. of this release (PRA analysis providing cost and hour burden estimates).

policies and procedures with respect to credit rating symbols, numbers, or scores an NRSRO must establish, maintain, enforce, and document under paragraph (b) of Rule 17g–8 as a record that must be retained.[2384] The Commission estimates that paragraph (b)(14) of Rule 17g–2 will result in total industry-wide one-time costs for NRSROs of approximately $12,000 [2385] and total industry-wide annual costs for NRSROs of approximately $3,000.[2386]

M. Electronic Submission of Form NRSRO and the Rule 17G–3 Annual Reports

The Commission is amending Rule 17g–1, the Instructions to Form NRSRO, Rule 17g–3, and Regulation S–T to require that the annual reports under Rule 17g–3 and a Form NRSRO and Exhibits 1 through 9 to Form NRSRO under paragraph (e), (f), or (g) of Rule 17g–1 (an update of registration, an annual certification, or a withdrawal from registration, respectively) be submitted to the Commission electronically as PDF documents using the Commission's EDGAR system.[2387]

The Commission estimates that these amendments will result in total industry-wide one-time costs for NRSROs of approximately $46,000 [2388] to become familiar with the EDGAR system and to file Form ID and total industry-wide annual costs for NRSROs of approximately $6,000 to monitor changes in EDGAR filing requirements.[2389]

[2384] *See* section II.J.2. of this release (providing a more detailed discussion of this amendment); section II.I.3. of this release (providing a focused economic analysis for this amendment). Under the amendments to paragraph (c) of Rule 17g–2, the record must be retained until three years after the date the record is replaced with an updated record.

[2385] 200 hours/5 records = 40 hours × $291 per hour for a senior systems analyst = $11,640, rounded to $12,000. *See* the PRA analysis in section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2386] 50 hours/5 records = 10 hours × $291 per hour for a senior systems analyst = $2,910, rounded to $3,000. *See* section IV.D.3. of this release (PRA analysis providing cost and hour burden estimates).

[2387] *See* section II.L. of this release (providing a more detailed discussion of these amendments) section II.L.2. of this release (providing a focused economic analysis for these amendments).

[2388] 160 hours + 2.5 hours = 162.5 hours × $283 per hour for a compliance manager = $45,987.50, rounded to $46,000. *See* sections IV.D.1. and IV.D.12 of this release (PRA analyses providing cost and hour burden estimates).

[2389] 20 hours × $283 per hour for a compliance manager = $5,660, rounded to $6,000. *See* section IV.D.1. of this release (PRA analysis providing cost and hour burden estimates).

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') [2390] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities.

The Commission proposed amendments to Rule 101 of Regulation S–T, Rule 201 of Regulation S–T, Rule 314 of Regulation S–T, Rule 17g–1, Rule 17g–2, Rule 17g–3, Rule 17g–5, Rule 17g–6, Rule 17g–7, Form ABS–15G, and Form NRSRO, and proposed new Rule 17g–8, new Rule 17g–9, new Rule 17g–10, new Rule 15Ga–2, and new Form ABS Due Diligence–15E. The Commission included an Initial Regulatory Flexibility Analysis (''IRFA'') in the proposing release.[2391] The Commission has prepared this Final Regulatory Flexibility Analysis in accordance with the provisions of the RFA.[2392]

A. Need for and Objectives of the Amendments and New Rules

Section II of this release describes the need for and objectives of the amendments and new rules. In addition, section IV.B. of this release describes the intended use of the collections of information that are required under the amendments and new rules. Moreover, as described in section II of this release, the amendments and new rules implement Title IX, Subtitle C of the Dodd-Frank Act.[2393] In section 931 of Title IX, Subtitle C of the Dodd-Frank Act, Congress made findings relating to the need for the amendments and new rules.[2394]

B. Significant Issues Raised by Public Comments

The Commission requested comment with regard to all matters discussed in the IRFA, including comments with respect to the number of small entities that may be affected by the proposed amendments and new rules and whether the effect on small entities would be economically significant.[2395]

One commenter addressed the IRFA stating that ''the majority of the proposed rules set forth in the Proposing Release are more appropriate for, and aimed at, large, established agencies and overall, insufficient consideration has been given to smaller agencies.'' [2396] The Commission is sensitive to the impact the amendments and new rules will have on small entities and has taken actions to address this issue. Specifically, the amendments and new rules contain certain modifications from the proposals designed to alleviate some of the concerns regarding small entities. The Commission believes that the amendments and new rules being adopted today, as modified from the proposal, strike an appropriate balance between minimizing the impact on small entities and implementing the policies and requirements addressed by Title IX, Subtitle C of the Dodd-Frank Act.

Moreover, in response to the commenter that specifically addressed the IRFA, the Commission believes the choices it has made in implementing Title IX, Subtitle C of the Dodd-Frank Act have resulted in amendments and new rules that are designed to be appropriate for entities of all sizes, while still implementing the policies and requirements addressed by the Dodd-Frank Act. For example, a number of the amendments and new rules are policies and procedures-based requirements and, consequently, a small NRSRO can comply with these requirements by tailoring and scaling its policies and procedures to its size and business activities. In addition, where feasible, the Commission has implemented Title IX, Subtitle C of the Dodd-Frank Act by enhancing existing requirements (most particularly with respect to performance statistics and rating histories) rather than establishing separate new requirements. Consequently, small NRSROs that currently are subject to the existing requirements can leverage their existing systems and procedures to comply with the new requirements and will not be subject to separate new requirements. Moreover, the Commission has implemented Title IX, Subtitle C of the Dodd-Frank Act, in large part, by designing amendments and new rules that are modeled closely on the statutory text mandating the rulemaking. Consequently, the Commission has sought to limit the cumulative impact on small NRSRO resulting from the amendments and new rules to that which is necessary to implement the policies and requirements addressed by Title IX, Subtitle C of the Dodd-Frank Act.

[2390] 5 U.S.C. 601 *et seq.*

[2391] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33533–33537.

[2392] *See* 5 U.S.C. 604(a).

[2393] *See* Public Law 111–203, 931 through 939H.

[2394] *See* Public Law 111–203, 931; section I.B.1. of this release (setting forth the findings).

[2395] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33537.

[2396] *See Trade Metrics Letter.* As noted below, other commenters addressed more generally issues related to the impact on small entities, which are discussed above in the relevant sections, as well as below in this analysis. *See, e.g., Kroll Letter.*

Finally, the Commission—as discussed in section III of this release—has prescribed differing dates for when the amendments and new rules will become effective, with the more technically complex amendments and rules having longer lead times before they become effective. This will provide all entities—including entities that are small NRSROs—with transition periods to prepare to comply with the new requirements, which may be particularly helpful to small NRSROs.

While the Commission has sought to limit the impact on small entities, the Commission acknowledges that Title IX, Subtitle C of the Dodd-Frank Act contains requirements—including those resulting from this substantial package of rulemaking—that collectively and, in many cases, individually will impose costs on NRSROs, including NRSROs that are small entities. The Commission recognizes that the consequences of these amendments and new rules may be the creation of barriers to entry and negative impacts on competition. The Commission has balanced these potential impacts with the rulemaking requirements and objectives of Title IX, Subtitle C of the Dodd-Frank Act (reflected in the findings in section 931 of the Dodd-Frank Act).

In addition to the comment discussed above that specifically addressed the IRFA, several commenters discussed the potential impact of the proposed amendments and new rules on small entities. These comments—and the Commission's response to the comments—are discussed in the various, relevant sections throughout this release, as well as below.

One commenter, with regard to the proposals relating to the internal control structure, stated that the Commission should ''avoid creating a regulatory environment for NRSROs that is so burdensome and complicated that only the large NRSROs, which have enormous resources at their disposal, can address the multitude of complex requirements'' and that the proposed amendments to Rule 17g–3 related to internal controls would compound barriers to entry because they are ''expensive and burdensome to implement,'' particularly for newer or smaller NRSROs.[2397] Commenters also stated, in response to a question in the proposing release, that the Commission should not prescribe factors for an internal control structure because this would place a heavy burden on small NRSROs.[2398] One commenter stated that the requirement to document internal controls is burdensome, particularly for smaller NRSROs, that the requirements are expensive, time consuming, and yield little benefit, and that documenting policies and procedures ''naturally coincide with the establishment of a properly functioning internal controls structure,'' which the NRSRO should be allowed to establish on its own, and the commenter urged the Commission to exclude ''extensive or overly-inclusive documentation requirements'' should it adopt paragraph (b)(12) of Rule 17g–2.[2399]

In response to these comments, the Commission notes that the approach it has taken with respect to section 15E(c)(3) of the Exchange Act—which contains a self-executing requirement that an NRSRO establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings—will reduce the impact on small NRSROs as compared to the proposal.[2400] First, while the Commission is prescribing factors an NRSRO must consider, it is not mandating that a specific factor be implemented. Consequently, while small NRSROs must consider the factors identified by the Commission, they can tailor and scale their internal control structures to their size and business activities. Second, the modifications to the amendments to Rule 17g–3 from the proposal (because they specify that management of the NRSRO cannot state in the internal controls report that the internal control structure was effective if it contained one or more material weaknesses and provide a description of when a material weakness exists) will provide better guidance to NRSROs on the statements and information that must be included in the report compared with the proposal. Consequently, modifications may result in modest reductions of the impact on small NRSROs associated with preparing the reports, as this guidance will provide more certainty as to the matters that must be specifically addressed in the reports and, therefore, reduce the effort needed to prepare them.[2401]

One commenter stated that the prohibited conflict of interest related to sales and marketing in proposed paragraph (c)(8) of Rule 17g–5 could make compliance ''a practical impossibility'' for all but the largest NRSROs because small NRSROs do not have the same resources or structure as larger NRSROs to comply with an absolute prohibition.[2402] Similarly, another commenter stated that the proposed rule regarding the prohibited conflict of interest related to sales and marketing is overly-restrictive, particularly for smaller NRSROs, and would result in ''grossly inefficient use of the [NRSRO's] resources and add a substantial amount of infrastructure costs, at little to no benefit.'' [2403]

In response to these comments, the Commission notes that, consistent with Exchange Act section 15E(h)(3)(B)(i), the final amendments provide a mechanism for small NRSROs to apply for an exemption from the rule's requirements.[2404] Under the final amendments, the Commission may grant an exemption if it finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[2405]

An NRSRO stated that complying with the amended instructions for Exhibit 1 to Form NRSRO regarding the production and presentation of performance statistics will require ''substantial technology resources'' and that smaller NRSROs' resources may be strained if sufficient time is not provided to comply.[2406] One commenter stated that the single cohort approach could lead to results that are ''significantly more volatile within the shorter time period, which will make interpreting those results more difficult.'' [2407] This commenter stated further that ''the volatility impact will be amplified for NRSROs with fewer ratings, which could lead to bias against smaller NRSROs.'' [2408]

In response to the first comment, the Commission notes—as discussed in section III. of this release—NRSROs will not be required to provide performance statistics in Exhibit 1 to Form NRSRO that adhere to the new requirements until they file their annual certifications in 2016. This will provide all NRSROs, including small NRSROs, with a substantial transition period to prepare to comply with the new requirements. In response to the second comment, the

[2397] *See Kroll Letter.*

[2398] *See A.M. Best Letter; Kroll Letter.*

[2399] *See A.M. Best Letter.*

[2400] *See* 15 U.S.C. 78o–7(c)(3). *See also* section II.A. of this release (discussing in detail the Commission's approach with respect to section 15E(c)(3)).

[2401] *See* section II.A.3. of this release (providing a more detailed discussion of the description of what constitutes a material weakness).

[2402] *See Kroll Letter.*

[2403] *See A.M. Best Letter.*

[2404] *See* paragraph (f) of Rule 17g–5.

[2405] *See id.*

[2406] *See Morningstar Letter.*

[2407] *See DBRS Letter.*

[2408] *See DBRS Letter.*

Commission—as discussed in section II.E.1.b. of this release—has balanced this concern with section (q)(2)(B) of the Exchange Act, which provides that the Commission's rules shall require that the performance measurement disclosures be clear and informative for investors having a wide range of sophistication).[2409] The single cohort approach involves simpler computations than other approaches for calculating the performance statistics. The requirements in the instructions for Exhibit 1 provide for very transparent disclosures about the number of credit ratings in the start date cohort and in the cohort for each notch in the credit rating scale of a given class or subclass. This transparency will provide persons reviewing the performance statistics with information to assess how the small number of credit rating ratings in a given cohort may have impacted the results.[2410] Further, the modifications to the instructions for Exhibit 1 to Form NRSRO permit an NRSRO, including a small NRSRO, to include in the exhibit a short statement describing the single cohort approach and any advantages or limitations to the single cohort approach the NRSRO believes would be appropriate to disclose.

The Commission also notes that it has modified the instructions for Exhibit 1 to Form NRSRO from the proposal in ways that will reduce the impact on small NRSROs.[2411] For example, the final amendments provide that, except for the issuers of asset-backed securities class of credit ratings, to determine the number of credit ratings outstanding as of the beginning of the applicable period, the NRSRO must include only credit ratings assigned to an obligor as an entity or, if there is no such rating, the rating of the obligor's senior unsecured debt, instead of the credit ratings of individual securities or money-market instruments issued by the obligor.[2412] Because the Commission has narrowed the scope of the credit ratings included in the performance statistics for four of the five classes of credit ratings, this is expected to substantially reduce the amount of historical information that an NRSRO is required to analyze. The Commission has also revised the standard definition of *paid off,* in response to comment,[2413] to eliminate the prong that applied to entity ratings of obligors. The Commission has clarified that the rule does not require an NRSRO to track the outcome of an obligor, security, or money market instrument after the credit rating has been withdrawn, in response to comments.[2414]

With respect to paragraph (a) of proposed Rule 17g–8, one NRSRO stated that to adopt policies mandating board approval of procedures and methodologies to determine credit ratings would be ''overly-burdensome for many smaller NRSROs and likely cost prohibitive for a small credit rating agency seeking to become an NRSRO.'' [2415] A second commenter stated that certain provisions of the proposal, including those related to credit rating methodologies, would compound barriers to entry, that many of the new provisions are ''expensive and burdensome to implement,'' especially for newer and smaller NRSROs, and do not appear to promote competition, and that the Commission should take into account the ''dominance'' of the larger players and expand small company exceptions that are ''needed to level the competitive field.'' [2416]

In response to comments about the board's role in approving the procedures and methodologies an NRSRO uses to determine credit ratings, the Commission notes—as discussed in section II.F.1. of this release—that section 15E(t)(3)(A) of the Exchange Act provides that the board of an NRSRO shall oversee the establishment, maintenance, and enforcement of policies and procedures for determining credit ratings.[2417] Consequently, the self-executing requirement in the statute governs the responsibility of the board. Paragraph (a)(1) of Rule 17g–8 governs the responsibility of the NRSRO to have policies and procedures reasonably designed to ensure that board carries out this statutory responsibility. Therefore, the rule implements a policies and procedures-based requirement and, therefore, a small NRSRO can comply with the rule requirements by tailoring and scaling its policies and procedures to its size and business activities. Moreover, with respect to the self-executing requirement, section 15E(t)(5) of the Exchange Act provides exception authority under which the Commission may permit an NRSRO to delegate responsibilities required in section 15E(t) to a committee if the Commission finds that compliance with the provisions of that section present an unreasonable burden on a small NRSRO.[2418] The ability to request an exception under section 15E(t)(5) provides a means for a small NRSRO to seek relief to delegate responsibilities to a committee if the Commission finds the costs and burdens associated with the requirements of section 15E(t) of the Exchange Act—including the requirement that the board oversee the establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings—are an unreasonable burden.[2419]

In response to the more general comment on the impact of paragraph (a) of Rule 17g–8 on smaller NRSROs, all of the provisions in the paragraph establish policies and procedures-based requirements. Therefore, a small NRSRO can comply with the requirements by tailoring and scaling its policies and procedures to its size and business activities. This should result in lower impacts on smaller NRSROs as compared to large NRSROs because the smaller NRSROs issue substantially fewer credit ratings than the large NRSROs.[2420] Consequently, the number of credit analysts and credit ratings to which the policies and procedures will need to be applied will be significantly fewer than will be the case for a large NRSRO. Thus, the new rule should result in lower impacts for small NRSROs in terms of the scope of the activities to be addressed by the policies and procedures.

One NRSRO stated that the implementation of proposed paragraph (a) of Rule 17g–7 (requiring the publication of a form and any applicable due diligence certifications with the taking of a rating action) would result in an ''enormous technological undertaking'' that will require a lead time of at least one year to implement for all NRSROs and possibly longer for smaller NRSROs who may not have the same level of financial or technological resources as the larger NRSROs.[2421]

In response to this comment, the Commission notes—as discussed in section III of this release—that the

[2409] *See* 15 U.S.C. 78o–7(q)(2)(B).

[2410] *See* section II.E.1.b. of this release.

[2411] *See* section II.E.1.b. of this release (discussing the modifications in more detail).

[2412] *See* section II.E.1.b. of this release.

[2413] *See S&P Letter.*

[2414] *See, e.g., S&P Letter* (stating that that the Commission should not require that an NRSRO monitor an obligor, security, or money market instrument after withdrawal because of the lack of information available to the NRSRO to perform such monitoring).

[2415] *See A.M. Best Letter.*

[2416] *See Kroll Letter.*

[2417] *See* 15 U.S.C. 78o–7(t)(3)(A).

[2418] *See* 15 U.S.C. 78o–7(t)(5).

[2419] The Commission will handle such requests in a manner similar to requests for relief under section 36 of the Exchange Act. *See* 15 U.S.C. 78mm. Further information about requesting relief from the Commission under section 36 of the Exchange Act is available at *http://www.sec.gov/rules/exempt.shtml.*

[2420] *See* Table 4 in section I.B.2.a. of this release (showing the approximate number of credit ratings outstanding across the ten NRSROs).

[2421] *See Morningstar Letter.*

requirement will not be effective until nine months after this release is published in the **Federal Register**. This will provide small NRSROs with a substantial transition period to prepare to comply with the new requirements. Moreover, while the transition period is not as long as suggested by the commenter (at least one year), the Commission has modified the final amendments from the proposal in a number of ways that will reduce impacts on small NRSROs and, therefore, should make a nine month transition period sufficient for small NRSROs.[2422] All of these modifications were made, in part, in response to concerns about burdens raised by commenters. The modifications include narrowing the scope of rating actions that will trigger the disclosure requirement. In addition, the Commission has exempted certain rating actions involving credit ratings assigned to foreign obligors or securities or money market instruments issued overseas. The Commission also significantly reduced the reporting requirements relating to representations, warranties, and enforcement mechanisms. These modifications should reduce the impact on all NRSROs, including small NRSROs, as compared with the proposal.

While commenters may not have specifically addressed the impact on small entities of other amendments and new rules being adopted today, as discussed in detail in Section II of this release, the Commission has made modifications from the proposals that will reduce the impact on small entities.

For example, the Commission has modified the requirement to submit certain Forms NRSRO and annual reports under Rule 17g–3 to the Commission electronically.[2423] In response to a comment from an NRSRO that the Commission's proposed cost estimate for the proposal ''accounts for only a small fraction of the expected cost of compliance'' and that instead PDF copies of the required submissions should be used,[2424] the Commission has modified the proposed amendments to require that the electronic submissions be made on EDGAR as PDF documents, which another NRSRO described as ''the most preferred and simplest'' way to provide the information.[2425] This will mitigate the costs for all NRSROs, including small NRSROs, to file the forms and report.

Further, the Commission has modified proposed paragraph (b) of Rule 17g–7 (the 100% Rule) in a number of ways that will reduce the impact on small NRSROs.[2426] To focus the disclosure of rating histories on the rating actions that are most relevant to evaluating performance, the final rule eliminates the proposed requirement to include placements on watch and affirmations (and the required data associated with these actions) in the rating histories. The final rule also significantly shortens from the proposal the time horizon of historical information that must be retrieved for inclusion in the rating histories. In particular, the proposed requirement to include information for all credit ratings outstanding on or after June 26, 2007 has been replaced with a standard three-year backward looking requirement that applies irrespective of when the NRSRO is registered in a class of credit ratings. This, together with the elimination of two proposed types of rating actions that would trigger a requirement to add information to a credit rating's history—placements of the security on credit watch or review and affirmations of the credit rating—is expected to significantly mitigate the costs of retrieving and analyzing historical information for the purposes of making the rating histories disclosures. The modifications from the proposal also should mitigate concerns about having to obtain information that was not traditionally retained by the NRSRO because it will significantly narrow the scope of such information that will need to be included in the rating histories. Further, the modifications from the proposal are expected to reduce the cost of updating the XBRL data file with new information.[2427] The final amendments also specify a standard for updating the file—no less frequently than monthly. This will mitigate costs that would result if the Commission had not established a minimum requirement for how often the file must be updated and NRSROs updated the file more frequently than monthly as a result. Finally, the final rule modifies the proposal to reduce the time period a credit rating history must be retained after the credit rating is withdrawn from twenty years to fifteen years. This is expected to reduce to some degree the data retention and maintenance costs associated with the final rule as compared to the proposed rule. Overall, these modifications are expected to reduce the impact on NRSROs, including small NRSROs, as compared with the proposal.

The Commission also has modified proposed Rule 17g–10 and Form ABS Due Diligence–15E in ways that will reduce the impact on small entities.[2428] In particular, Rule 17g–10, as adopted, establishes a ''safe harbor'' to provide certainty to providers of third-party due diligence services with respect to how they can meet their obligation under section 15E(s)(4)(B) of the Exchange Act to provide Form ABS Due Diligence–15E to any NRSRO that produces a credit rating to which the due diligence services relate. Consequently, small third-party due diligence providers will not be required to identify every NRSRO that is producing a credit rating.

Finally, the amendments being adopted today eliminate the 10% Rule.[2429] This will eliminate the costs for all NRSROs, including small NRSROs, to produce and disclose rating histories to comply with the 10% Rule.

C. Small Entities Subject to the Rules

1. NRSROs and Providers of Third-Party Due Diligence Services

Paragraph (a) of Rule 0–10 provides that, for purposes of the RFA, a small entity ''[w]hen used with reference to an 'issuer' or a 'person' other than an investment company'' means ''an 'issuer' or 'person' that, on the last day of its most recent fiscal year, had total assets of $5 million or less.''[2430] The Commission has stated in the past that an NRSRO with total assets of $5 million or less would qualify as a ''small'' entity for purposes of the RFA.[2431] The Commission continues to believe this threshold of total assets of $5 million or less qualifies an NRSRO as ''small'' for purposes of the RFA. In addition, the Commission believes this is an appropriate threshold for determining whether a provider of third-party due diligence services is ''small'' for purposes of the RFA. Currently, there are ten credit rating agencies registered with the

[2422] *See* section II.G. of this release (providing a more detailed discussion of these modifications).

[2423] *See* section II.E.2. of this release.

[2424] *See DBRS Letter.*

[2425] *See S&P Letter.*

[2426] *See* section II.E.3. of this release (providing a more detailed discussion of these modifications).

[2427] *See* section II.E.3.b. of this release (discussing how the modifications narrow the types of rating actions that must be included in a rating history).

[2428] *See* section II.H.2. of this release.

[2429] See section II.E.3. of this release (discussing the 10% Rule and reasons for its elimination).

[2430] 17 CFR 240.0–10(a).

[2431] *See, e.g., Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33618; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6481; *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63863.

Commission as NRSROs.[2432] Based on their annual reports under Rule 17g–3 for the 2013 fiscal year, two NRSROs are small entities under the above definition.

The Commission stated in the proposing release that it believed that there were approximately ten firms that provide, or would begin providing, third-party due diligence services to issuers and underwriters of Exchange Act-ABS and that all would be small entities for purposes of the RFA.[2433] However, based on further analysis, the Commission estimates that there are approximately fifteen providers of third-party due diligence services.[2434] The Commission believes that all of these firms will be small entities for purposes of the RFA.

2. Issuers

As noted above, Rule 0–10(a)[2435] defines an issuer be a *small business* or *small organization* if it had total assets of $5 million or less on the last day of its most recent fiscal year. In the proposing release, the Commission estimated that there were 270 issuers and certified pursuant to 5 U.S.C. 605(b) that Rule 15Ga–2 and the amendments to Form ABS–15G, if adopted, would not have a significant economic impact on a substantial number of small entities.[2436] The Commission requested comment on this certification.[2437] However, no commenters responded to that request or indicated that the proposed rules would have a significant economic impact on a substantial number of small entities.

The Commission estimates that there will be 336 unique issuers subject to Rule 15Ga–2 and the amendments to Form ABS–15G.[2438] The Commission's data indicate that only one issuer would be small for purposes of the RFA.[2439] Because only one out of 336 unique issuers is small and because commenters did not indicate that the proposed rules would have a significant economic impact on a substantial number of small issuers, the Commission certifies that Rule 15Ga–2 and the amendments to Form ABS–15G will not have a significant economic impact on a substantial number of small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

In accordance with the Dodd-Frank Act and to enhance oversight of NRSROs, the Commission is adopting amendments to existing rules and new rules that apply to NRSROs, providers of third-party due diligence services for asset-backed securities, and issuers and underwriters of asset-backed securities.

The Commission is amending Rule 17g–1. First, the Commission is amending paragraph (i) of Rule 17g–1.[2440] The amendments require an NRSRO to make Form NRSRO and Exhibits 1 through 9 of the form publicly and freely available on an easily accessible portion of its corporate Internet Web site (eliminating an option to make the form and exhibits available ''through another comparable, readily accessible means'') and to make its most recent Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit.

Second, the Commission is amending paragraphs (e), (f), and (g) of Rule 17g–1 to require NRSROs to use the Commission's EDGAR system to electronically submit Form NRSRO and required exhibits to the form to the Commission as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[2441]

The Commission is amending the instructions for Exhibit 1 to Form NRSRO.[2442] The amendments standardize the production and presentation of the 1-year, 3-year, and 10-year transition and default statistics that an NRSRO must disclose in the Exhibit. The performance statistics must be presented in a format specified in the instructions, which include a sample ''Transition/Default Matrix.'' The amendments also enhance the information to be disclosed by, for example, requiring statistics to be produced and presented for subclasses of structured finance products and for credit ratings where the obligation was paid off or the credit rating was withdrawn for reasons other than a default or the obligation was paid off.

The Commission is amending Rule 17g–2. First, the Commission is adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures with respect to look-back reviews an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8 as a record that must be made and retained.[2443] Second, the Commission is adding paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[2444] Third, the Commission is adding paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures with respect to the procedures and methodologies used to determine credit ratings an NRSRO is required to establish, maintain, enforce, and document pursuant to paragraph (a) of Rule 17g–8 as a record that must be retained.[2445] Fourth, the Commission is adding paragraph (b)(14) to Rule 17g–2 to identify the policies and procedures with respect to credit rating symbols, numbers, or scores an NRSRO must establish, maintain, enforce, and document pursuant to paragraph (b) of Rule 17g–8 as a record that must be retained.[2446] Fifth, the Commission is adding paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to Rule 17g–9 as a record that must be retained.[2447] In addition, the Commission is amending paragraph (c) of Rule 17g–2 to provide that records identified in paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 must be retained until three years after the date the record is replaced with an updated record, instead of three years after the record is made or received, which is the retention period for other

[2432] *See* section I.B.2.a. of this release (discussing the economic baseline with respect to NRSROs); *see also* section IV.C. of this release (stating that there are ten NRSRO respondents for purposes of the PRA).

[2433] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33534.

[2434] *See* section I.B.2.b. of this release (discussing the economic baseline with respect to providers of third-party due diligence services and the analysis upon which the Commission bases this estimate); *see also* section IV.C. of this release (stating that there are fifteen respondents that are providers of third-party due diligence services for purposes of the PRA).

[2435] 17 CFR 240.0–10(a).

[2436] *See Nationally Recognized Statistical Rating Organizations,* 76 FR at 33534.

[2437] *See id.* at 33537.

[2438] *See* section I.B.2.b. of this release (discussing the economic baseline with respect to issuers); *see also* section IV.C. of this release (stating that there are 336 issuer respondents for purposes of the PRA).

[2439] This is based on data from Asset-Backed Alert, which is available at *http://www.abalert.com/ranks.php.*

[2440] *See* section II.E.2. of this release (providing a more detailed discussion of the amendments).

[2441] *See* section II.L. of this release (providing a more detailed discussion of the amendments).

[2442] *See* section II.E.1. of this release (providing a more detailed discussion of the amendments).

[2443] *See* section II.C.2. of this release (providing a more detailed discussion of this amendment).

[2444] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment).

[2445] *See* section II.F.2. of this release (providing a more detailed discussion of this amendment).

[2446] *See* section II.J.2. of this release (providing a more detailed discussion of this amendment).

[2447] *See* section II.I.2. of this release (providing a more detailed discussion of this amendment).

records identified in paragraphs (a) and (b) of Rule 17g–2.[2448] The Commission also repealed paragraph (d)(2) of Rule 17g–2 (the 10% Rule) and has re-codified (with significant amendments) the requirements in paragraph (d)(3) of Rule 17g–2 (the 100% Rule) in paragraph (b) of Rule 17g–7.[2449]

The Commission is amending Rule 17g–3. First, the Commission is amending paragraphs (a) and (b) of Rule 17g–3.[2450] The amendment to paragraph (a) adds paragraph (a)(7) to require an NRSRO to include an additional unaudited report—a report on the NRSRO's internal control structure—with its annual submission of reports to the Commission pursuant to Rule 17g–3.[2451] The amendment to paragraph (b) of Rule 17g–3 requires that the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, must provide a signed statement attesting to information in the report that must be attached to the report.[2452]

Second, the Commission is adding paragraph (d) to Rule 17g–3 to require that the annual reports required to be submitted to the Commission pursuant to Rule 17g–3 be submitted electronically through the Commission's EDGAR system as PDF documents.[2453]

Third, the Commission is adding paragraph (a)(8) to Rule 17g–3 to identify the report of the NRSRO's designated compliance officer that an NRSRO is required to file with the Commission pursuant to section 15E(j)(5)(B) of the Exchange Act as a report that must be filed with the other annual reports.[2454] This aspect of the requirement will not result in a collection of information requirement because the requirement to file the report with the other annual reports required under Rule 17g–3 is pursuant to section 15E(j)(5)(B) of the Exchange Act.[2455] Moreover, the Commission is not adding any requirements with respect to the filing other than the requirement that this report be filed with the other annual reports. However, as discussed in more detail below, this report and the other annual reports must be submitted through the EDGAR system.[2456]

The Commission is amending Rule 17g–5. First, the Commission is adding paragraph (a)(3)(iii)(E) to Rule 17g–5 to require an NRSRO to obtain an additional representation from the issuer, sponsor, or underwriter of an asset-backed security that the issuer, sponsor, or underwriter will post on the Rule 17g–5 Web site, promptly after receipt, any executed Form ABS Due Diligence–15E delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.[2457]

Second, the Commission is adding paragraph (c)(8) to Rule 17g–5 to prohibit an NRSRO from issuing or maintaining a credit rating where a person within the NRSRO who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also: (1) Participates in sales or marketing of a product or service of the NRSRO or a product or service of an affiliate of the NRSRO; or (2) is influenced by sales or marketing considerations.[2458]

Third, the Commission is adding paragraph (f) of Rule 17g–5, which provides that upon written application by an NRSRO the Commission may exempt, either conditionally or unconditionally, the NRSRO from paragraph (c)(8) if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[2459]

Fourth, the Commission is adding paragraph (g) of Rule 17g–5 to establish a finding that must be made in the context of a proceeding under section 15E(d)(1) of the Exchange Act that is in lieu of the findings specified in sections 15E(d)(1)(A) through (F) of the Exchange Act.[2460]

The Commission is amending Rule 17g–7. First, the Commission is incorporating the disclosure requirement in Rule 17g–7 relating to representations, warranties, and enforcement mechanisms available to investors in asset-backed securities before today's amendments into paragraph (a) of the rule and is adding disclosure provisions that require an NRSRO, when taking certain rating actions, to publish a form containing information about the credit rating resulting from or subject to the rating action as well as any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[2461] The amendments prescribe: (1) The types of rating actions that trigger the requirement to publish the form and, if applicable, any due diligence certifications;[2462] (2) the format of the form;[2463] (3) the content of the form (which must include certain qualitative and quantitative information relating to the credit rating);[2464] and (4) an attestation requirement for the form.[2465]

Second, the Commission is re-codifying in paragraph (b) of Rule 17g–7 the requirements to disclose rating histories that were contained in paragraph (d)(3) of Rule 17g–2 before today's amendments (the 100% Rule).[2466] The amendments to Rule 17g–7 also expand the scope of the credit ratings that must be included in the histories and add additional data elements that must be disclosed in the rating history for a particular credit rating.

The Commission is adopting Rule 17g–8, which requires an NRSRO to establish, maintain, enforce, and document certain types of policies and procedures or to address certain matters in policies and procedures the NRSRO is required to establish, maintain, and enforce pursuant to the Exchange Act.

Specifically, paragraph (a) of Rule 17g–8 requires an NRSRO to establish,

[2448] *See* section II.A.2. of this release (providing a more detailed discussion of this amendment).

[2449] *See* section II.E.3. of this release (providing a more detailed discussion of this amendment).

[2450] *See* section II.A.3. of this release (providing a more detailed discussion of these amendments).

[2451] *See* paragraph (a)(7) of Rule 17g–3.

[2452] *See* paragraph (b)(2) of Rule 17g–3.

[2453] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2454] *See* section II.K. of this release (providing a more detailed discussion of this amendment).

[2455] *See* 15 U.S.C. 78o–7(j)(5)(B).

[2456] *See* section IV.D.11. of this release (discussing the initial and annual recordkeeping and reporting burdens resulting from the requirement to submit the annual reports to the Commission using the EDGAR system).

[2457] *See* sections II.G.5. and II.H.2. of this release (providing more detailed discussions of this amendment).

[2458] *See* section II.B.1. of this release (providing a more detailed discussion of this amendment).

[2459] *See* section II.B.2. of this release (providing a more detailed discussion of this amendment).

[2460] *See* section II.B.3. of this release (providing a more detailed discussion of this amendment).

[2461] *See* section II.G. of this release (providing a more detailed discussion of these amendments).

[2462] The Commission is adopting an exemption for certain non-U.S. rating actions from the requirements of paragraph (a). *See* section II.G.1. of this release (providing a more detailed discussion of these amendments).

[2463] *See* section II.G.2. of this release (providing a more detailed discussion of these amendments).

[2464] *See* section II.G.3. of this release (providing a more detailed discussion of these amendments).

[2465] *See* section II.G.4. of this release (providing a more detailed discussion of these amendments).

[2466] *See* section II.E.3. of this release (providing a more detailed discussion of these amendments). The Commission is also repealing paragraph (d)(2) of Rule 17g–2 (the 10% Rule). As stated above in section II.E.3. of this release, in light of the amendments to the instructions for Exhibit 1 to Form NRSRO and the amendments to the 100% Rule, retaining the 10% Rule would provide little, if any, incremental benefit.

maintain, enforce, and document policies and procedures with respect to the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings.[2467] The required policies and procedures include policies and procedures relating to: (1) Board approval of the procedures and methodologies for determining credit ratings;[2468] (2) the development and modification of the procedures and methodologies for determining credit ratings;[2469] (3) applying material changes to the procedures and methodologies for determining credit ratings;[2470] (4) publishing material changes to and notices of significant errors in the procedures and methodologies for determining credit ratings;[2471] and (5) disclosing the version of a credit rating procedure or methodology used with respect to a particular credit rating.[2472]

Paragraph (b) of Rule 17g–8 requires an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[2473] The required policies and procedures include policies and procedures relating to: (1) Assessing the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments in accordance with the terms of the security or money market instrument;[2474] (2) clearly defining each symbol, number, or score in the rating scale used by the NRSRO and including the definitions in Exhibit 1 to Form NRSRO;[2475] and (3) applying any symbol, number, or score in the rating scale used by the NRSRO in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[2476]

Paragraph (c) of Rule 17g–8 requires that the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Exchange Act with respect to look-back reviews must address instances in which a look-back review determines that a conflict of interest influenced a credit rating by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO takes certain steps reasonably designed to ensure the credit rating is no longer influenced by the conflict and that the existence and an explanation of the conflict is disclosed.[2477]

Paragraph (d) of Rule 17g–8 requires an NRSRO to consider certain prescribed factors when establishing, maintaining, enforcing, and documenting an effective internal structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings pursuant to section 15E(c)(3)(A) of the Exchange Act.[2478]

The Commission is adopting Rule 17g–9. Rule 17g–9 requires an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the NRSRO produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[2479] Paragraph (b) identifies four factors the NRSRO must consider when designing the standards.[2480] Paragraph (c)(1) requires NRSROs to include a requirement for periodic testing in its standards.[2481] Paragraph (c)(2) provides that the standards must include a requirement that at least one individual with an ''appropriate level of experience in performing credit analysis, but not less than three years'' must participate in the determination of a credit rating.[2482]

The Commission is adopting Rule 17g–10 and Form ABS Due Diligence–15E.[2483] Paragraph (a) of Rule 17g–10 provides that the written certification providers of third-party due diligence services must provide to NRSROs pursuant to section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence–15E.[2484] Paragraph (b) of Rule 17g–10 provides that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[2485] Paragraph (c) of Rule 17g–10 provides a ''safe harbor'' for a provider of third-party due diligence services to meet its obligation under section 15E(s)(4)(B).[2486] Paragraph (d) of Rule 17g–10 contains four definitions to be used for the purposes of section 15E(s)(4)(B) and Rule 17g–10; namely, definitions of *due diligence services,*[2487] *issuer,*[2488] *originator,*[2489] and *securitizer.*[2490]

Form ABS Due Diligence–15E contains five line items identifying information the provider of third-party due diligence services must provide.[2491] It also contains a signature line with a corresponding representation.[2492] Item 1 elicits the identity and address of the provider of third-party due diligence services.[2493] Item 2 elicits the identity and address of the issuer, underwriter, or NRSRO that paid the provider to provide the services.[2494] Item 3 requires the provider of the due diligence services to identify each NRSRO whose published criteria for performing due diligence the provider of third-party due diligence services intended to satisfy in performing the due diligence review.[2495] Item 4 requires the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.[2496] Item 5 requires the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.[2497]

The Commission is adopting Rule 15Ga–2 and amendments to Form ABS–15G.[2498] Rule 15Ga–2 requires an issuer or underwriter of certain Exchange Act-ABS that are to be rated by an NRSRO to furnish a Form ABS–15G on the Commission's EDGAR system containing the findings and conclusions

[2467] *See* section II.F.1. of this release (providing a more detailed discussion of this paragraph).

[2468] *See* paragraph (a)(1) of Rule 17g–8.

[2469] *See* paragraph (a)(2) of Rule 17g–8.

[2470] *See* paragraph (a)(3) of Rule 17g–8.

[2471] *See* paragraph (a)(4) of Rule 17g–8.

[2472] *See* paragraph (a)(5) of Rule 17g–8.

[2473] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph).

[2474] *See* paragraph (b)(1) of Rule 17g–8.

[2475] *See* paragraph (b)(2) of Rule 17g–8.

[2476] *See* paragraph (b)(3) of Rule 17g–8.

[2477] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph).

[2478] *See* section II.A.1. of this release (providing a more detailed discussion of this paragraph).

[2479] *See* section II.I.1.a. of this release (providing a more detailed discussion of this paragraph).

[2480] *See* section II.I.1.b. of this release (providing a more detailed discussion of this paragraph).

[2481] *See* section II.I.1.c. of this release (providing a more detailed discussion of this paragraph).

[2482] *See* section II.I.1.c. of this release (providing a more detailed discussion of this paragraph).

[2483] *See* section II.H.2. of this release (providing a more detailed discussion of Rule 17g–10); section II.H.3. of this release (providing a more detailed discussion of Form ABS Due Diligence–15E).

[2484] *See* paragraph (a) of Rule 17g–10.

[2485] *See* paragraph (b) of Rule 17g–10.

[2486] *See* paragraphs (c)(1) and (2) of Rule 17g–10. *See also* paragraph (a)(3)(iii)(E) of Rule 17g–5 (provisions under which the issuer or underwriter must promptly post the form on the Rule 17g–5 Web site).

[2487] *See* paragraph (d)(1) of Rule 17g–10.

[2488] *See* paragraph (d)(2) of Rule 17g–10.

[2489] *See* paragraph (d)(3) of Rule 17g–10.

[2490] *See* paragraph (d)(4) of Rule 17g–10.

[2491] *See* section II.H.3. of this release (providing a more detailed discussion of the information to be reported in the form).

[2492] *See* Form ABS Due Diligence–15E.

[2493] *See* Item 1 of Form ABS Due Diligence–15E.

[2494] *See* Item 2 of Form ABS Due Diligence–15E.

[2495] *See* Item 3 of Form ABS Due Diligence–15E.

[2496] *See* Item 4 of Form ABS Due Diligence–15E.

[2497] *See* Item 5 of Form ABS Due Diligence–15E.

[2498] *See* section II.H.1. of this release (providing a more detailed discussion of the rule and form).

of any third-party ''due diligence report'' obtained by the issuer or underwriter at least five business days prior to the first sale in the offering. The rule defines *due diligence report* as any report containing findings and conclusions relating to *due diligence services* as defined in Rule 17g–10.[2499] Under the rule, the disclosure must be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. However, if the disclosure required by Rule 15Ga–2 has been made in the applicable prospectus, the issuer or underwriter may refer to that section of the prospectus in Form ABS–15G rather than providing the findings and conclusions directly on the form.[2500] Also, Rule 15Ga–2 provides an exemption for certain offshore issuances of Exchange Act-ABS. Further, the final rule does not apply to municipal Exchange Act-ABS, but section 15E(s)(4)(A) of the Exchange Act requires an issuer or underwriter of these securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

As stated above, the Commission is requiring that certain Forms NRSRO and all Rule 17g–3 annual reports be submitted to the Commission electronically using the Commission's EDGAR system as PDF documents.[2501] In order to implement this requirement, the Commission is adopting amendments to Rule 101 of Regulation S–T to require that Forms NRSRO and Exhibits 1 through 9 submitted pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted pursuant Rule 17g–3 be submitted through the EDGAR system as PDF documents.[2502]

NRSROs will need to file a Form ID with the Commission in order to gain access to the Commission's EDGAR system to make electronic submissions to the Commission.[2503]

Issuers and underwriters of Exchange Act-ABS also will need to furnish Form ABS–15G to the Commission through the EDGAR system pursuant to Rule 15Ga–2. The Commission believes that these issuers and underwriters already have access to the EDGAR system because, for example, they need such access for purposes of Rule 15Ga–1. Consequently, the new rule and amendments will not require them to file a Form ID to gain access to the EDGAR system.

E. Agency Action To Minimize Effect on Small Entities

Pursuant to section 604(a)(6) of the RFA, the Commission must describe the steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.[2504] In connection with adopting the amendments and new rules, the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part of the rules, for small entities.

As discussed throughout this release, as well as in section VI.B. of this release, the Commission is sensitive to the costs and burdens the amendments and new rules will have on all entities, including small entities. Consequently, the amendments and new rules contain certain modifications from the proposals designed to alleviate as appropriate some of the concerns regarding small entities. The Commission believes that the amendments and new rules being adopted today, as modified from the proposal, strike an appropriate balance between minimizing the costs and burdens on small entities, and implementing the policies and requirements addressed by Title IX, Subtitle C of the Dodd-Frank Act. Moreover, the Commission believes the choices it has made in implementing Title IX, Subtitle C of the Dodd-Frank Act have resulted in amendments and new rules that are appropriate for entities of all sizes.

Consistent with Exchange Act section 15E(h)(3)(B)(i), the Commission has provided for a process for small NRSROs to seek exemptions with respect to the sales and marketing conflict of interest provisions.[2505] The Commission does not otherwise believe it is appropriate to establish different compliance or reporting requirements or timetables; to clarify, consolidate, or simplify compliance and reporting requirements under the amendments to existing rules and new rules for small entities; or summarily exempt small entities from coverage of the rules, or any part of the rules. As discussed throughout this release, the amendments and new rules being adopted today are designed to improve the governance of NRSROs with respect to their procedures and methodologies for determining credit ratings, increase the transparency of NRSRO activities, and improve the quality of NRSRO credit ratings. These measures will benefit NRSROs, investors, and other users of credit ratings. Moreover, the objectives of governance, transparency, and quality are as relevant to small NRSROs as they are to large NRSROs insomuch as investors and others use the credit ratings of all NRSROs.

However, where possible in the adopted amendments and new rules and as discussed throughout this release, the Commission has used performance standards. Policies and procedures requirements allow for tailoring by the small NRSROs to their particular business models. As noted in section VI.B. of this release, a number of the amendments and new rules are policies and procedures-based requirements and, consequently, a small NRSRO can comply with these requirements by tailoring and scaling its policies and procedures to its size and business activities. For example, the Commission has established policies and procedures-based requirements in Rule 17g–8 to implement provisions in Title IX, Subtitle C of the Dodd-Frank Act that address: (1) The procedures and methodologies an NRSRO uses to determine credit ratings;[2506] (2) the symbols, numbers, or scores an NRSRO uses to denote credit ratings;[2507] and (3) look-back reviews.[2508] In addition, the new rule requiring an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings provides the NRSRO with flexibility to design the standards subject to certain minimum requirements.[2509]

Moreover, as noted in section VI.B. of this release, the Commission has modified the amendments and new rules from the proposal in ways that will reduce costs on, and burdens for, all NRSROs subject to the amendments and new rules, including small entities.

[2499] *See* paragraph (d)(1) of Rule 17g–10.

[2500] *See* section II.H.1. of this release (providing a more detailed discussion of this rule).

[2501] *See* section II.L. of this release (providing a more detailed discussion of this amendment).

[2502] *See* paragraph (a)(xiv) of Rule 101 of Regulation S–T.

[2503] *See* section II.L. of this release (providing a more detailed discussion of these requirements).

[2504] *See* 5 U.S.C. 604(a)(6).

[2505] *See* section II.B.2. of this release (providing a more detailed discussion of this provision).

[2506] *See* section II.F.1. of this release (providing a more detailed discussion of these requirements).

[2507] *See* section II.J.1. of this release (providing a more detailed discussion of this paragraph).

[2508] *See* section II.C.1. of this release (providing a more detailed discussion of this paragraph).

[2509] *See* section II.I.1. of this release (providing a more detailed discussion of this rule).

For example, the Commission has modified the provisions from the proposal regarding the disclosure of performance statistics to narrow the scope of the credit ratings included in the statistics, which will make producing them less costly and burdensome.[2510] In addition, the Commission has significantly shortened from the proposal the time horizon of historical information that must be retrieved for inclusion in the rating histories.[2511] Furthermore, the Commission has narrowed from the proposal the scope of rating actions that will trigger the requirement that an NRSRO publish a form and any due diligence certifications when taking a rating action and has exempted from this requirement certain rating actions involving credit ratings assigned to foreign obligors or securities or money market instruments issued overseas.[2512] These modifications and the other modifications discussed throughout this release, as well as in section VI.B. of this release, will reduce the cumulative cost and burden of the amendments and new rules as compared with the proposals.

Finally, the amendments and new rules being adopted today will make additional information about third-party due diligence services provided for Exchange Act-ABS available to market participants and others.[2513] This will benefit NRSROs, the users of credit ratings, and investors and other Exchange Act-ABS market participants who may or may not be users of credit ratings.[2514] As discussed in section VI.C. of this release, the Commission estimates that all fifteen providers of third-party due diligence services subject to the new requirements are small entities and that the new requirements applicable to issuers will not have a significant economic impact on a substantial number of small entities.

As noted above, the Commission included its view that the requirements applicable to issuers will not have a significant economic impact on a substantial number of small entities in the proposing release and received no comments on its conclusion and the Commission estimates that only one of the estimated 336 unique issuers is small for purposes of the PRA. For these reasons, the Commission does not believe it is appropriate to establish different compliance or reporting requirements or timetables; to clarify, consolidate, or simplify compliance and reporting requirements under the amendments to existing rules and new rules for small entities; or summarily exempt small entities from coverage of the rules, or any part of the rules.

[2510] *See* section II.E.1.b. of this release (providing a more detailed discussion of these modifications).

[2511] *See* section II.E.3. of this release (providing a more detailed discussion of these modifications).

[2512] *See* section II.G. of this release (providing a more detailed discussion of these modifications).

[2513] *See* section II.H. of this release (providing a more detailed discussion of the final amendments and new rules relating to third-party due diligence services).

[2514] *See, e.g.,* section II.H.4. of this release (providing a more detailed discussion of the benefits of the final amendments and new rules relating to third-party due diligence services).

VII. Statutory Authority

The Commission is adopting amendments to §§ 232.101, 240.17g–1, 240.17g–2, 240.17g–3, 240.17g–5, 240.17g–6, 240.17g–7, Form NRSRO, and Form ABS–15G and is adopting §§ 240.15Ga–2, 240.17g–8, 240.17g–9, 240.17g–10, and Form ABS Due Diligence–15E pursuant to the authority conferred by the Exchange Act, including sections 15E, 17(a), and 36 (15 U.S.C. 78o–7, 78q, and 78mm), and pursuant to authority in sections 936, 938, and 943 of the Dodd-Frank Act (Pub. L. 111–203 §§ 936, 938, and 943).

List of Subjects in 17 CFR Parts 232, 240, 249, and 249b

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

In accordance with the foregoing, the Commission is amending Title 17, Chapter II of the Code of Federal Regulation as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.101 is amended by adding paragraph (a)(1)(xiv) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Form NRSRO (§ 249b.300 of this chapter), and the information and documents in Exhibits 1 through 9 to Form NRSRO, filed with or furnished to, as applicable, the Commission under § 240.17g–1(e), (f), and (g) of this chapter and the annual reports filed with or furnished to, as applicable, the Commission under § 240.17g–3 of this chapter. The filings or furnishings must be made on EDGAR as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T (§ 232.11). Notwithstanding Rule 104 of Regulation S–T (§ 232.104), the PDF documents filed or furnished under this paragraph will be considered as officially filed with or furnished to, as applicable, the Commission.

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PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 is amended by adding sectional authorities for §§ 240.15Ga–2, 240.17g–8, and 240.17g–9 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

Section 240.15Ga–2 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

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Section 240.17g–8 is also issued under sec. 938, Pub. L. 111–203, 124 Stat. 1376.

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Section 240.17g–9 is also issued under sec. 936, Pub. L. 111–203, 124 Stat. 1376.

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■ 4. Section 240.15Ga–2 is added to read as follows:

§ 240.15Ga–2 Findings and conclusions of third-party due diligence reports.

(a) The issuer or underwriter of an offering of any asset-backed security (as that term is defined in Section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)) that is to be rated by a nationally recognized statistical rating organization must furnish Form ABS–15G (§ 249.1400 of this chapter) to the Commission containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter at least five business days prior to the first sale in the offering.

Instruction to paragraph (a): Disclosure of the findings and conclusions includes, but is not limited to, disclosure of the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria along with the basis for including any loans not meeting those criteria. This disclosure is only required

for an initial rating and does not need to be furnished in connection with any subsequent rating actions. For purposes of this rule, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check.

(b) In the case where the issuer and one or more underwriters have obtained the same third-party due diligence report related to a particular asset-backed securities transaction, if any one such party has furnished all the disclosures required in order to meet the obligations under paragraph (a) of this section, the other party or parties are not required to separately furnish the same disclosures related to such third-party due diligence report.

(c) If the disclosure required by this rule has been made in the prospectus (including an attribution to the third-party that provided the third-party due diligence report), the issuer or underwriter may refer to that section of the prospectus in Form ABS–15G rather than providing the findings and conclusions itself directly in Form ABS–15G.

(d) For purposes of paragraphs (a) and (b) of this section, *issuer* is defined in Rule 17g–10(d)(2) (§ 240.17g–10(d)(2) of this chapter) and *third-party due diligence report* means any report containing findings and conclusions of any *due diligence services* as defined in Rule 17g–10(d)(1) (§ 240.17g–10(d)(1) of this chapter) performed by a third party.

(e) The requirements of this rule would not apply to an offering of an asset-backed security if certain conditions are met, including:

(i) The offering is not required to be, and is not, registered under the Securities Act of 1933;

(ii) The issuer of the rated security is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(iii) the security issued by the issuer will be offered and sold upon issuance, and any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States.

(f) The requirements of this rule would not apply to an offering of an asset-backed security if certain conditions are met, including:

(i) The issuer of the rated security is a municipal issuer; and

(ii) The offering is not required to be, and is not, registered under the Securities Act of 1933.

(g) For purposes of paragraph (f) of this section, a municipal issuer is an *issuer* (as that term is defined in Rule 17g–10(d)(2) (§ 240.17g–10(d)(2) of this chapter)) that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia.

(h) An offering of an asset-backed security that is exempted from the requirements of this rule pursuant to paragraph (f) of this section remains subject to the requirements of Section 15E(s)(4)(A) of the Act (15 U.S.C. 78o–7(s)(4)(A)), which requires that the issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

■ 5. Section 240.17g–1 is amended:

■ a. In paragraphs (a), (b), and (c), by removing the phase ''furnish the Commission with'' and its place adding the phrase ''file with the Commission two paper copies of'';

■ b. In paragraph (d), by adding the phrase ''two paper copies of'' after the phrase ''the applicant must furnish the Commission with''; and

■ c. By revising paragraphs (e), (f), (g), (h), and (i).

The revisions read as follows:

§ 240.17g–1 Application for registration as a nationally recognized statistical rating organization.

* * * * *

(e) *Update of registration.* A nationally recognized statistical rating organization amending materially inaccurate information in its application for registration pursuant to section 15E(b)(1) of the Act (15 U.S.C. 78o–7(b)(1)) must promptly file with the Commission an update of its registration on Form NRSRO that follows all applicable instructions for the Form. A Form NRSRO and the information and documents in Exhibits 2 through 9 to Form NRSRO, as applicable, filed under this paragraph must be filed electronically with the Commission on EDGAR as a PDF document in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T (§ 232.11 of this chapter).

(f) *Annual certification.* A nationally recognized statistical rating organization amending its application for registration pursuant to section 15E(b)(2) of the Act (15 U.S.C. 78o–7(b)(2)) must file with the Commission an annual certification on Form NRSRO that follows all applicable instructions for the Form not later than 90 days after the end of each calendar year. A Form NRSRO and the information and documents in Exhibits 1 through 9 to Form NRSRO filed under this paragraph must be filed electronically with the Commission on EDGAR as a PDF document in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(g) *Withdrawal from registration.* A nationally recognized statistical rating organization withdrawing from registration pursuant to section 15E(e)(1) of the Act (15 U.S.C. 78o–7(e)(1)) must furnish the Commission with a notice of withdrawal from registration on Form NRSRO that follows all applicable instructions for the Form. The withdrawal from registration will become effective 45 calendar days after the notice is furnished to the Commission upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors. A Form NRSRO furnished under this paragraph must be furnished electronically with the Commission on EDGAR as a PDF document in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(h) *Filing or furnishing Form NRSRO.* A Form NRSRO filed or furnished, as applicable, under any paragraph of this section will be considered filed with or furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form. Information filed or furnished, as applicable, on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law.

(i) *Public availability of Form NRSRO.* A nationally recognized statistical rating organization must make its current Form NRSRO and information and documents in Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet Web site within 10 business days after the date of the Commission order granting an initial application for registration as a nationally recognized statistical rating organization or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission a Form NRSRO under paragraph (e), (f), or (g) of this section. In addition, a nationally recognized statistical rating organization must make

its most recently filed Exhibit 1 to Form NRSRO freely available in writing to any individual who requests a copy of the Exhibit.

■ 6. Section 240.17g–2 is amended:

■ a. In paragraphs (a)(2)(iii) and (a)(7), by removing the words ''or mortgage-backed'';

■ b. By adding paragraph (a)(9);

■ c. By revising paragraph (b)(1);

■ d. In paragraph (b)(9), by removing the words ''or mortgage-backed'';

■ e. By revising paragraph (b)(11);

■ f. By adding paragraphs (b)(12) through (15);

■ g. By revising paragraph (c);

■ h. By redesignating paragraph (d)(1) as paragraph (d); and

■ i. By removing paragraphs (d)(2) and (d)(3);

The additions and revisions read as follows:

§ 240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.

(a) * * *

(9) A record documenting the policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) and § 240.17g–8(c).

* * * * *

(b) * * *

(1) Significant records (for example, bank statements, invoices, and trial balances) underlying the information included in the annual financial reports the nationally recognized statistical rating organization filed with or furnished to, as applicable, the Commission pursuant to § 240.17g–3.

* * * * *

(11) Forms NRSRO (including Exhibits and accompanying information and documents) the nationally recognized statistical rating organization filed with or furnished to, as applicable, the Commission.

(12) The internal control structure the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to section 15E(c)(3)(A) of the Act (15 U.S.C. 78o–7(c)(3)(A)).

(13) The policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–8(a).

(14) The policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–8(b).

(15) The standards of training, experience, and competence for credit analysts the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–9.

(c) *Record retention periods.* The records required to be retained pursuant to paragraphs (a) and (b) of this section must be retained for three years after the date the record is made or received, except that a record identified in paragraph (a)(9), (b)(12), (b)(13), (b)(14), or (b)(15) of this section must be retained until three years after the date the record is replaced with an updated record.

* * * * *

■ 7. Section 240.17g–3 is amended:

■ a. By revising the section heading;

■ b. By revising paragraph (a) introductory text;

■ c. In paragraph (a)(1) introductory text, by removing the first word ''Audited'' and in its place adding the phrase ''File with the Commission a financial report, as of the end of the fiscal year, containing audited'';

■ d. In paragraph (a)(2) introductory text, by removing the first word ''If'' and in its place adding the phrase ''File with the Commission a financial report, as of the end of the fiscal year, containing, if'';

■ e. In the Note to paragraph (a)(2), by removing the word ''furnished'' and in its place adding the word ''filed'';

■ f. In paragraphs (a)(3) introductory text, (a)(4) introductory text, and (a)(5) introductory text, by removing the first word ''An'' and in its place adding the phrase ''File with the Commission an unaudited financial report, as of the end of the fiscal year,'';

■ g. In paragraph (a)(6) introductory text, by removing the first word ''An'' and in its place adding the phrase ''Furnish the Commission with an unaudited report, as of the end of the fiscal year,'';

■ h. In the Note to paragraph (a)(6), by removing the words ''or mortgage-backed'';

■ i. By adding paragraphs (a)(7) and (8);

■ j. By redesignating paragraph (b) as paragraph (b)(1) and revising it;

■ k. By adding paragraphs (b)(2), (d), and (e).

The additions and revisions read as follows:

§ 240.17g–3 Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations.

(a) A nationally recognized statistical rating organization must annually, not more than 90 calendar days after the end of its fiscal year (as indicated on its current Form NRSRO):

* * * * *

(7)(i) File with the Commission an unaudited report containing an assessment by management of the effectiveness during the fiscal year of the internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to section 15E(c)(3)(A) of the Act (15 U.S.C. 78o–7(c)(3)(A)) that includes:

(A) A description of the responsibility of management in establishing and maintaining an effective internal control structure;

(B) A description of each material weakness in the internal control structure identified during the fiscal year, if any, and a description, if applicable, of how each identified material weakness was addressed; and

(C) A statement as to whether the internal control structure was effective as of the end of the fiscal year.

(ii) Management is not permitted to conclude that the internal control structure of the nationally recognized statistical rating organization was effective as of the end of the fiscal year if there were one or more material weaknesses in the internal control structure as of the end of the fiscal year.

(iii) For purposes of this paragraph (a)(7), a deficiency in the internal control structure exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect a failure of the nationally recognized statistical rating organization to:

(A) Implement a policy, procedure, or methodology for determining credit ratings in accordance with the policies and procedures of the nationally recognized statistical rating organization; or

(B) Adhere to an implemented policy, procedure, or methodology for determining credit ratings.

(iv) For purposes of this paragraph (a)(7), a material weakness exists if a deficiency, or a combination of deficiencies, in the design or operation of the internal control structure creates a reasonable possibility that a failure identified in paragraph (a)(7)(iii) of this section that is material will not be prevented or detected on a timely basis.

(8) File with the Commission an unaudited annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization pursuant

to section 15E(j)(5)(B) of the Act (15 U.S.C. 78o–7(j)(5)(B)).

(b)(1) The nationally recognized statistical rating organization must attach to the reports filed or furnished, as applicable, pursuant to paragraphs (a)(1) through (6) of this section a signed statement by a duly authorized person associated with the nationally recognized statistical rating organization stating that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the financial condition, results of operations, cash flows, revenues, analyst compensation, and credit rating actions of the nationally recognized statistical rating organization for the period presented; and

(2) The nationally recognized statistical rating organization must attach to the report filed pursuant to paragraph (a)(7) of this section a signed statement by the chief executive officer of the nationally recognized statistical rating organization or, if the nationally recognized statistical rating organization does not have a chief executive officer, an individual performing similar functions, stating that the chief executive officer or equivalent individual has responsibility for the report and, to the best knowledge of the chief executive officer or equivalent individual, the report fairly presents, in all material respects: an assessment by management of the effectiveness of the internal control structure during the fiscal year that includes a description of the responsibility of management in establishing and maintaining an effective internal control structure; a description of each material weakness in the internal control structure identified during the fiscal year, if any, and a description, if applicable, of how each identified material weakness was addressed; and an assessment by management of the effectiveness of the internal control structure as of the end of the fiscal year.

* * * * *

(d) *Electronic filing.* The reports must be filed with or furnished to, as applicable, the Commission electronically on EDGAR as PDF documents in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(e) *Confidential treatment.* Information in a report filed or furnished, as applicable, on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law. Confidential treatment may be requested by marking each page ''Confidential Treatment Requested'' and by complying with Commission rules governing confidential treatment.

■ 8. Section 240.17g–5 is amended:

■ a. In paragraph (a)(3) introductory text, by removing the words ''or mortgaged-backed'';

■ b. In paragraphs (a)(3)(i), (a)(3)(ii) introductory text, (a)(3)(iii)(A), (a)(3)(iii)(B) introductory text, and (a)(3)(iii)(C) and (D), by removing the words ''Web site'' and in their place adding the word ''website'';

■ c. In paragraphs (a)(3)(i) and (a)(3)(iii)(A), by removing the citation ''(a)(3)(iii)(C) and (a)(3)(iii)(D)'' and in their place adding the words ''(a)(3)(iii)(C) through (E)'';

■ d. By adding paragraph (a)(3)(iii)(E);

■ e. In paragraph (b)(9), by removing the words ''or mortgaged-backed'';

■ f. In paragraph (c)(6), by removing the word ''or'' at the end of the paragraph after the semicolon;

■ g. In paragraph (c)(7), by adding the word ''or'' at the end of the paragraph after the semicolon;

■ f. By adding paragraph (c)(8);

■ h. In paragraph (e) introductory text, by removing the words ''Web site'' and in their place adding the word ''Web site'' and in the undesignated certification paragraph, removing the words ''websites'' and in their place adding the word ''Web sites''; and

■ i. By adding paragraphs (f) and (g).

The additions read as follows:

§ 240.17g–5 Conflicts of interest.

(a) * * *

(3) * * *

(iii) * * *

(E) Post on such password-protected Internet Web site, promptly after receipt, any executed Form ABS Due Diligence–15E (§ 249b.500 of this chapter) containing information about the security or money market instrument delivered by a person employed to provide third-party due diligence services with respect to the security or money market instrument.

* * * * *

(c) * * *

(8) The nationally recognized statistical rating organization issues or maintains a credit rating where a person within the nationally recognized statistical rating organization who participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative and quantitative models, also:

(i) Participates in sales or marketing of a product or service of the nationally recognized statistical rating organization or a product or service of an affiliate of the nationally recognized statistical rating organization; or

(ii) Is influenced by sales or marketing considerations.

* * * * *

(f) Upon written application by a nationally recognized statistical rating organization, the Commission may exempt, either unconditionally or on specified terms and conditions, such nationally recognized statistical rating organization from the provisions of paragraph (c)(8) of this section if the Commission finds that due to the small size of the nationally recognized statistical rating organization it is not appropriate to require the separation within the nationally recognized statistical rating organization of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.

(g) In a proceeding pursuant to section 15E(d)(1) of the Act (15 U.S.C. 78o–7(d)(1)), the Commission shall suspend or revoke the registration of a nationally recognized statistical rating organization if the Commission finds, in lieu of a finding specified under sections 15E(d)(1)(A), (B), (C), (D), (E), or (F) of the Act (15 U.S.C. 78o–7(d)(1)(A) through (F)), that the nationally recognized statistical rating organization has violated a rule issued under section 15E(h) of the Act (15 U.S.C. 78o–7(h)) and that the violation affected a credit rating.

§ 240.17g–6 [Amended]

■ 9. Section 240.17g–6 is amended in paragraph (a)(4) by removing the words ''or mortgage-backed''.

■ 10. Section 240.17g–7 is revised to read as follows:

§ 240.17g–7 Disclosure requirements.

(a) *Disclosures to be made when taking a rating action.* Except as provided in paragraph (a)(3) of this section, a nationally recognized statistical rating organization must publish the items described in paragraphs (a)(1) and (2) of this section, as applicable, when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the nationally recognized statistical rating organization is registered. For purposes of this section, the term *rating action* means any of the following: the publication of an expected or preliminary credit rating assigned to an obligor, security, or

money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); and an affirmation or withdrawal of an existing credit rating if the affirmation or withdrawal is the result of a review of the credit rating assigned to the obligor, security, or money market instrument by the nationally recognized statistical rating organization using applicable procedures and methodologies for determining credit ratings. The items described in paragraphs (a)(1) and (2) of this section must be published in the same manner as the credit rating that is the result or subject of the rating action and made available to the same persons who can receive or access the credit rating that is the result or subject of the rating action.

(1) *Information disclosure form.* A form generated by the nationally recognized statistical rating organization that meets the requirements of paragraphs (a)(1)(i) through (iii) of this section.

(i) *Format.* The form generated by the nationally recognized statistical rating organization must be in a format that:

(A) Organizes the information into numbered items that are identified by the type of information being disclosed and a reference to the paragraph in this section that specifies the disclosure of the information, and are in the order that the paragraphs specifying the information to be disclosed are codified in this section;

Note to paragraph (a)(1)(i)(A): A given item in the form should be identified by a title that identifies the type of information and references paragraph (a)(1)(ii)(A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), (M), (N), or (a)(2) of this section based on the information being disclosed in the item. For example, the information specified in paragraph (a)(1)(ii)(C) of this section should be identified with the caption ''Main Assumptions and Principles Used to Construct the Rating Methodology used to Determine the Credit Rating as required by Paragraph (a)(1)(ii)(C) of Rule 17g–7''). The form must organize the items of information in the following order: items 1 through 14 must contain the information specified in paragraphs (a)(1)(ii)(A) through (N) of this section, respectively, and item 15 must contain the certifications specified in paragraph (a)(2) of this section (the information specified in each paragraph comprising a separate item). For example, item 3 must contain the information specified in paragraph (a)(1)(ii)(C) of this section.

(B) Is easy to use and helpful for users of credit ratings to understand the information contained in the form; and

(C) Provides the content described in paragraphs (a)(1)(ii)(K) through (M) of this section in a manner that is directly comparable across types of obligors, securities, and money market instruments.

(ii) *Content.* The form generated by the nationally recognized statistical rating organization must contain the following information about the credit rating:

(A) The symbol, number, or score in the rating scale used by the nationally recognized statistical rating organization to denote credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the credit rating and, as applicable, the identity of the obligor or the identity and a description of the security or money market instrument;

(B) The version of the procedure or methodology used to determine the credit rating;

(C) The main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs, and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets;

(D) The potential limitations of the credit rating, including the types of risks excluded from the credit rating that the nationally recognized statistical rating organization does not comment on, including, as applicable, liquidity, market, and other risks;

(E) Information on the uncertainty of the credit rating including:

(*1*) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(*2*) A statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including:

(*i*) Any limits on the scope of historical data; and

(*ii*) Any limits on accessibility to certain documents or other types of information that would have better informed the credit rating;

(F) Whether and to what extent the nationally recognized statistical rating organization used due diligence services of a third party in taking the rating action, and, if the nationally recognized statistical rating organization used such services, either:

(*1*) A description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party; or

(*2*) A cross-reference to a Form ABS Due Diligence–15E executed by the third party that is published with the form, provided the cross-referenced Form ABS Due Diligence–15E (§ 249b.500 of this chapter) contains a description of the information that the third party reviewed in conducting the due diligence services and a summary of the findings and conclusions of the third party;

(G) If applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating;

(H) A description of the types of data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating;

(I) A statement containing an overall assessment of the quality of information available and considered in determining the credit rating for the obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

(J) Information relating to conflicts of interest of the nationally recognized statistical rating organization, which must include:

(*1*) As applicable, a statement that the nationally recognized statistical rating organization was:

(*i*) Paid to determine the credit rating by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated;

(*ii*) Paid to determine the credit rating by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated; or

(*iii*) Not paid to determine the credit rating;

(*2*) If applicable, in a statement required under paragraph (a)(1)(ii)(J)(*1*)(*i*) or (*ii*) of this section, a statement that the nationally recognized statistical rating organization also was paid for services other than determining credit ratings during the most recently ended fiscal year by the person that paid the nationally recognized statistical rating organization to determine the credit rating; and

(*3*) If the rating action results from a review conducted pursuant to section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) and § 240.17g–8(c), the following information (as applicable):

(*i*) If the rating action is a revision of a credit rating pursuant to § 240.17g–8(c)(2)(i)(A), an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, including a description of the nature of the conflict, the date and associated credit rating of each prior rating action that the nationally recognized statistical rating organization has determined was influenced by the conflict, and a description of the impact the conflict had on the prior rating action or actions; or

(*ii*) If the rating action is an affirmation of a credit rating pursuant to § 240.17g–8(c)(2)(i)(B), an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, including a description of the nature of the conflict, an explanation of why no rating action was taken to revise the credit rating notwithstanding the presence of the conflict, the date and associated credit rating of each prior rating action the nationally recognized statistical rating organization has determined was influenced by the conflict, and a description of the impact the conflict had on the prior rating action or actions.

(K) An explanation or measure of the potential volatility of the credit rating, including:

(*1*) Any factors that are reasonably likely to lead to a change in the credit rating; and

(*2*) The magnitude of the change that could occur under different market conditions determined by the nationally recognized statistical rating organization to be relevant to the rating;

(L) Information on the content of the credit rating, including:

(*1*) If applicable, the historical performance of the credit rating; and

(*2*) The expected probability of default and the expected loss in the event of default;

(M) Information on the sensitivity of the credit rating to assumptions made by the nationally recognized statistical rating organization, including:

(*1*) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on the credit rating if the assumptions were proven false or inaccurate; provided that, if the nationally recognized statistical rating organization has made fewer than five such assumptions, it need only disclose information on the assumptions that would have an impact on the credit rating; and

(*2*) An analysis, using specific examples, of how each of the assumptions identified in paragraph (a)(1)(ii)(M)(*1*) of this section impacts the credit rating;

(N)(*1*) If the credit rating is assigned to an asset-backed security as defined in section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)), information on:

(*i*) The representations, warranties, and enforcement mechanisms available to investors which were disclosed in the prospectus, private placement memorandum or other offering documents for the asset-backed security and that relate to the asset pool underlying the asset-backed security; and

(*ii*) How they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities;

(*2*) A nationally recognized statistical rating organization must include the information required under paragraph (a)(1)(ii)(N)(*1*) of this section only if the rating action is a preliminary credit rating, an initial credit rating, or, in the case of a rating action other than a preliminary credit rating or initial credit rating, the rating action is the first rating action taken after a material change in the representations, warranties, or enforcement mechanisms described in paragraph (a)(1)(ii)(N)(*1*) of this section and the rating action involves an asset-backed security that was initially rated by the nationally recognized statistical rating organization on or after September 26, 2011.

(iii) *Attestation.* The nationally recognized statistical rating organization must attach to the form a signed statement by a person within the nationally recognized statistical rating organization stating that the person has responsibility for the rating action and, to the best knowledge of the person:

(A) No part of the credit rating was influenced by any other business activities;

(B) The credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and

(C) The credit rating was an independent evaluation of the credit risk of the obligor, security, or money market instrument.

(2) *Third-party due diligence certification.* Any executed Form ABS Due Diligence–15E (§ 249b.500 of this chapter) containing information about the security or money market instrument subject to the rating action that is received by the nationally recognized statistical rating organization or obtained by the nationally recognized statistical rating organization through an Internet Web site maintained by the issuer, sponsor, or underwriter of the security or money market instrument pursuant to § 240.17g–5(a)(3).

(3) *Exemption.* The provisions of paragraphs (a)(1) and (a)(2) do not apply to a rating action if:

(i) The rated obligor or issuer of the rated security or money market instrument is not a U.S. person (as defined in § 230.902(k) of this chapter); and

(ii) The nationally recognized statistical rating organization has a reasonable basis to conclude that a security or money market instrument issued by the rated obligor or the issuer will be offered and sold upon issuance, and that any underwriter or arranger linked to the security or money market instrument will effect transactions in the security or money market instrument after issuance, only in transactions that occur outside the United States.

(b) *Disclosure of credit rating histories*—(1) *Credit ratings subject to the disclosure requirement.* A nationally recognized statistical rating organization must publicly disclose for free on an easily accessible portion of its corporate Internet Web site:

(i) For a class of credit rating in which the nationally recognized statistical rating organization is registered with the Commission as of the effective date of paragraph (b) of this section, the credit rating assigned to each obligor, security, and money market instrument in the class that was outstanding as of, or initially determined on or after, the date three years prior to the effective date of this rule, and any subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default), and a withdrawal of the credit rating; and

(ii) For a class of credit rating in which the nationally recognized statistical rating organization is registered with the Commission after the effective date of paragraph (b) of this section, the credit rating assigned to each obligor, security, and money market instrument in the class that was outstanding as of, or initially determined on or after, the date three years prior to the date the nationally recognized statistical rating organization is registered in the class, and any subsequent upgrade or downgrade of the credit rating (including a downgrade to, or assignment of, default), and a withdrawal of the credit rating.

(2) *Information.* A nationally recognized statistical rating organization must include, at a minimum, the

following information with each credit rating disclosed pursuant to paragraph (b)(1) of this section:

(i) The identity of the nationally recognized statistical rating organization disclosing the rating action;

(ii) The date of the rating action;

(iii) If the rating action is taken with respect to a credit rating of an obligor as an entity, the following identifying information about the obligor, as applicable:

(A) The Legal Entity Identifier issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation (LEI) of the obligor, if available, or, if an LEI is not available, the Central Index Key (CIK) number of the obligor, if available; and

(B) The name of the obligor.

(iv) If the rating action is taken with respect to a credit rating of a security or money market instrument, as applicable:

(A) The LEI of the issuer of the security or money market instrument, if available, or, if an LEI is not available, the CIK number of the issuer of the security or money market instrument, if available;

(B) The name of the issuer of the security or money market instrument; and

(C) The CUSIP of the security or money market instrument;

(v) A classification of the rating action as either:

(A) An addition to the rating history disclosure because the credit rating was outstanding as of the date three years prior to the effective date of the requirements in paragraph (b) of this section or because the credit rating was outstanding as of the date three years prior to the nationally recognized statistical rating organization becoming registered in the class of credit ratings;

(B) An initial credit rating;

(C) An upgrade of an existing credit rating;

(D) A downgrade of an existing credit rating, which would include classifying the obligor, security, or money market instrument as in default, if applicable; or

(E) A withdrawal of an existing credit rating and, if the classification is withdrawal, the nationally recognized statistical rating organization also must classify the reason for the withdrawal as either:

(*1*) The obligor defaulted, or the security or money market instrument went into default;

(*2*) The obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; or

(*3*) The credit rating was withdrawn for reasons other than those set forth in paragraph (b)(2)(v)(E)(*1*) or (*2*) of this section; and

(vi) The classification of the class or subclass that applies to the credit rating as either:

(A) Financial institutions, brokers, or dealers;

(B) Insurance companies;

(C) Corporate issuers; or

(D) Issuers of structured finance products in one of the following subclasses:

(*1*) Residential mortgage backed securities (''RMBS'') (for purposes of this subclass, RMBS means a securitization primarily of residential mortgages);

(*2*) Commercial mortgage backed securities (''CMBS'') (for purposes of this subclass, CMBS means a securitization primarily of commercial mortgages);

(*3*) Collateralized loan obligations (''CLOs'') (for purposes of this subclass, a CLO means a securitization primarily of commercial loans);

(*4*) Collateralized debt obligations (''CDOs'') (for purposes of this subclass, a CDO means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds);

(*5*) Asset-backed commercial paper conduits (''ABCP'') (for purposes of this subclass, ABCP means short term notes issued by a structure that securitizes a variety of financial assets, such as trade receivables or credit card receivables, which secure the notes);

(*6*) Other asset-backed securities (''other ABS'') (for purposes of this subclass, other ABS means a securitization primarily of auto loans, auto leases, floor plans, credit card receivables, student loans, consumer loans, or equipment leases); or

(*7*) Other structured finance products (''other SFPs'') (for purposes of this subclass, other SFPs means any structured finance product not identified in paragraphs (b)(2)(iv)(D)(*1*) through (*6*)) of this section; or

(E) Issuers of government securities, municipal securities, or securities issued by a foreign government in one of the following subclasses:

(*1*) Sovereign issuers;

(*2*) U.S. public finance; or

(*3*) International public finance; and

(vii) The credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the action, the credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as of the date of the rating action (in either case, include a credit rating in a default category, if applicable).

(3) *Format and frequency of updating.* The information identified in paragraph (b)(2) of this section must be disclosed in an interactive data file that uses an XBRL (eXtensible Business Reporting Language) format and the List of XBRL Tags for nationally recognized statistical rating organizations as published on the Internet Web site of the Commission, and must be updated no less frequently than monthly.

(4) *Timing.* The nationally recognized statistical rating organization must disclose the information required in paragraph (b)(2) of this section:

(i) Within twelve months from the date the rating action is taken, if the credit rating subject to the action was paid for by the obligor being rated or by the issuer, underwriter, depositor, or sponsor of the security being rated; or

(ii) Within twenty-four months from the date the rating action is taken, if the credit rating subject to the action is not a credit rating described in paragraph (b)(4)(i) of this section.

(5) *Removal of a credit rating history.* The nationally recognized statistical rating organization may cease disclosing a rating history of an obligor, security, or money market instrument if at least 15 years have elapsed since a rating action classified as a withdrawal of a credit rating pursuant to paragraph (b)(2)(v)(E) of this section was disclosed in the rating history of the obligor, security, or money market instrument.

11. Section 240.17g–8 is added to read as follows:

§ 240.17g–8 Policies, procedures, and internal controls.

(a) *Policies and procedures with respect to the procedures and methodologies used to determine credit ratings.* A nationally recognized statistical rating organization must establish, maintain, enforce, and document policies and procedures reasonably designed to ensure:

(1) That the procedures and methodologies, including qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are approved by its board of directors or a body performing a function similar to that of a board of directors.

(2) That the procedures and methodologies, including qualitative

and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the nationally recognized statistical rating organization.

(3) That material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are:

(i) Applied consistently to all current and future credit ratings to which the changed procedures or methodologies apply; and

(ii) To the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to current credit ratings to which the changed procedures or methodologies apply within a reasonable period of time, taking into consideration the number of credit ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.

(4) That the nationally recognized statistical rating organization promptly publishes on an easily accessible portion of its corporate Internet Web site:

(i) Material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the nationally recognized statistical rating organization uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current credit ratings; and

(ii) Notice of the existence of a significant error identified in a procedure or methodology, including a qualitative or quantitative model, the nationally recognized statistical rating organization uses to determine credit ratings that may result in a change to current credit ratings.

(5) That the nationally recognized statistical rating organization discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.

(b) *Policies and procedures with respect to credit rating symbols, numbers, or scores.* A nationally recognized statistical rating organization must establish, maintain, enforce, and document policies and procedures that are reasonably designed to:

(1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.

(2) Clearly define each symbol, number, or score in the rating scale used by the nationally recognized statistical rating organization to denote a credit rating category and notches within a category for each class of credit ratings for which the nationally recognized statistical rating organization is registered (including subclasses within each class) and to include such definitions in Exhibit 1 to Form NRSRO (§ 249b.300 of this chapter).

(3) Apply any symbol, number, or score defined pursuant to paragraph (b)(2) of this section in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.

(c) *Policies and procedures with respect to look-back reviews.* The policies and procedures a nationally recognized statistical rating organization is required to establish, maintain, and enforce pursuant to section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure that the nationally recognized statistical rating organization will:

(1) Promptly determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the nationally recognized statistical rating organization uses to determine credit ratings; and

(2)(i) Promptly publish, based on the determination of whether a current credit rating referred to in paragraph (c)(1) of this section must be revised (as applicable):

(A) A revised credit rating, if appropriate, and include with the publication of the revised credit rating the information required by § 240.17g–7(a)(1)(ii)(J)(*3*)(*i*); or

(B) An affirmation of the credit rating, if appropriate, and include with the publication of the affirmation the information required by § 240.17g–7(a)(1)(ii)(J)(*3*)(*ii*).

(ii) If the credit rating is not revised or affirmed pursuant to paragraph (c)(2)(i) of this section within fifteen calendar days of the date of the discovery that the credit rating was influenced by a conflict of interest, publish a rating action placing the credit rating on watch or review and include with the publication an explanation that the reason for the action is the discovery that the credit rating was influenced by a conflict of interest.

(d) *Internal control structures.* A nationally recognized statistical rating organization must take into consideration the factors identified in paragraphs (d)(1) through (4) of this section when establishing, maintaining, enforcing, and documenting an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings pursuant to section 15E(c)(3)(A) of the Act.

(1) With respect to establishing the internal control structure, the nationally recognized statistical rating organization must take into consideration:

(i) Controls reasonably designed to ensure that a newly developed methodology or proposed update to an in-use methodology for determining credit ratings is subject to an appropriate review process (for example, by persons who are independent from the persons that developed the methodology or methodology update) and to management approval prior to the new or updated methodology being employed by the nationally recognized statistical rating organization to determine credit ratings;

(ii) Controls reasonably designed to ensure that a newly developed methodology or update to an in-use methodology for determining credit ratings is disclosed to the public for consultation prior to the new or updated methodology being employed by the nationally recognized statistical rating organization to determine credit ratings, that the nationally recognized statistical rating organization makes comments received as part of the consultation publicly available, and that the nationally recognized statistical rating organization considers the comments before implementing the methodology;

(iii) Controls reasonably designed to ensure that in-use methodologies for determining credit ratings are periodically reviewed (for example, by persons who are independent from the persons who developed and/or use the methodology) in order to analyze whether the methodology should be updated;

(iv) Controls reasonably designed to ensure that market participants have an opportunity to provide comment on whether in-use methodologies for

determining credit ratings should be updated, that the nationally recognized statistical rating organization makes any such comments received publicly available, and that the nationally recognized statistical rating organization considers the comments;

(v) Controls reasonably designed to ensure that newly developed or updated quantitative models proposed to be incorporated into a credit rating methodology are evaluated and validated prior to being put into use;

(vi) Controls reasonably designed to ensure that quantitative models incorporated into in-use credit rating methodologies are periodically reviewed and back-tested;

(vii) Controls reasonably designed to ensure that a nationally recognized statistical rating organization engages in analysis before commencing the rating of a class of obligors, securities, or money market instruments the nationally recognized statistical rating organization has not previously rated to determine whether the nationally recognized statistical rating organization has sufficient competency, access to necessary information, and resources to rate the type of obligor, security, or money market instrument;

(viii) Controls reasonably designed to ensure that a nationally recognized statistical rating organization engages in analysis before commencing the rating of an ''exotic'' or ''bespoke'' type of obligor, security, or money market instrument to review the feasibility of determining a credit rating;

(ix) Controls reasonably designed to ensure that measures (for example, statistics) are used to evaluate the performance of credit ratings as part of the review of in-use methodologies for determining credit ratings to analyze whether the methodologies should be updated or the work of the analysts employing the methodologies should be reviewed;

(x) Controls reasonably designed to ensure that, with respect to determining credit ratings, the work and conclusions of the lead credit analyst developing an initial credit rating or conducting surveillance on an existing credit rating is reviewed by other analysts, supervisors, or senior managers before a rating action is formally taken (for example, having the work reviewed through a rating committee process);

(xi) Controls reasonably designed to ensure that a credit analyst documents the steps taken in developing an initial credit rating or conducting surveillance on an existing credit rating with sufficient detail to permit an after-the-fact review or internal audit of the rating file to analyze whether the analyst adhered to the nationally recognized statistical rating organization's procedures and methodologies for determining credit ratings;

(xii) Controls reasonably designed to ensure that the nationally recognized statistical rating organization conducts periodic reviews or internal audits of rating files to analyze whether analysts adhere to the nationally recognized statistical rating organization's procedures and methodologies for determining credit ratings; and

(xiii) Any other controls necessary to establish an effective internal control structure taking into consideration the nature of the business of the nationally recognized statistical rating organization, including its size, activities, organizational structure, and business model.

(2) With respect to maintaining the internal control structure, the nationally recognized statistical rating organization must take into consideration:

(i) Controls reasonably designed to ensure that the nationally recognized statistical rating organization conducts periodic reviews of whether it has devoted sufficient resources to implement and operate the documented internal control structure as designed;

(ii) Controls reasonably designed to ensure that the nationally recognized statistical rating organization conducts periodic reviews or ongoing monitoring to evaluate the effectiveness of the internal control structure and whether it should be updated;

(iii) Controls reasonably designed to ensure that any identified deficiencies in the internal control structure are assessed and addressed on a timely basis;

(iv) Any other controls necessary to maintain an effective internal control structure taking into consideration the nature of the business of the nationally recognized statistical rating organization, including its size, activities, organizational structure, and business model.

(3) With respect to enforcing the internal control structure, the nationally recognized statistical rating organization must take into consideration:

(i) Controls designed to ensure that additional training is provided or discipline taken with respect to employees who fail to adhere to requirements imposed by the internal control structure;

(ii) Controls designed to ensure that a process is in place for employees to report failures to adhere to the internal control structure; and

(iii) Any other controls necessary to enforce an effective internal control structure taking into consideration the nature of the business of the nationally recognized statistical rating organization, including its size, activities, organizational structure, and business model.

(4) With respect to documenting the internal control structure, the nationally recognized statistical rating organization must take into consideration any controls necessary to document an effective internal control structure taking into consideration the nature of the business of the nationally recognized statistical rating organization, including its size, activities, organizational structure, and business model.

■ 12. Section 240.17g–9 is added to read as follows:

§ 240.17g–9 Standards of training, experience, and competence for credit analysts.

(a) A nationally recognized statistical rating organization must establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to participate in the determination of credit ratings that are reasonably designed to achieve the objective that the nationally recognized statistical rating organization produces accurate credit ratings in the classes of credit ratings for which the nationally recognized statistical rating organization is registered.

(b) The nationally recognized statistical rating organization must consider the following when establishing the standards required under paragraph (a) of this section:

(1) If the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated;

(2) If the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies;

(3) The classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses; and

(4) The complexity of the obligors, securities, or money market instruments

for which the individual participates in determining credit ratings.

(c) The nationally recognized statistical rating organization must include the following in the standards required under paragraph (a) of this section:

(1) A requirement for periodic testing of the individuals employed by the nationally recognized statistical rating organization to participate in the determination of credit ratings on their knowledge of the procedures and methodologies used by the nationally recognized statistical rating organization to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings; and

(2) A requirement that at least one individual with an appropriate level of experience in performing credit analysis, but not less than three years, participates in the determination of a credit rating.

■ 13. Section 240.17g–10 is added to read as follows:

§ 240.17g–10 Certification of providers of third-party due diligence services in connection with asset-backed securities.

(a) The written certification that a person employed to provide third-party due diligence services is required to provide to a nationally recognized statistical rating organization pursuant to section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)) must be on Form ABS Due Diligence–15E (§ 249b.500 of this chapter).

(b) The written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.

(c) A person employed to provide third-party due diligence services will be deemed to have satisfied its obligations under section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)) if the person promptly delivers an executed Form ABS Due Diligence–15E (§ 249b.500 of this chapter) after completion of the due diligence services to:

(1) A nationally recognized statistical rating organization that provided a written request for the Form prior to the completion of the due diligence services stating that the services relate to a credit rating the nationally recognized statistical rating organization is producing;

(2) A nationally recognized statistical rating organization that provides a written request for the Form after the completion of the due diligence services stating that the services relate to a credit rating the nationally recognized statistical rating organization is producing; and

(3) The issuer or underwriter of the asset-backed security for which the due diligence services relate that maintains the Internet Web site with respect to the asset-backed security pursuant to § 240.17g–5(a)(3).

(d) For purposes of section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)) and this section:

(1) The term *due diligence services* means a review of the assets underlying an asset-backed security, as defined in section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)) for the purpose of making findings with respect to:

(i) The accuracy of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets;

(ii) Whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines, standards, criteria, or other requirements;

(iii) The value of collateral securing the assets;

(iv) Whether the originator of the assets complied with federal, state, or local laws or regulations; or

(v) Any other factor or characteristic of the assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal in accordance with applicable terms and conditions.

(2) The term *issuer* includes a sponsor, as defined in § 229.1101 of this chapter, or depositor, as defined in § 229.1101 of this chapter, that participates in the issuance of an asset-backed security, as defined in section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)).

(3) The term *originator* has the same meaning as in section 15G(a)(4) of the Act (15 U.S.C. 78o–9(a)(4)).

(4) The term *securitizer* has the same meaning as in section 15G(a)(3) of the Act (15 U.S.C. 78o–9(a)(3)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 15. Subpart O and Form ABS–15G (referenced in § 249.1400) to Part 249 are revised to read as follows:

Note: The text of Form ABS–15G does not, and this amendment will not, appear in the Code of Federal Regulations.

Subpart O—Forms for Securitizers of Asset-Backed Securities

§ 249.1400 Form ABS–15G, Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934.

This form shall be used for reports of information required by Rule 15Ga–1 (§ 240.15Ga–1 of this chapter) and Rule 15Ga–2 (§ 240.15Ga–2 of this chapter).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM ABS-15G

ASSET-BACKED SECURITIZER
REPORT PURSUANT TO SECTION 15G OF
THE SECURITIES EXCHANGE ACT OF 1934

Check the appropriate box to indicate the filing obligation which this form is intended to satisfy:

____ Rule 15Ga-1 under the Exchange Act (17 CFR 240.15Ga-1) for the reporting period _____ to _____

Date of Report (Date of earliest event reported)_____

Commission File Number of securitizer: _____

Central Index Key Number of securitizer: _____

_____
Name and telephone number, including area code, of the person to contact in connection with this filing

Indicate by check mark whether the securitizer has no activity to report for the initial period pursuant to Rule 15Ga-1(c)(1) [ ]

Indicate by check mark whether the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga-1(c)(2)(i) [ ]

Indicate by check mark whether the securitizer has no activity to report for the annual period pursuant to Rule 15Ga-1(c)(2)(ii) [ ]

____ Rule 15Ga-2 under the Exchange Act (17 CFR 240.15Ga-2)

Central Index Key Number of depositor: _____

_____
(Exact name of issuing entity as specified in its charter)

Central Index Key Number of issuing entity (if applicable): _____

Central Index Key Number of underwriter (if applicable): _____

_____
Name and telephone number, including area code, of the person to contact in connection with this filing

GENERAL INSTRUCTIONS

A. Rule as to Use of Form ABS-15G.

This form shall be used to comply with the requirements of Rule 15Ga-1 (17 CFR 240.15Ga-1) and Rule 15Ga-2 (17 CFR 240.15Ga-2) under the Exchange Act.

B. Events to be Reported and Time for Filing of Reports.

Forms filed under Rule 15Ga-1. In accordance with Rule 15Ga-1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.

Forms furnished under Rule 15Ga-2. In accordance with Rule 15Ga-2, furnish the information required by Part II no later than five business days prior to the first sale of securities in the offering.

C. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

D. Signature an d Filing of Report.

1. Forms filed under Rule 15Ga-1. Any form filed for the purpose of meeting the requirements in Rule 15Ga-1 must be signed by the senior officer in charge of securitization of the securitizer.
2. Forms furnished under Rule 15Ga-2. Any form furnished for the purpose of meeting the requirements in Rule 15Ga-2 must be signed by a senior officer in charge of securitization of the depositor if information required by Item 2.01 is required to be provided and must be signed by a duly authorized officer of the underwriter if information required by Item 2.02 is required to be provided.
3. Copies of report. If paper filing is permitted, three complete copies of the report shall be filed with, or furnished to, the Commission, as applicable.

INFORMATION TO BE INCLUDED IN THE REPORT

PART I: REPRESENTATION AND WARRANTY INFORMATION

Item 1.01 Initial Filing of Rule 15Ga-1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) according to the filing requirements of Rule 15Ga-1(c)(1).

Item 1.02 Periodic Filing of Rule 15Ga-1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) according to the filing requirements of Rule 15Ga-1(c)(2).

Item 1.03 Notice of Termination of Duty to File Reports under Rule 15Ga-1

If a securitizer terminates its reporting obligation pursuant to Rule 15Ga-1(c)(3), provide the date of the last payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

PART II – FINDINGS AND CONCLUSIONS OF THIRD-PARTY DUE DILIGENCE REPORTS

Item 2.01 Findings and Conclusions of a Third Party Due Diligence Report Obtained by the Issuer

Provide the disclosures required by Rule 15Ga-2 (17 CFR 240.15Ga-2) for any third-party due diligence report obtained by the issuer.

Item 2.02 Findings and Conclusions of a Third-Party Due Diligence Report Obtained by the Underwriter

Provide the disclosures required by Rule 15Ga-2 (17 CFR 240.15Ga-2) for any third-party due diligence report obtained by the underwriter.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____ (Securitizer, Depositor or Underwriter)

Date _____

_____ (Signature)*

*Print name and title of the signing officer under his or her signature.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for part 249b continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq., unless otherwise noted;

* * * * *

17. Form (referenced in § 249b.300) is amended to read as follows:

Note: The text of Form NRSRO does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM NRSRO

APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

SEC 1541 (4-09)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

☐ INITIAL APPLICATION

☐ APPLICATION TO ADD CLASS OF CREDIT RATINGS

☐ APPLICATION SUPPLEMENT
Items and/or Exhibits Supplemented:

_____

☐ ANNUAL CERTIFICATION

☐ UPDATE OF REGISTRATION
Items and/or Exhibits Amended:

_____

☐ WITHDRAWAL FROM REGISTRATION

Important: Refer to Form NRSRO Instructions for General Instructions, Item-by-Item Instructions, an Explanation of Terms, and the Disclosure Reporting Page (NRSRO). "You" and "your" mean the person filing or furnishing, as applicable, this Form NRSRO. "Applicant" and "NRSRO" mean the person filing or furnishing, as applicable, this Form NRSRO and any credit rating affiliate identified in Item 3.

1. **A.** Your full name:

_____

B. (i) Name under which your credit rating business is primarily conducted, if different from Item 1A:

_____

(ii) Any other name under which your credit rating business is conducted and where it is used (other than the name of a credit rating affiliate identified in Item 3):

_____

C. Address of your principal office (do not use a P.O. Box):

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

D. Mailing address, if different:

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

E. Contact person (See Instructions):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

CERTIFICATION:

The undersigned has executed this Form NRSRO on behalf of, and on the authority of, the Applicant/NRSRO. The undersigned, on behalf of the Applicant/NRSRO, represents that the information and statements contained in this Form, including Exhibits and attachments, all of which are part of this Form, are accurate in all significant respects. If

this is an ANNUAL CERTIFICATION, the undersigned, on behalf of the NRSRO, represents that the NRSRO's application on Form NRSRO, as amended, is accurate in all significant respects.

_____ _____
(Date) (Name of the Applicant/NRSRO)

By: _____
(Signature) (Print Name and Title)

2. **A**. Your legal status:

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Other (specify) _____

B. Month and day of your fiscal year end: _____

C. Place and date of your formation (i.e., state or country where you were incorporated, where your partnership agreement was filed, or where you otherwise were formed):

State/Country of formation: _____ Date of formation: _____

3. Your credit rating affiliates (See Instructions):

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

4. The designated compliance officer of the Applicant/NRSRO (See Instructions):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Postal Code)

5. Describe in detail how this Form NRSRO and Exhibits 1 through 9 to this Form NRSRO will be made publicly and freely available on an easily accessible portion of the corporate Internet website of the Applicant/NRSRO (See Instructions):

_____

_____

_____

6. COMPLETE ITEM 6 ONLY IF THIS IS AN INITIAL APPLICATION, APPLICATION SUPPLEMENT, OR APPLICATION TO ADD A CLASS OF CREDIT RATINGS.

A. Indicate below the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. For each class, indicate the approximate number of obligors, securities, and money market instruments in that class as of the date of this application for which the Applicant/NRSRO has an outstanding credit rating and the approximate date the Applicant/NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit ratings	Applying for registration	Approximate number currently outstanding	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		
issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		
issuers of government securities as that term is defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

_____

C. Check the applicable box and attach certifications from qualified institutional buyers, if required (See Instructions):

☐ The Applicant/NRSRO is attaching _____ certifications from qualified institutional buyers to this application. Each is marked "Certification from Qualified Institutional Buyer."

☐ The Applicant/NRSRO is exempt from the requirement to file certifications from qualified institutional buyers pursuant to section 15E(a)(1)(D) of the Exchange Act.

Note: You are not required to make a Certification from a Qualified Institutional Buyer filed with this Form NRSRO publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep these certifications confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the certifications confidential upon request to the extent permitted by law.

7. DO NOT COMPLETE ITEM 7 IF THIS IS AN INITIAL APPLICATION.

A. Indicate below the classes of credit ratings for which the NRSRO is currently registered. For each class, indicate the approximate number of obligors, securities, and money market instruments in that class for which the NRSRO had an outstanding credit rating as of the most recent calendar year end and the approximate date the NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit rating	Currently registered	Approximate number outstanding as of the most recent calendar year end	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		
issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		
issuers of government securities as that term is defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

_____

8. Answer each question. Provide information that relates to a "Yes" answer on a Disclosure Reporting Page (NRSRO) and submit the Disclosure Reporting Page with this Form NRSRO (See Instructions). You are not required to make any disclosure reporting pages submitted with this Form publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.	

	YES	NO
A. Has the Applicant/NRSRO or any person within the Applicant/NRSRO committed or omitted any act, or been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934 in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
B. Has the Applicant/NRSRO or any person within the Applicant/NRSRO been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
C. Is any person within the Applicant/NRSRO subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO?	☐	☐

9. Exhibits (See Instructions).

Exhibit 1. Credit ratings performance measurement statistics. ☐ Exhibit 1 is attached and made a part of this Form NRSRO.
Exhibit 2. A description of the procedures and methodologies used in determining credit ratings. ☐ Exhibit 2 is attached and made a part of Form NRSRO.
Exhibit 3. Policies or procedures adopted and implemented to prevent the misuse of material, nonpublic information. ☐ Exhibit 3 is attached and made a part of this Form NRSRO.
Exhibit 4. Organizational structure. ☐ Exhibit 4 is attached to and made a part of this Form NRSRO.
Exhibit 5. The code of ethics or a statement of the reasons why a code of ethics is not in effect. ☐ Exhibit 5 is attached to and made a part of this Form NRSRO.
Exhibit 6. Identification of conflicts of interests relating to the issuance of credit ratings. ☐ Exhibit 6 is attached to and made a part of this Form NRSRO.
Exhibit 7. Policies and procedures to address and manage conflicts of interest. ☐ Exhibit 7 is attached to and made a part of this Form NRSRO.

Exhibit 8. Certain information regarding the credit rating agency's credit analysts and credit analyst supervisors.

☐ Exhibit 8 is attached to and made a part of this Form NRSRO.

Exhibit 9. Certain information regarding the credit rating agency's designated compliance officer.

☐ Exhibit 9 is attached to and made a part of this Form NRSRO.

Exhibit 10. A list of the largest users of credit rating services by the amount of net revenue earned from the user during the fiscal year ending immediately before the date of the initial application.

☐ Exhibit 10 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 11. Audited financial statements for each of the three fiscal or calendar years ending immediately before the date of the initial application.

☐ Exhibit 11 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 12. Information regarding revenues for the fiscal or calendar year ending immediately before the date of the initial application.

☐ Exhibit 12 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 13. The total and median annual compensation of credit analysts.

☐ Exhibit 13 is attached and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

FORM NRSRO INSTRUCTIONS

A. GENERAL INSTRUCTIONS.

1. Form NRSRO is the Application for Registration as a Nationally Recognized Statistical Rating Organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17g-1. Exchange Act Rule 17g-1 requires an Applicant/NRSRO to use Form NRSRO to:

   - File an initial application to be registered as an NRSRO with the U.S. Securities and Exchange Commission ("Commission");
   - File an application to register for an additional class of credit ratings with the Commission;
   - File an application supplement with the Commission;
   - File an update of registration pursuant to Section 15E(b)(1) of the Exchange Act with the Commission;
   - File an annual certification pursuant to Section 15E(b)(2) of the Exchange Act with the Commission; and
   - Furnish a withdrawal of registration pursuant to Section 15E(e) of the Exchange Act to the Commission.

2. Exchange Act Rule 17g-1(c) requires that an Applicant/NRSRO promptly file with the Commission a written notice if information filed with the Commission in an initial application for registration or in an application to register for an additional class of credit ratings is found to be or becomes materially inaccurate before the Commission has granted or denied the application. The notice must identify the information found to be materially inaccurate. The Applicant/NRSRO must also promptly file with the Commission accurate and complete information as an application supplement on Form NRSRO.

3. Pursuant to Exchange Act Rule 17g-1(i), an NRSRO must make its current Form NRSRO and information and documents filed in Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet website within 10 business days after the date of the Commission Order granting an initial application for registration as an

NRSRO or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission an update of registration, annual certification, or withdrawal from registration on Form NRSRO.

The certifications from qualified institutional buyers, disclosure reporting pages, and Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Rule 17g-1(i). An Applicant/NRSRO may request that the Commission keep confidential the certifications from qualified institutional buyers, the disclosure reporting pages, and the information and documents in Exhibits 10 – 13 filed with the Commission. An Applicant/NRSRO seeking confidential treatment for these submissions should mark each page "Confidential Treatment" and comply with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep this information confidential to the extent permitted by law.

4. Section 15E(a)(2) of the Exchange Act prescribes time periods and requirements for the Commission to grant or deny an initial application for registration as an NRSRO. These time periods also apply to an application to register for an additional class of credit ratings.

5. Type or clearly print all information. Use only the current version of Form NRSRO or a reproduction of it.

6. Section 15E of the Exchange Act (15 U.S.C. 78o-7) authorizes the Commission to collect the Information on Form NRSRO from an Applicant/NRSRO. The principal purposes of Form NRSRO are to determine whether an Applicant should be granted registration as an NRSRO, whether an NRSRO should be granted registration in an additional class of credit ratings, whether an NRSRO continues to meet the criteria for registration as an NRSRO, for an NRSRO to withdraw from registration, and to provide information about an NRSRO to users of credit ratings. Intentional misstatements or omissions may constitute federal criminal violations under 18 U.S.C. 1001.

The information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The Commission may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a

valid Office of Management and Budget (OMB) control number. The time required to complete and file or furnish, as applicable, this form, will vary depending on individual circumstances. The estimated average time to complete an initial application is displayed on the facing page of this Form. Send comments regarding this burden estimate or suggestions for reducing the burden to Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549 or PRA Mailbox@sec.gov.

7. Under Exchange Act Rule 17g-2(b)(10), an NRSRO must retain copies of all Forms NRSRO (including Exhibits, accompanying information, and documents) filed with or furnished to, as applicable, the Commission. Exchange Act Rule 17g-2(c) requires that these records be retained for three years after the date the record is made.

8. An Applicant must file with the Commission at the address indicated below two paper copies of an initial application for registration as an NRSRO under Exchange Act Rule 17g-1(a), an application to register for an additional class of credit ratings under Exchange Act Rule 17g-1(b), a supplement to an initial application or application to register for an additional class of credit ratings under Exchange Act Rule 17g-1(c), or a withdrawal of an initial application or an application to register for an additional class of credit ratings under Exchange Act Rule 17g-1(d).

ADDRESS - The mailing address for Form NRSRO is:

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

After registration, an NRSRO must file with or furnish to, as applicable, the Commission electronically on EDGAR as a PDF document in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S-T, an update of registration under Exchange Act Rule 17g-1(e), an annual certification under Exchange Act Rule 17g-1(f), or a withdrawal from registration under Exchange Act Rule 17g-1(g).

9. A Form NRSRO will be considered filed with or furnished to, as applicable, the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows

all applicable instructions for the Form, including the instructions in Item A.8 with respect to how a Form NRSRO must be filed with or furnished to the Commission.

10. An NRSRO is subject to applicable fines, penalties, and other available sanctions set forth in sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act (15 U.S.C. 78o-7, 78u, 78u-1, 78u-2, 78u-3, and 78ff, respectively) for violations of the securities laws.

B. INSTRUCTIONS FOR AN INITIAL APPLICATION

An Applicant applying to be registered with the Commission as an NRSRO must file with the Commission an initial application on Form NRSRO. To complete an initial application:

- Check the "INITIAL APPLICATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 6, and 8. (See Instructions below for each Item). Enter "None" or "N/A" where appropriate.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers, marked "Certification from Qualified Institutional Buyer" (See Instructions below for Item 6C).
- Attach Exhibits 1 through 13 (See Instructions below for each Exhibit).
- Execute the Form.

The Applicant must promptly file with the Commission a written notice if information submitted to the Commission in an initial application is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly file with the Commission an application supplement on Form NRSRO (See instructions below for an application supplement).

C. INSTRUCTIONS FOR AN APPLICATION TO ADD A CLASS OF CREDIT RATINGS

An NRSRO applying to register for an additional class of credit ratings must file with the Commission an application on Form NRSRO. To complete an application to register for an additional class of credit ratings:

- Check the "APPLICATION TO ADD CLASS OF CREDIT RATINGS" box at the top of Form NRSRO.

- Complete Items 1, 2, 3, 4, 5, 6, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers for the additional class of credit ratings marked "Certification from Qualified Institutional Buyer" (See Instructions below for Item 6C).
- If any information in an Exhibit previously submitted is materially inaccurate, update that information.
- Execute the Form.

The Applicant must promptly file with the Commission a written notice if information submitted to the Commission in an application to add a class of credit ratings is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly file with the Commission an application supplement on Form NRSRO (See instructions below for an application supplement).

D. INSTRUCTIONS FOR AN APPLICATION SUPPLEMENT

An Applicant must file an application supplement with the Commission on Form NRSRO if information submitted to the Commission in a pending initial application for registration as an NRSRO or a pending application to register for an additional class of credit ratings is found to be or becomes materially inaccurate. To complete an application supplement:

- Check the "APPLICATION SUPPLEMENT" box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being supplemented.
- Complete Items 1, 2, 3, 4, 5 and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If supplementing an initial application, also complete Item 6. If supplementing an application for registration in an additional class of credit ratings, also complete Items 6 and 7. If any information in an Item on a

previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.

- If a certification from a qualified institutional buyer is being updated or a new certification is being added, attach the updated or new certification.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

E. INSTRUCTIONS FOR AN UPDATE OF REGISTRATION

After registration is granted, section 15E(b)(1) of the Exchange Act requires that an NRSRO must promptly amend its application for registration if information or documents provided in a previously submitted Form NRSRO become materially inaccurate. This requirement does not apply to Item 7 and Exhibit 1, which only are required to be updated annually with the annual certification. It also does not apply to Exhibits 10 – 13 and the certifications from qualified institutional buyers, which are not required to be updated on Form NRSRO after registration. An NRSRO amending its application for registration must file with the Commission an update of its registration on Form NRSRO. To complete an update of registration:

- Check the "UPDATE OF REGISTRATION" box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being updated.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

F. INSTRUCTIONS FOR ANNUAL CERTIFICATIONS

After registration is granted, section 15E(b)(2) of the Exchange Act requires that an NRSRO file with the Commission an annual certification not later than 90 days after the end of each calendar

year. The annual certification must be filed with the Commission on Form NRSRO and must include an update of the information in Item 7 and the credit rating transition and default rates submitted in Exhibit 1, a certification that the information and documents on or with Form NRSRO continue to be accurate (use the certification on the Form), and a list of material changes to the application for registration that occurred during the previous calendar year. To complete an annual certification:

- Check the "ANNUAL CERTIFICATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on the previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- If any information in a non-confidential Exhibit previously submitted is materially inaccurate, update that information. (Note: After registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Exchange Act Rule 17g-1(i) and they should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year under Exchange Act Rule 17g-3.).
- Attach a list of all material changes made to the information or documents in the application for registration of the NRSRO that occurred during the previous calendar year.
- Execute the Form.

G. INSTRUCTIONS FOR A WITHDRAWAL FROM REGISTRATION

Section 15E(e)(1) of the Exchange Act provides that an NRSRO may voluntarily withdraw its registration with the Commission. Under Exchange Act Rule, 17g-1(g), to withdraw from registration, an NRSRO must furnish the Commission with a notice of withdrawal from registration on Form NRSRO. The withdrawal from registration will become effective 45 calendar days after the withdrawal from registration is furnished to the Commission upon such terms and conditions

as the Commission may establish as necessary in the public interest or for the protection of investors. To complete a withdrawal from registration:

- Check the "WITHDRAWAL FROM REGISTRATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- Execute the Form.

H. INSTRUCTIONS FOR SPECIFIC LINE ITEMS

Item 1A. Provide the name of the person (e.g., XYZ Corporation) that is filing or furnishing, as applicable, the Form NRSRO. This means the name of the person that is applying for registration as an NRSRO or is registered as an NRSRO and not the name of the individual that is executing the Form.

Item 1E. The individual listed as the contact person must be authorized to receive all communications and papers from the Commission and must be responsible for their dissemination within the Applicant/NRSRO.

Certification. The certification must be executed by the Chief Executive Officer or the President of the person that is filing or furnishing, as applicable, the Form NRSRO or an individual with similar responsibilities.

Item 3. Identify credit rating affiliates that issue credit ratings on behalf of the person filing or furnishing, as applicable, the Form NRSRO in one or more of the classes of credit ratings identified in Item 6 or Item 7. A "credit rating affiliate" is a separate legal entity or a separately identifiable department or division thereof that determines credit ratings that are credit ratings of the person filing or furnishing, as applicable, the Form NRSRO. The information in Items 4 – 8 and all the Exhibits must incorporate information about the credit ratings, methodologies, procedures, policies, financial condition, results of operations, personnel, and organizational structure of each credit rating affiliate identified in Item 3, as applicable. Any credit rating determined by a credit rating affiliate identified in Item 3 will be treated as a credit rating issued by the person filing or furnishing, as applicable, the Form NRSRO for purposes of section 15E of the Exchange Act and the Commission's rules thereunder. The terms "Applicant" and

"NRSRO" as used on Form NRSRO and the Instructions for the Form mean the person filing or furnishing, as applicable, the Form NRSRO and any credit rating affiliate identified in Item 3.

Item 4. Section 15E(j)(1) of the Exchange Act requires an NRSRO to designate a compliance officer responsible for administering the policies and procedures of the NRSRO established pursuant to sections 15E(g) and (h) of the Exchange Act (respectively, to prevent the misuse of material nonpublic information and address and manage conflicts of interest) and for ensuring compliance with applicable securities laws, rules, and regulations.

Item 5. Section 15E(a)(3) of the Exchange Act and Exchange Act Rule 17g-1(i) require an NRSRO to make Form NRSRO and Exhibits 1 – 9 to Form NRSRO filed with the Commission publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet website within 10 business days after the date of the Commission order granting an initial application for registration as an NRSRO or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission an amendment, annual certification, or withdrawal from registration on Form NRSRO. The certifications from qualified institutional investors, Disclosure Reporting Pages, and Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's corporate Internet website. Describe how the current Form NRSRO and Exhibits 1 – 9 will be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet website by providing the Internet address and link to the Form and Exhibits.

Item 6. Complete Item 6 only if filing an initial application for registration, an application to be registered in an additional class of credit ratings, or an application supplement.

Item 6A. Pursuant to section 15E(a)(1)(B)(vii) of the Exchange Act, an Applicant applying for registration as an NRSRO must disclose in the application the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. Indicate these classes by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the Applicant/NRSRO presently has a credit rating outstanding as of the date of the application. In determining this amount, the Applicant/NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other

unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. The Applicant/NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating. An Applicant/NRSRO must include in the class of credit ratings described in section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. For each class of credit ratings, also provide in the appropriate box the approximate date the Applicant/NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a "credit rating agency," as that term is defined in section 3(a)(61) of the Exchange Act. If there was a period when the Applicant/NRSRO stopped issuing credit ratings in a particular class or stopped operating as a credit rating agency, provide the approximate date the Applicant/NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of "credit rating agency" in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the Applicant/NRSRO began operating as a "credit rating agency."

Item 6B. To meet the definition of "credit rating agency" pursuant to section 3(a)(61)(A) of the Exchange Act, the Applicant must, among other things, issue "credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee." Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the Applicant/NRSRO, provide a fee schedule or describe the price(s) charged.

Item 6C. If the Applicant/NRSRO is required to file qualified institutional buyer certifications under section 15E(a)(1)(C) of the Exchange Act file a minimum of 10 certifications from qualified institutional buyers, none of which is affiliated with the Applicant/NRSRO. Each certification may address more than one class of credit ratings. To be registered as an NRSRO for a class of credit ratings identified in Item 6A under "Applying for Registration," the Applicant/NRSRO must file at least two certifications that address the class of credit ratings. If this is an application of an NRSRO to be registered in one or more additional classes of credit ratings, file at least two certifications that address each additional class of credit ratings.

The required certifications must be signed by a person duly authorized by the certifying entity, must be notarized, must be marked "Certification from Qualified Institutional Buyer," and must be in substantially the following form:

"I, [Executing official], am authorized by [Certifying entity] to execute this certification on behalf of [Certifying entity]. I certify that all actions by stockholders, directors, general partners, and other bodies necessary to authorize me to execute this certification have been taken and that [Certifying entity]:

(i) Meets the definition of a 'qualified institutional buyer' as set forth in section 3(a)(64) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(64)) pursuant to the following subsection(s) of 17 CFR 230.144A(a)(1) [insert applicable citations];

(ii) Has seriously considered the credit ratings of [the Applicant/NRSRO] in the course of making some of its investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings: [Insert applicable classes of credit ratings]; and

(iii) Has not received compensation either directly or indirectly from [the Applicant/NRSRO] for executing this certification.

[Signature]

Print Name and Title"

You are not required to make a Certification from a Qualified Institutional Buyer filed with this Form NRSRO publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep these certifications confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the certifications confidential upon request to the extent permitted by law.

Item 7. An Applicant filing Form NRSRO to apply for registration as an NRSRO should not complete Item 7. An NRSRO filing or furnishing, as applicable, Form NRSRO for any other reason must complete Item 7. The information in Item 7 must be updated on an annual basis with the filing of the annual certification.

Item 7A. Indicate the classes of credit ratings for which the NRSRO is currently registered by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the NRSRO had a credit rating outstanding as of the end of the most recently ended calendar year. In determining this amount, NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. The NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating. An NRSRO must include in the class of credit ratings described in section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. For each class of credit ratings, also provide in the appropriate box the approximate date the NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a "credit rating agency," as that term is defined in section 3(a)(61) of the Exchange Act. If there was a period when the NRSRO stopped issuing credit ratings in a particular class or stopped operating as a credit rating agency, provide the approximate date the NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of "credit rating agency" in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the NRSRO began operating as a "credit rating agency."

Item 7B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the NRSRO, provide a fee schedule or describe the price(s) charged.

Item 8. Answer each question by checking the appropriate box. Refer to the definition of "person within an Applicant/NRSRO" set forth below to determine the persons to which the questions apply. Information that relates to an affirmative answer must be provided on a Disclosure Reporting Page (NRSRO) and filed with Form NRSRO. Submit a separate Disclosure Reporting Page (NRSRO) for each person that:

(a) has committed or omitted any act, or has been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, has been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or has been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934; (b) has been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or has been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction; or (c) is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO. The Disclosure Reporting Page (NRSRO) is attached to these instructions. Note: the definition of "person within an Applicant/NRSRO" is narrower than the definition of "person associated with a nationally recognized statistical rating organization" in Section 3(a)(63) of the Exchange Act. You are not required to make any disclosure reporting pages submitted with this Form NRSRO publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.

Item 9. Exhibits. Section 15E(a)(1)(B) of the Exchange Act requires a credit rating agency's application for registration as an NRSRO to contain certain specific information and documents and, pursuant to section 15E(a)(1)(B)(x), any other information and documents concerning the applicant and any person associated with the applicant that the Commission requires as necessary or appropriate in the public interest or for the protection of investors. If any information or document required to be included with any Exhibit is maintained in a language other than English, file a copy of the original document and a version of the document translated into English. Attach a certification by an authorized person that the translated version is a true, accurate, and complete English translation of the information or document. Attach the Exhibits to Form NRSRO in numerical order. Bind each Exhibit separately, and mark each Exhibit or bound volume of the Exhibit with the appropriate Exhibit number. The information in the Exhibits must be sufficiently detailed to allow for verification. The information and documents in Exhibits 1 through 9 must

be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet website pursuant to Exchange Act Rule 17g-1(i). The information and documents in Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's corporate Internet website pursuant to Exchange Act Rule 17g-1(i). An NRSRO may request that the Commission keep these Exhibits confidential by marking each page of them "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in these Exhibits confidential upon request to the extent permitted by law. (Note: After registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Exchange Act Rule 17g-1(i) and they should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g-3.)

Exhibit 1. (1) An Applicant/NRSRO must provide in this Exhibit performance measurement statistics consisting of transition and default rates for each class (and applicable subclass of credit ratings as listed below) for which it is seeking registration as an NRSRO or for which it is registered as an NRSRO. For each applicable class and subclass of credit ratings, an Applicant/NRSRO must provide transition and default rates for 1-year, 3-year, and 10-year time periods through the most recent calendar year end. The transition and default rates for each time period must be presented together in tabular form ("Transition/Default Matrix"). The Transition/Default Matrices must be presented on a calendar year basis even if the Applicant/NRSRO has a fiscal year end other than December 31. Exhibit 1 must be updated annually with the filing of the NRSRO's Annual Certification pursuant to Exchange Act Rule 17g-1(f). Pursuant to Exchange Act Rule 17g-1(i), an NRSRO must make the Annual Certification publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet website within 10 business days after the filing and must make its most recently filed Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit. The classes and subclasses of credit ratings for which an Applicant/NRSRO must provide Transition/Default Matrices are (as applicable):

(A) The class of credit ratings described in section 3(a)(62)(B)(i) of the Exchange Act (financial institutions, brokers, or dealers).

(B) The class of credit ratings described in section 3(a)(62)(B)(ii) of the Exchange Act (insurance companies);

(C) The class of credit ratings described in section 3(a)(62)(B)(iii) of the Exchange Act (corporate issuers);

(D) The following subclasses of credit ratings described in section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) and, to the extent not described in section 3(a)(62)(B)(iv), any security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction:

(i) Residential mortgage backed securities ("RMBS") (for the purposes of Exhibit 1, RMBS means a securitization primarily of residential mortgages);

(ii) Commercial mortgage backed securities ("CMBS") (for the purposes of Exhibit 1, CMBS means a securitization primarily of commercial mortgages);

(iii) Collateralized loan obligations ("CLOs") (for the purposes of Exhibit 1, a CLO means a securitization primarily of commercial loans);

(iv) Collateralized debt obligations ("CDOs") (for the purposes of Exhibit 1, a CDO means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds);

(v) Asset-backed commercial paper ("ABCP") (for the purposes of Exhibit 1, ABCP means short term notes issued by a structure that securitizes a variety of financial assets (e.g., trade receivables or credit card receivables), which secure the notes);

(vi) other asset-backed securities ("other ABS") (for the purposes of Exhibit 1, other ABS means a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, or equipment leases); and

(vii) other structured finance products ("other SFPs") (for the purposes of Exhibit 1, other SFPs means any structured finance product not identified in subparagraphs (i) through (vi) above -- the Applicant/NRSRO must provide a description of the products in this subclass); and

(E) The following subclasses of credit ratings described in section 3(a)(62)(B)(v) of the Exchange Act (issuers of government securities, municipal securities, or securities issued by a foreign government):

(i) Sovereign issuers;

(ii) U.S. public finance; and

(iii) International public finance.

(2) The Transition/Default Matrices for applicable classes and subclasses of credit ratings must be presented in the same order that the classes and subclasses of credit ratings are identified in paragraphs (1)(A) through (E) above. For a given class or subclass, Transition/Default Matrices must be presented in the following order: 1-year matrix, 3-year matrix, and then 10-year matrix. If the Applicant/NRSRO has not been determining credit ratings in the applicable class or subclass for the length of time necessary to produce a 1-year, 3-year, and/or 10-year Transition/Default Matrix, it must explain that fact in the location where the Transition/Default Matrix would have been presented in the Exhibit. The Applicant/NRSRO must clearly define, after the presentation of all applicable Transition/Default Matrices, each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings in any Transition/Default Matrix presented in the Exhibit. In, addition the Applicant/NRSRO must clearly explain the conditions under which it classifies obligors, securities, or money market instruments as being in default. Next, the Applicant/NRSRO must provide the uniform resource locator (URL) of its corporate Internet website where the credit rating histories required to be disclosed pursuant to 17 CFR 17g-7(b) will be located (in the case of an Applicant) or are located (in the case of an NRSRO). Exhibit 1 must contain no performance measurement statistics or information other than as described in, and required by, these Instructions for Exhibit 1; except that the Applicant/NRSRO may provide after the presentation of all required Transition/Default Matrices and other disclosures: (1) a short statement describing the required method of calculating the performance measurement statistics in Exhibit 1 (the single cohort approach) and any advantages or limitations to the single cohort approach the Applicant/NRSRO believes would be appropriate to disclose; (2) a short statement that the Applicant/NRSRO has calculated and published on an Internet website performance measurement statistics using the average cohort approach (if applicable), a description of the differences between the single cohort approach and the average cohort approach used to calculate the performance measurement statistics, and the Internet website URL where the performance measurements statistics calculated using the average cohort approach are located; and

(3) the Internet website URLs where any other information relating to performance measurement statistics of the Applicant/NRSRO is located.

(3) The Transition/Default Matrices must be presented using the format of the sample matrix ("Sample Matrix") below. The first row of a Transition/Default Matrix must contain the column headings: "Credit Ratings as of [insert the period start date]"; "Credit Ratings as of [insert the period end date] percent"; and "Other Outcomes During [insert the period start date and end date] (percent)". The second row must contain column headings that are grouped under the three top row headings. The first and second columns in Transition/Default Matrix are for entering information about the credit ratings as of the period start date and must be grouped under the first heading in the first row. The cells in the second row for the first two columns must contain the headings, respectively: "Credit Rating Scale" and "Number of Ratings Outstanding." The applicable date is the date 1, 3, or 10 years prior to the most recent calendar year end depending on whether the Transition/Default Matrix is for a 1-year, 3-year, or 10-year period. The next sequence of columns are for entering information about the credit ratings as of the period end date and must be grouped under the second heading in the first row. The cells in the second row for this series of columns must contain, from left to right, each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch. The Applicant/NRSRO must not include a "default" category if its rating scale has such a category. The final three columns in the header row are for entering information about credit ratings that were classified as in default or paid off during the period, or were withdrawn during the period for reasons other than default or having been paid off (see explanations below). These columns must grouped under the third heading in the top row. The cells in the header rows for these columns must have the following headings from left to right, "Default", "Paid Off", and "Withdrawn (other)". The first column of a Transition/Default Matrix must have a separate cell containing each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch. The Applicant/NRSRO must not include a "default" category in the column if its rating scale has such a category. The last cell of the first column must contain the word "Total." The cells representing no

change in the credit rating as of the period end date must be highlighted. Finally, the Transition/Default Matrix must have a title identifying the applicable class or subclass of credit ratings, the period covered, and the start date and end date of the period.

The Transition/Default Matrix must resemble the Sample Matrix below except that the number of credit rating symbols depicted in the cells of the first column and header row of a matrix will depend on the number of notches in the applicable rating scale of the Applicant/NRSRO (excluding a "default" category).

Corporate Issuers – 10-Year Transition and Default Rates
(December 31, 2000 through December 31, 2010)

Credit Ratings as of 12/31/2000		Credit Ratings as of 12/31/2010 (Percent)									Other Outcomes During 12/31/2000-12/31/2010 (Percent)		
Credit Rating	Number of Ratings Outstanding	AAA	AA	A	BBB	BB	B	CCC	CC	C	Default	Paid Off	Withdrawn (other)
AAA	10	50%	10%									40%	
AA	2000	1%	39%	12%	10%	8%	5%	4%			1%	19%	1%
A	4000		6%	34%	15%	10%	6%	4%	3%		2%	18%	2%
BBB	3600		2%	9%	28%	15%	10%	6%	5%	1%	4%	17%	3%
BB	1000			2%	4%	20%	14%	5%			2%	16%	37%
B	500			1%	3%	6%	20%	20%	15%		15%	15%	5%
CCC	300					4%	6%	15%	25%	20%	20%	4%	6%
CC	200						2%	8%	10%	38%	30%	2%	10%
C	160							2%	8%	10%	67%	1%	12%
Total	11,770												

(4) An Applicant/NRSRO must complete a Transition/Default Matrix as follows:

(A) *Second Column Showing Number of Ratings Outstanding as of the Period Start Date*. To determine the number of credit ratings outstanding as of the period start date (the "start-date cohort") for all classes of credit ratings other than the class of issuers of asset-backed securities, the Applicant/NRSRO must: (1) identify each obligor that the Applicant/NRSRO assigned a credit rating to as an entity where the credit rating was outstanding as of the period start date; (2) identify each additional obligor that issued securities or money market instruments that the Applicant/NRSRO assigned credit ratings to where the credit ratings were outstanding as of the period start date; and (3) include in the start-date cohort only credit ratings assigned to an obligor as an entity, or, if the obligor is not assigned a credit rating as an entity, the credit rating of the obligor's senior unsecured debt. All other credit ratings outstanding as of the period start date assigned to securities or money market instruments issued by the obligor must be excluded from the start-date cohort. For the class of issuers of asset-backed securities, the start-date cohort

must consist of credit ratings that the Applicant/NRSRO assigned to all securities or money market instruments in the class where the credit ratings were outstanding as of the period start date, excluding expected or preliminary credit ratings.

In determining the start-date cohort for all classes of credit ratings, the Applicant/NRSRO must exclude credit ratings that the Applicant/NRSRO classified as in default as of the period start date or that were expected or preliminary credit ratings.

The Applicant/NRSRO must next determine the number of credit ratings in the start-date cohort in each notch in the "Credit Rating Scale" column as of the period start date and enter this number in the appropriate cell. The Applicant/NRSRO must enter the total number of credit ratings in the start-date cohort in the last cell of the column.

(B) *Rows Representing Credit Rating Notches*. Each row representing a credit rating notch must contain percents indicating the credit rating outcomes as of the period end date of all the credit ratings at that notch as of the period start date. The percents in a row must add up to 100%. To compute the percents for each row in the Transition/Default Matrix representing a notch in the rating scale:

(i) The Applicant/NRSRO must determine the number of credit ratings in the start-date cohort at that notch as of the period start date that were assigned a credit rating at the same notch as of the period end date. This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date and the percent must be entered in the column representing the same notch. The cell must be highlighted. To determine this percent, the Applicant/NRSRO must use the credit rating as of the period end date and not a credit rating assigned between the period start date and the period end date.

(ii) The Applicant/NRSRO must determine the number credit ratings at that notch as of the period start date at each other notch as of the period end date. These numbers must be expressed as percents of the total number of credit ratings at that notch as of the period start date and the percents must be entered in the columns representing each notch. To determine these percents, the Applicant/NRSRO must use the credit rating as of the period

end date and not a credit rating assigned between the period start date and the period end date.

(iii) The Applicant/NRSRO must determine the number of credit ratings at that notch as of the period start date that went into *Default* (see explanation below) at any time during the applicable time period. This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date and the percent must be entered in the *Default* column. The Applicant/NRSRO must classify a credit rating as a *Default* if any of the following conditions are met*:*

(a) The obligor failed to timely pay principal or interest due according to the terms of an obligation during the applicable period or the issuer of the security or money market instrument failed to timely pay principal or interest due according to the terms of the security or money market instrument during the applicable period;

(b) The security or money market instrument was subject to a write-down, applied loss, or other realized deficiency of the outstanding principal amount during the applicable period; or

(c) The Applicant/NRSRO classified the obligor, security, or money market instrument as having gone into default using its own definition of "default" during the applicable period.

A credit rating that goes into in *Default* as defined in this paragraph (4)(B)(iii) must be classified as in *Default* even if the Applicant/NRSRO assigned a credit rating to the obligor, security, or money market instrument at a notch above default in its rating scale on or after the event of *Default* or withdrew the credit rating on or after the event of *Default*.

(iv) The Applicant/NRSRO must determine the number of credit ratings at that notch as of the period start date that were *Paid Off* (see explanation below) at any time during the applicable time period. This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date and the percent must be entered in the *Paid Off* column. To determine this percent, the Applicant/NRSRO must classify a credit rating as *Paid Off* if the issuer of the security or money market instrument assigned the credit rating

extinguished its obligation with respect to the security or money market instrument during the applicable time period by paying in full all outstanding principal and interest due according to the terms of the security or money market instrument (for example, because the security or money market instrument matured, was called, or was prepaid); and the Applicant/NRSRO withdrew the credit rating for the security or money market instrument because the obligation was extinguished.

(v) The Applicant/NRSRO must determine the number of credit ratings at that notch as of the period start date for which the Applicant/NRSRO withdrew a credit rating at any time during the applicable time period for a reason other than *Default* (as described in paragraph (4)(B)(iii)) or *Paid-Off* (as described in paragraph (4)(B)(iv)). This number must be expressed as a percent of the total number of credit ratings at that notch as of the period start date and the percent must be entered in the *Withdrawn (other)* column. The Applicant/NRSRO must classify the credit rating as *Withdrawn (other)* even if the Applicant/NRSRO assigned a credit rating to the obligor, security, or money market instrument after withdrawing its credit rating.

Exhibit 2. Provide in this Exhibit a general description of the procedures and methodologies used by the Applicant/NRSRO to determine credit ratings, including unsolicited credit ratings within the classes of credit ratings for which the Applicant/NRSRO is seeking registration or is registered. The description must be sufficiently detailed to provide users of credit ratings with an understanding of the processes employed by the Applicant/NRSRO in determining credit ratings, including, as applicable, descriptions of: policies for determining whether to initiate a credit rating; a description of the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors; whether and, if so, how information about verification performed on assets underlying or referenced by a security or money market instrument issued by an asset pool or as part of any asset-backed or securities transaction is relied on in determining credit ratings; the quantitative and qualitative models and metrics used to determine credit ratings, including whether and, if so, how assessments of the quality of originators of assets underlying or referenced by a security or money market instrument issued by an asset pool or as part of any asset-backed or securities transaction factor into the determination of credit ratings; the

methodologies by which credit ratings of other credit rating agencies are treated to determine credit ratings for securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgaged-backed securities transaction; the procedures for interacting with the management of a rated obligor or issuer of rated securities or money market instruments; the structure and voting process of committees that review or approve credit ratings; procedures for informing rated obligors or issuers of rated securities or money market instruments about credit rating decisions and for appeals of final or pending credit rating decisions; procedures for monitoring, reviewing, and updating credit ratings, including how frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing ratings surveillance are incorporated into the models and criteria for determining initial ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating. An Applicant/NRSRO may provide in Exhibit 2 the location on its corporate Internet website where additional information about the procedures and methodologies is located.

Exhibit 3. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to prevent the misuse of material, nonpublic information pursuant to section 15E(g) of the Exchange Act and 17 CFR 240.17g-4. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 4. Provide in this Exhibit information about the organizational structure of the Applicant/NRSRO, including, as applicable, an organizational chart that identifies, as applicable, the ultimate and sub-holding companies, subsidiaries, and material affiliates of the Applicant/NRSRO; an organizational chart showing the divisions, departments, and business units of the Applicant/NRSRO; and an organizational chart showing the managerial structure of the Applicant/NRSRO, including the designated compliance officer identified in Item 4.

Exhibit 5. Provide in this Exhibit a copy of the written code of ethics the Applicant/NRSRO has in effect or a statement of the reasons why the Applicant/NRSRO does not have a written code of ethics in effect.

Exhibit 6. Identify in this Exhibit the types of conflicts of interest relating to the issuance of credit ratings by the Applicant/NRSRO that are material to the Applicant/NRSRO. First, identify the conflicts described in the list below that apply to the Applicant/NRSRO. The Applicant/NRSRO may use the descriptions below to identify an applicable conflict of interest and is not required to provide any further details. Second, briefly describe any other type of conflict of interest relating to the issuance of credit ratings by the Applicant/NRSRO that is not covered in the descriptions below that is material to the Applicant/NRSRO (for example, one the Applicant/NRSRO has established specific policies and procedures to address):

The Applicant/NRSRO is paid by issuers or underwriters to determine credit ratings with respect to securities or money market instruments they issue or underwrite.

- The Applicant/NRSRO is paid by obligors to determine credit ratings of the obligors.
- The Applicant/NRSRO is paid for services in addition to determining credit ratings by issuers, underwriters, or obligors that have paid the Applicant/NRSRO to determine a credit rating.
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons may use the credit ratings of the Applicant/NRSRO to comply with, and obtain benefits or relief under, statutes and regulations using the term “nationally recognized statistical rating organization.”
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the Applicant/NRSRO.
- The Applicant/NRSRO allows persons within the Applicant/NRSRO to:

- Directly own securities or money market instruments of, or have other direct ownership interests in, obligors or issuers subject to a credit rating determined by the Applicant/NRSRO.
- Have business relationships that are more than arms length ordinary course business relationships with obligors or issuers subject to a credit rating determined by the Applicant/NRSRO.

- A person associated with the Applicant/NRSRO is a broker or dealer engaged in the business of underwriting securities or money market instruments (identify the person).
- The Applicant/NRSRO has any other material conflict of interest that arises from the issuances of credit ratings (briefly describe).

Exhibit 7. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to address and manage conflicts of interest pursuant to section 15E(h) of the Exchange Act. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 8. Provide in this Exhibit the following information about the Applicant/NRSRO's credit analysts and the persons who supervise the credit analysts:

- The total number of credit analysts (including credit analyst supervisors).
- The total number of credit analyst supervisors.
- A general description of the minimum qualifications required of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts).
- A general description of the minimum qualifications required of the credit analyst supervisors, including education level and work experience.

Exhibit 9. Provide in this Exhibit the following information about the designated compliance officer (identified in Item 4) of the Applicant/NRSRO:

- Name.
- Employment history.
- Post secondary education.

- Whether employed by the Applicant/NRSRO full-time or part-time.

Exhibit 10. Provide in this Exhibit a list of the largest users of credit rating services of the Applicant by the amount of net revenue earned by the Applicant attributable to the person during the fiscal year ending immediately before the date of the initial application. First, determine and list the 20 largest issuers and subscribers in terms of net revenue. Next, add to the list any obligor or underwriter that, in terms of net revenue during the fiscal year, equaled or exceeded the 20th largest issuer or subscriber. In making the list, rank the persons in terms of net revenue from largest to smallest and include the net revenue amount for each person. For purposes of this Exhibit:

Net revenue means revenue earned by the Applicant for any type of service or product provided to the person, regardless of whether related to credit rating services, and net of any rebates and allowances the Applicant paid or owes to the person; and

Credit rating services means any of the following: rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings, credit ratings data, or credit ratings analysis to a subscriber.

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet website, pursuant to Exchange Act Rule 17g-1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 10 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g-3).

Exhibit 11. Provide in this Exhibit the financial statements of the Applicant, which must include a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity, audited by an independent public accountant, for each of the three fiscal or calendar years ending immediately before the date of the Applicant's initial application to the Commission, subject to the following:

- If the Applicant is a division, unit, or subsidiary of a parent company, the Applicant may provide audited consolidated financial statements of its parent company.

- If the Applicant does not have audited financial statements for one or more of the three fiscal or calendar years ending immediately before the date of the initial application, the Applicant may provide unaudited financial statements for the applicable year or years, but must provide audited financial statements for the fiscal or calendar year ending immediately before the date of the initial application.

Attach to the unaudited financial statements a certification by a person duly authorized by the Applicant to make the certification that the person has responsibility for the financial statements and that to the best knowledge of the person making the certification the financial statements fairly present, in all material respects, the Applicant's financial condition, results of operations, and cash flows for the period presented.

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet website, pursuant to Exchange Act Rule 17g-1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 11 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g-3).

Exhibit 12. Provide in this Exhibit the following information, as applicable, and which is not required to be audited, regarding the Applicant's aggregate revenues for the fiscal or calendar year ending immediately before the date of the initial application:

- Revenue from determining and maintaining credit ratings;
- Revenue from subscribers;
- Revenue from granting licenses or rights to publish credit ratings; and

- Revenue from all other services and products offered by your credit rating organization (include descriptions of any major sources of revenue).

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet website, pursuant to Exchange Act Rule 17g-1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 12 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g-3).

Exhibit 13. Provide in this Exhibit the approximate total and median annual compensation of the Applicant's credit analysts for the fiscal or calendar year ending immediately before the date of this initial application. In calculating total and median annual compensation, the Applicant may exclude deferred compensation, provided such exclusion is noted in the Exhibit.

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet website pursuant to Exchange Act Rule 17g-1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 13 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g-3.)

I. EXPLANATION OF TERMS.

1. COMMISSION - The U.S. Securities and Exchange Commission.
2. CREDIT RATING [Section 3(a)(60) of the Exchange Act] - An assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.
3. CREDIT RATING AGENCY [Section 3(a)(61) of the Exchange Act] - Any person:

- engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;
- employing either a quantitative or qualitative model, or both to determine credit ratings; and
- receiving fees from either issuers, investors, other market participants, or a combination thereof.

4. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION [Section 3(a)(62) of the Exchange Act] - A credit rating agency that:

- issues credit ratings certified by qualified institutional buyers in accordance with section 15(a)(1)(B)(ix) of the Exchange Act with respect to:
    - financial institutions, brokers, or dealers;
    - insurance companies;
    - corporate issuers;
    - issuers of asset-backed securities;
    - issuers of government securities, municipal securities, or securities issued by a foreign government; or
    - a combination of one or more of the above; and
- is registered as an NRSRO.

6. PERSON - An individual, partnership, corporation, trust, company, limited liability company, or other organization (including a separately identifiable department or division).

7. PERSON WITHIN AN APPLICANT/NRSRO – The person filing or furnishing, as applicable, Form NRSRO identified in Item 1, any credit rating affiliates identified in Item 3, and any partner, officer, director, branch manager, or employee of the person or the credit rating affiliates (or any person occupying a similar status or performing similar functions).

8. SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION - A unit of a corporation or company:

- that is under the direct supervision of an officer or officers designated by the board of directors of the corporation as responsible for the day-to-day conduct of the corporation's credit rating activities for one or more affiliates, including the supervision of all employees engaged in the performance of such activities; and
- for which all of the records relating to its credit rating activities are separately created or maintained in or extractable from such unit's own facilities or the facilities of the corporation, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of the Exchange Act and rules and regulations promulgated thereunder.

8. QUALIFIED INSTITUTIONAL BUYER [Section 3(a)(64) of the Exchange Act] - An entity listed in 17 CFR 230.144A(a) that is not affiliated with the credit rating agency.

DISCLOSURE REPORTING PAGE (NRSRO)

This Disclosure Reporting Page (DRP) is to be used to provide information concerning affirmative responses to **Item 8** of Form NRSRO.

Submit a separate DRP for each person that: (a) has committed or omitted any act, or been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, has been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or has been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934; (b) has been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or has been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction; or (c) is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO.

Name of Applicant/NRSRO Date

_____ _____

Check Item being responded to:

☐ Item 8A

☐ Item 8B

☐ Item 8C

Full name of the person for whom this DRP is being submitted:

_____

If this DRP provides information relating to a "Yes" answer to Item 8A, describe the act(s) that was (were) committed or omitted; or the order(s) or finding(s); or the injunction(s) (provide the relevant statute(s) or regulation(s)) and provide jurisdiction(s) and date(s):

_____

If this DRP provides information relating to a "Yes" answer to Item 8B, describe the crime(s) and provide jurisdiction(s) and date(s):

_____

If this DRP provides information relating to a "Yes" answer to Item 8C, attach the relevant Commission order(s) and provide the date(s):

_____

18. Section 249b.500 and Form ABS Due Diligence-15E are added to read as follows:

Note: The text of Form ABS Due Diligence-15E will not appear in the Code of Federal Regulations.

§ 249b.500 Form ABS Due Diligence-15E, Certification of third-party provider of due diligence services for asset-backed securities

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM ABS DUE DILIGENCE-15E

CERTIFICATION OF PROVIDER OF THIRD-PARTY DUE DILIGENCE SERVICES FOR ASSET-BACKED SECURITIES

Pursuant 17 CFR 240.17g-10, this Form must be used by a person providing third-party due diligence services in connection with an asset-backed security to comply with section 15E(s)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(s)(4)(B)). Section 15E(s)(4)(B) of the Securities Exchange Act of 1934 requires a person providing the due diligence services to provide a written certification to any nationally recognized statistical rating organization that produces a credit rating to which such due diligence services relate.

Item 1. Identity of the person providing third-party due diligence services

Legal Name: _____

Business Name (if Different): _____

Principal Business Address: _____

_____

Item 2. Identity of the person who paid the person to provide third-party due diligence services

Legal Name: _____

Business Name (if Different): _____

Principal Business Address: _____

_____

Item 3. Credit rating criteria

If the due diligence performed by the third party is intended to satisfy the criteria for due diligence published by a nationally recognized statistical rating organization, identify the nationally recognized statistical rating organization and the title and date of the published criteria (more than one nationally recognized statistical rating organization may be identified).

Identity of NRSRO	Title and Date of Criteria

Item 4. Description of the due diligence performed

Provide a description of the scope and manner of the due diligence services performed in connection with the review of assets that is sufficiently detailed to provide an understanding of the steps taken in performing the review. Include in the description: (1) the type of assets that were reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the accuracy of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the conformity of the origination of the assets to stated underwriting or credit extension guidelines, standards, criteria or other requirements was reviewed and, if so, how the review was conducted; (6) whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with federal, state, and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review that was part of the due diligence services conducted by the person executing this Form. This description should be attached to the Form and contain the heading “Item 4.” Provide this description regardless of whether the due diligence performed is intended to satisfy the criteria for due diligence published by a nationally recognized statistical rating organization.

Item 5. Summary of findings and conclusions of review

Provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2. This summary should be attached to the Form and contain the heading “Item 5.”

CERTIFICATION

The undersigned has executed this Form ABS Due Diligence 15E on behalf of, and on the authority of, the person identified in Item 1 of the Form. The undersigned, on behalf of the person, represents that the person identified in Item 1 of the Form conducted a thorough review in performing the due diligence described in Item 4 attached to this Form and that the information and statements contained in this Form, including Items 4 and 5 attached to this Form, which are part of this Form, are accurate in all significant respects on and as of the date hereof.

Name of Person Identified in Item 1: _____

By: _____ _____
(Print name of duly authorized person) (Signature)

Date: _____

By the Commission.

Dated: August 27, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–20890 Filed 9–12–14; 8:45 am]

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Part III

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Parts 4279 and 4287
Guaranteed Loanmaking and Servicing Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4287

RIN 0570–AA85

Guaranteed Loanmaking and Servicing Regulations

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (Agency) is an agency within the Rural Development mission area of the United States Department of Agriculture (USDA) responsible for administering the Business and Industry (B&I) Guaranteed Loan Program. The B&I Guaranteed Loan Program is authorized by the Consolidated Farm and Rural Development Act and provides loan guarantees to banks and other approved lenders to finance private businesses located in rural areas.

The Agency is proposing changes to refine the regulations for the B&I Guaranteed Loan Program in an effort to improve program delivery, clarify the regulations to make them easier to understand, and reduce delinquencies. The proposed changes to the program are expected to reduce the subsidy rate and thereby lower program subsidy costs over time as the proposed rule is implemented. By lowering the subsidy rate, the Agency may be able to provide greater leverage for the budget authority provided by Congress. This will allow the Agency to guarantee a higher total dollar amount of loan requests and, assuming the same average size of loans being guaranteed, to guarantee more loans. These changes could also result in increased lending activity, expanded business opportunities, and creation of more jobs in rural areas.

DATES: Comments on the proposed rule must be received on or before November 14, 2014. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through November 14, 2014.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742 with a copy to Brenda Griffin, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3224, Washington, DC 20250–3224.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Washington, DC 20024 with a copy to Brenda Griffin, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 6847, Washington, DC 20250–3224.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above. Comments will also be available through regulations.gov referencing RIN number 0570–AA85.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3224, Washington, DC 20250–3224; email: *brenda.griffin@wdc.usda.gov;* telephone (202) 720–6802.

I. SUPPLEMENTARY INFORMATION

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant. The EO defines a ''economically significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The actions in this rule collectively are not expected to have an impact of $100 million or more, which negates the need for a more detailed assessment of likely benefits and costs and analysis of potentially effective and reasonably feasible alternatives.

Programs Affected

The Catalog of Federal Domestic Assistance program number assigned to the B&I Guaranteed Loan Program is 10.768.

Executive Order 12372, Intergovernmental Review of Federal Programs

B&I Guaranteed Loans are subject to the Provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. The Agency will conduct intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V, or successor regulations.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. Additionally, (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on 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. Nor does this proposed rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on the Agency in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects lenders that utilize the B&I Guaranteed Loan Program and any potential lenders that may utilize the program in the future. There are currently 1,117 active lenders in the B&I portfolio. The Agency estimates that approximately 50 percent of the lenders that utilize the program are small community banks that are considered a small entity, as defined by the Regulatory Flexibility Act. Therefore, the Agency has determined that this proposed rule will have an impact on a substantial number of small entities.

However, the Agency has determined that the economic impact of the proposed rule on these small lenders will not be significant. Many of the changes being implemented in the rule are tweaks to the program that lenders have suggested at a series of lender roundtable meetings or during annual lender visits that do not have any economic impact on the lenders. The most significant change in the rule that affects lenders is the criteria to become an approved non-regulated lender. This change by itself, however, does not have a significant economic impact on a substantial number of entities as it affects less than 2 percent of the active lenders (approximately 21 non-regulated lenders). Based on the data in the Paperwork Reduction Act (PRA) burden package, the Agency estimates the cost of the proposed rule to be approximately $1,600 per lender. This is based on determining which of the estimated costs in the PRA burden package would be incurred by the lenders applying for and participating in the program, and the estimated number of lenders. SBA's definition of a small business for lenders is total assets of $500 million or less. The Agency selected 20 small lenders at random to determine their total assets. Based on 2014 data, the range of total assets for these 20 lenders is $52.6 million to $476 million. The average cost of $1,600 per lender represents less than 0.003% of the total assets of the smallest of these 20 lenders. Therefore, this rule will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Protection Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required.

Under this program, the Agency conducts a NEPA review for each application received. To date, no significant environmental impacts have been reported, and Findings of No Significant Impact (FONSI) have been issued for each approved application. Taken collectively, the applications show limited potential for significant adverse cumulative effects.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service announces its intention to seek OMB approval of the new reporting and recordkeeping requirements contained in this regulation.

The following estimates are based on an estimated volume of activity of 100 preapplications, 600 applications, and 550 new loan guarantees. Preapplications are not required and are submitted at the option of the lender. The purpose of a preapplication is to allow a lender to submit a limited amount of information, most of which should be easily obtained, so that the Agency can determine and advise the lender whether the request is likely to meet the requirements of the program. Some lenders will skip the preapplication process and submit a full application as the first contact with the Agency. If the information is submitted in a preapplication, it would not need to be resubmitted in the application unless the financials become more than 90 days old between the time of preapplication and application. Applications are evaluated by the Agency to determine whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations.

Estimate of Burden: Public reporting burden for the additional proposed requirements will increase the current collection of information by an estimated total of 5,111 hours. The Agency anticipates the number of respondents to fluctuate based on funding levels. The average burden per respondent under the current rule is estimated to be 8 hours, and the average burden under the proposed rule is estimated to be 11 hours, for an estimated increase of 3 hours per respondent.

Respondents: Primary respondents for this data are lending institutions and rural for profit businesses but also include individuals, non-profit businesses, Indian tribes, public bodies, and cooperatives. The estimates below are for all three subparts associated with this rule and include the additional proposed requirements.

Estimated Number of Respondents: 3,675.

Estimated Number of Responses per Respondent: 1–4.

Estimated Number of Responses: 27,076.

Estimated Total Annual Burden (hours) on Respondents: 40,511.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742 or by calling (202) 692–0040.

Comments

Comments are invited on: (a) The accuracy of the new Rural Development estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Comments can be viewed at

regulations.gov under RIN number 0570–AA85.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

II. Background

Rural Development administers a multitude of Federal programs for the benefit of rural America, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, access to capital, and technical support that enables rural communities to prosper. To achieve its mission, Rural Development provides financial support—including direct loans, grants, and loan guarantees—and technical assistance to help improve the quality of life and provide the foundation for economic development in rural areas.

The B&I Guaranteed Loan Program was authorized by the Rural Development Act of 1972. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural America. Businesses in rural areas are eligible for this program. Rural area, as defined by 7 CFR 4279.108(c), is defined as any area other than a city or town of more than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town. The types of borrowers that are served by the B&I Guaranteed Loan Program are cooperative organizations, corporations, partnerships, or other legal entities organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual, provided the borrower is engage in, or proposing to engage, in a business. Loans can be made for a variety of purposes including business acquisition, expansion or improvement; purchase of real estate, machinery and equipment, or supplies; debt refinancing; and working capital. The rate and term of the loan is negotiated between the business and the lender.

The regulations for the B&I Guaranteed Loan Program were rewritten in 1996 to streamline and simplify the regulations for the program while shifting primary responsibility for loan documentation and analysis from the Agency to the lenders to make the program more responsive to the needs of lenders and rural businesses.

III. Executive Summary

Purpose of the Regulatory Action

The Agency is promulgating these regulations to improve program delivery, clarify the regulations to make them easier to understand, and reduce delinquencies. The changes should reduce the cash outflows and increase the cash inflows associated with the B&I Guaranteed Loan Program portfolio, resulting in a lower subsidy rate. A lower subsidy rate should result in increased lending activity, the expansion of business opportunities, and the creation of more jobs in rural areas. Changes proposed originated from informal third party comments and Agency experience in administering the program, including observations from assessment reviews and recommendations from the Agency's internal Business Programs Advisory Team.

The Agency believes the proposed changes in the rule may increase lending activity, resulting in the expansion of business opportunities and the creation of more jobs in rural America, and improve the program's effectiveness by improving the prosperity of rural residents through guarantees of targeted investments that may improve rural competitiveness, facilitate industrial conversion, and enable rural residents to profit from private sector activity. The revisions contained herein may improve the efficiency and effectiveness of the program and make the regulation more customer friendly and easier to understand. The Agency thinks that errors may be reduced because the guidelines and requirements will be clearer and better organized.

The proposed rule's incremental effect to the public will be to nominally increase the burden for lenders seeking to be an eligible lender and for ''new'' investors in projects that receive B&I loan guarantees after the Loan Note Guarantee is issued by a total of approximately $4,800 per year. The cost to participating lenders and borrowers was estimated to be approximately $2.5 million. The cost to the Federal government to administer the program was estimated to be approximately $2.1 million.

Summary of the Major Provisions of the Regulatory Action

This proposed rule is intended to replace the B&I Guaranteed Loan Program regulations under 7 CFR parts 4279 and 4287, which will not significantly depart from the current program of loan guarantees for businesses in rural areas.

The rule will strengthen criteria for non-regulated lenders to participate in the program. It will also codify provisions of the 2008 Farm Bill, including two types of rural area exceptions and eligibility of local foods projects and cooperative equity security guarantees. The rule also includes provisions for New Markets Tax Credits and the Cooperative Stock Purchase Program. Changes are also made to the loan scoring criteria. Loan servicing changes include the termination of interest accrual to the lender after 90 days from the delinquency effective date or to a holder 90 days from the date of the first demand letter from any holder of the guaranteed portion. Additionally, attorney/legal fees that the lender can claim in the liquidation process will be reduced from full reimbursement to being shared equally between the lender and the Agency. The rule also adds the ability to obtain personal and corporate guarantees from those owning 20 percent of the business when there is a sale of the borrower's stock.

IV. Discussion of the Proposed Rule

Following is a discussion of some of the most significant policy revisions included in this proposed rule.

Eligible lenders for the program include regulated lenders (formerly known as ''traditional lenders'') and Agency-approved non-regulated lenders (formerly known as ''other lenders''). Insurance companies will no longer be considered traditional or regulated lenders under the program because historically, insurance companies have had significant default and loss rates in the Agency B&I Guaranteed Loan portfolio. However, insurance companies will be able to apply to become Agency-approved eligible lenders by meeting criteria of a non-regulated lender established in the regulation. Lenders will have to execute a new Lender's Agreement to originate new guaranteed loans; however, existing lenders are bound by their existing Lender's Agreements and must continue to service existing guaranteed loans in their portfolio regardless of whether they wish to originate new guaranteed loans.

Criteria to become an approved non-regulated lender for the B&I program

will be strengthened under this proposed rule due to higher than usual default and loss rates for this type of lender in the Agency B&I Guaranteed Loan portfolio. Non-regulated lenders will be able to become eligible lenders for a 3-year period and may request renewals to continue originating loans under the program. Non-regulated lenders will have to have and maintain 10 percent tangible balance sheet equity, which is up from the 7 percent previously required. Non-regulated lenders will have to have a record of successfully making at least 10 commercial loans annually totaling at least $1 million for each of the last 5 years, with lender's delinquent commercial loan portfolio over that period not exceeding 6 percent of all commercial loans made and 3 percent in commercial loan losses based on the original principal loan amount. In addition, non-regulated lenders will have to maintain a loss reserve and undergo a credit examination that must be acceptable to the Agency. These requirements are being strengthened to ensure participation in the program by lenders that have a thorough knowledge of commercial lending and high standards of professional competence to operate a successful lending program.

Under the B&I program, a rural area is generally any area of a State other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town. In making this determination, the Agency will use the latest decennial census from the U.S. Census Bureau. The 2008 Farm Bill added the ability to make two different types of rural area exceptions, which was incorporated into the Consolidated Farm and Rural Development Act. Section 343(a)(13)(E) of the Consolidated Farm and Rural Development Act states: ''Notwithstanding any other provision of this definition, in determining which census blocks in an urbanized area are not in a rural area, the Agency shall exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.'' Additionally, the Under Secretary for Rural Development may determine that areas are ''rural in character,'' and therefore eligible for the program, under certain circumstances. Any determination made by the Under Secretary under this provision will be to areas that are determined to be ''rural in character'' in accordance with Section 343(a)(13)(D) of the Consolidated Farm and Rural Development Act and are within: (1) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such city or town; or (2) an area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within a quarter mile of a rural area.

Presently, corporations or other non public-body type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence to be eligible borrowers under the B&I program. The Agency is inviting public comment on whether guaranteed loans should be made to businesses that do not meet this requirement, if the facility being financed will create new or save existing jobs for rural U.S. residents and when loan funds are used only for fixed assets that will remain in the U.S. This could provide flexibility to create or save jobs in rural areas when the business is owned, in whole or in part, by a foreign interest.

The eligibility section is proposed to be revised to include cooperative equity security guarantees as eligible loan purposes in accordance with the 2008 Farm Bill. Separate sections of the regulation specifically address the requirements for New Markets Tax Credits and cooperative equity security guarantees, as well as requirements for the cooperative stock purchase program.

The eligibility section is being revised to include projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income. This is also a provision of the 2008 Farm Bill. The term ''locally or regionally produced agricultural food product'' means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product or within the State in which the product is produced, as defined by Section 310B(g)(9)(A)(i) of the Consolidated Farm and Rural Development Act. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption. A significant amount of the food product sold by the borrower must be locally or regionally produced, and a significant amount of the locally or regionally produced food product must be sold locally or regionally. Projects in non-rural areas may be included when the project provides an economic benefit to the surrounding rural communities. Funding priority will be given to projects that provide a benefit to underserved communities. In accordance with Section 310B(g)(9)(A)(ii) of the Consolidated Farm and Rural Development Act, an underserved community is a community (including an urban or rural community and an Indian tribal community) that has limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer to consumer direct markets and that has either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census.

The ineligible loan purpose section is being modified to permit distribution or payment to an immediate family member of the owner to accommodate intergenerational business acquisitions. Previously, no loan proceeds could be distributed to a close relative of the owner who retained an ownership interest in the borrower. This is being changed so that an immediate family member of the owner, partner, or stockholder can purchase the business from an owner, partner or stockholder when the seller does not retain an ownership interest and the Agency determines the price paid to be reasonable.

A definition for a high priority project is being added to the rule. A high priority project is defined in the proposed rule as one that scores more than half of the points available under the scoring criteria outlined in the priority scoring section.

In an effort to reduce the cost for the taxpayer, 90 percent guarantees will be limited to loans of $5 million and less that are either high priority projects or where the lender needs the higher percentage of guarantee because of its legal or regulatory lending limit. Additionally, reduced guarantee fees will only be available on loans of $5 million or less, unless an authorizing statute provides otherwise (e.g., the Alaska Roadless Areas statute).

Previously, the interest rate on the guaranteed portion of the loan could not exceed the unguaranteed portion of the loan. This was to prevent the Agency from paying a higher loss on the guaranteed portion than it otherwise would have if the interest on the guaranteed portion was equal to or less than the unguaranteed portion. This requirement has been relaxed to prevent

lenders from having to set floors and ceilings to remain compliant with this requirement. The proposed rule now allows for the interest rate on the guaranteed portion to be higher than the unguaranteed portion in situations where a fixed rate on the guaranteed portion becomes a higher rate than the variable rate on the unguaranteed portion due to the normal fluctuation in the approved variable interest rate.

Although credit quality standards have not changed, the credit quality section is being modified to be in line with the five C's of credit (capacity, capital, collateral, conditions, character). The Agency's policy on standardized collateral discounting has also been added. The Agency is adding the ability to require guarantees from persons whose ownership in the borrower is held indirectly through other companies.

The Agency is relaxing the requirement for business plans with the application for loans where the use of loan proceeds is exclusively for debt refinancing and fees, but has added a requirement for feasibility studies for all biofuels proposals, whether new or existing. The Agency is also proposing to revise the requirement for 3 years of historical financial statements for parent, subsidiary, and affiliated companies to only require current financial statements. Additionally, the number of attachments that need to be included as part a complete application for loans of $600,000 and less are reduced.

Loan scoring criteria, which is used to fund projects by priority, is being modified to award more points for the following: Leveraging B&I program dollars, the business' loan-to-job ratio, and providing quality jobs. The administrative points section has also been modified to account for community economic development strategies and State strategic plans and to allow for the awarding of points for projects that will fulfill an Agency initiative, such as the biobased product initiative or the Investing in Manufacturing Communities Partnership initiative. The proposed rule now allows for 150 possible priority points.

Loan servicing requirements under the B&I program have been clarified. The annual conference between the lender and the Agency can be held via teleconference. This change is not meant to replace a face-to-face annual lender conference. However, it does give some flexibility when face-to-face lender visits are not practical. The lender may contract loan servicing activities. However, the lender remains responsible for complying with all requirements of the regulations. The contracting out of any loan servicing activities does not relieve the lender of its responsibility to comply with the statutes and regulations governing the program. The proposed rule also clarifies that the Agency will not allow the write-down of debt while leaving the borrower in business and no new promissory notes may be issued to process a transfer and assumption since the Loan Note Guarantee references a specifically dated promissory note(s) with specific amount(s). The lender may use an allonge to the existing promissory note to facilitate the transaction.

Lenders will also be able to utilize balloon payments to restructure a guaranteed loan in default in a workout situation as long as there is a reasonable prospect for success and the remaining life of the collateral supports the workout terms.

Lenders will provide the loan classification of the guaranteed loan at loan closing rather than 90 days after the loan has closed. Additionally, lenders must notify the Agency when a borrower is 30 days past due and cannot cure the delinquency within 30 days. The lender must also provide a monthly default status report, as opposed to bimonthly. This will allow the Agency to be more responsive to delinquencies.

The lender can proceed with liquidation after the loan has been properly accelerated while the Agency has the liquidation plan under review. This will allow the lender to take such action as appropriate to protect the interest of the lender and the Agency while the liquidation plan is under review by the Agency. The appraisal requirement threshold will be increased from $100,000 to $250,000 on all collateral being released, and the requirement for a current appraisal for collateral being liquidated is being increased from $200,000 to $250,000. The $250,000 threshold is consistent with Office of Management and Budget (OMB) guidelines set forth in OMB Circular A–129.

The future recoveries section has been modified. The lender must use reasonable efforts to attempt collection from any party still liable for the guaranteed loan. Any net proceeds from that effort must be split pro rata between the lender and the Agency based on the original amount of the loan guarantee. To the extent any party to the loan has a written agreement with the Agency to repay all or part of any loss claim paid by the Agency, any collection on that agreement will not be split with the lender. This is because the Federal Government has collection remedies available to it that are not available to the lender and that are not intended to benefit private parties.

Several changes have been made in an effort to reduce the cost to the taxpayer in guaranteeing business and industry loans. Reasonable attorney/legal fees that the lender can claim in the liquidation process, as well as a Chapter 7 or Liquidating 11 bankruptcy, will be reduced from full reimbursement to being shared equally between the lender and the Agency. The Agency will not allow default or penalty interest to be charged to the borrower. This could cause the Agency to pay a loss when a solution could have been possible if the interest rate had not been increased. Additionally, the proposed rule clarifies that late payment fees and interest on interest will not be covered by the guarantee. The Agency has added the ability to require personal or corporate guarantees from those owning 20 percent or more of the borrower when stock of the borrower is sold. The ability for the Agency to charge a transfer and assumption fee has been added to the proposed rule. Notification for any such fee will be published annually in the **Federal Register**.

A significant change that is expected to decrease the cost to the taxpayer is that interest accrual is limited (1) to any holder to 90 days from the date of the first demand letter from a secondary market holder for payment and (2) to any lender 90 days from the delinquency effective date. A holder is a person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan. The Agency was finding instances where holders were collecting interest on the guaranteed portion of the loan for a much longer period of time than other holders on the same loan. This was costing the Agency a substantial amount of money in interest paid and complicating the administration of the defaulted loan.

List of Subjects for 7 CFR Parts 4279 and 4287

Loan programs—Business and industry—Rural development assistance, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, and Rural areas.

For the reasons set forth in the preamble, parts 4279 and 4287 of title 7 of the Code of Federal Regulations are proposed to be amended as follows:

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a), and 7 U.S.C. 1989.

■ 2. Revise Subpart A to read as follows:

Subpart A—General

Sec.
4279.1 Introduction.
4279.2 Definitions and abbreviations.
4279.3–4279.14 [Reserved]
4279.15 Exception authority.
4279.16 Appeals.
4279.17–4279.28 [Reserved]
4279.29 Eligible lenders.
4279.30 Lenders' functions and responsibilities.
4279.31–4279.43 [Reserved]
4279.44 Access to Records.
4279.45–4279.58 [Reserved]
4279.59 Environmental requirements.
4279.60 Civil rights impact analysis.
4279.61 Equal Credit Opportunity Act.
4279.62–4279.70 [Reserved]
4279.71 Public bodies and nonprofit corporations.
4279.72 Conditions of guarantee.
4279.73 [Reserved]
4279.74 [Reserved]
4279.75 Sale or assignment of guaranteed loan.
4279.76 [Reserved]
4279.77 Minimum retention.
4279.78 Repurchase from holder.
4279.79–4279.83 [Reserved]
4279.84 Replacement of document.
4279.85–4279.99 [Reserved]
4279.100 OMB control number.

Subpart A—General

§ 4279.1 Introduction.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. This subpart is supplemented by subpart B of this part, which contains loan processing regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(b) The lender is responsible for ascertaining that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms, regulations, and instructions referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *www.rurdev.usda.gov/rbs.* Whenever a form is designated in this subpart, it is initially capitalized and its reference includes predecessor and successor forms, if applicable.

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Administrator. The Administrator of Rural Business-Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture.

Affiliate. An entity that is related to another entity by owning shares or having an interest in the entity, by common ownership, or by any means of control.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National or State Office should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural production. The cultivation, growing or harvesting of crops and the breeding, raising, feeding or housing of livestock for fiber or food for human consumption.

Annual renewal fee. The annual renewal fee is a fee that is paid once a year by the lender and is required to maintain the enforceability of the Loan Note Guarantee.

Appraisal surplus. The difference between the fair market value of an asset and its depreciated book value when the fair market value is higher.

Arm's-length transaction. A transaction between ready, willing, and able disinterested parties that are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other.

Assignment Guarantee Agreement. Form RD 4279–6, ''Assignment Guarantee Agreement,'' is the signed agreement between the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Biogas. Renewable biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, and fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Bond. A form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower. The person that borrows, or seeks to borrow, money from the lender, including any party liable for the loan except for guarantors.

Collateral. The asset(s) pledged by the borrower to secure the loan.

Commercially available. A system that has a proven operating history for at least 1 year specific to the proposed application. Such a system is based on established design and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and the balance of system equipment and spare parts are readily available, and service is readily available to properly maintain and operate the system. An established warranty exists for major parts and labor. If the system is currently commercially available only outside of the U.S., authoritative evidence of the foreign operating history, performance and reliability is required in order to address the proven operating history.

Conditional Commitment. Form RD 4279–3, ''Conditional Commitment,'' is the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency and outlined in the attachment to the Conditional Commitment.

Conflict of interest. A situation in which a person has competing personal, professional, or financial interests that prevents the person from acting impartially.

Cooperative organization. An entity that is legally chartered as a cooperative or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Debt Collection Improvement Act (DCIA). The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq,* requires that any monies that are payable or may become payable from the United States under contracts and other written agreements to any person not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person owes to the United States.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan

agreement, or other related documents evidencing the loan. Default could be a monetary or non-monetary default.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquency. A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.

Energy projects. Commercially available projects that produce or distribute energy or power and/or projects that produce biomass or biogas fuel.

Existing business. A business that has been in operation for at least 1 full year. Mergers or changes in the business name or legal type of entity of a currently operating business are considered to be existing businesses as long as there is not a significant change in operations. Newly-formed entities that are buying existing businesses will be considered an existing business as long as the business being bought remains in operation and there is no significant change in operations.

Existing lender debt. A debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Future recovery. Funds collected by the lender after a final loss claim is processed.

High impact business development investment. A business that scores at least 20 points under § 4279.166(b)(4).

High priority project. A project that scores more than 50 percent of the priority points available under § 4279.166(b)(1) through (5).

Holder. A person, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of the Assignment Guarantee Agreement.

Immediate family. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or cousin.

In-house expenses. Expenses associated with activities that are routinely the responsibility of a lender's internal staff or its agents. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Interest. A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as percentage of the principal amount owed. The term interest does not include default or penalty interest or late payment fees or charges.

Interim financing. A temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The eligible lender approved by the Agency to make, service, and collect the Agency guaranteed loan that is subject to this subpart. Agency approval of the lender will be evidenced by an outstanding Form RD 4279–4, ''Lender's Agreement,'' between the Agency and the lender.

Lender's Agreement. Form RD 4279–4, ''Lender's Agreement,'' or predecessor form, between the Agency and the lender setting forth the lender's loan responsibilities.

Liquidation expenses. Costs directly associated with the liquidation of collateral, including preparing collateral for sale (e.g., repairs and transport) and conducting the sale (e.g., advertising, public notices, auctioneer expenses, and foreclosure fees). Liquidation expenses do not include in-house expenses. Legal/attorney fees are considered liquidation expenses provided that the fees are reasonable, as determined by the Agency, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

Loan agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan classification. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. Form RD 4279–5, ''Loan Note Guarantee,'' or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan packager. A person, other than the applicant borrower or lender, that prepares a loan application package.

Loan service provider. A person, other than the lender of record, that provides loan servicing activities to the lender.

Loan-to-discounted value. The ratio of the dollar amount of a loan to the discounted dollar value of the collateral pledged as security for the loan.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Local government. A county, municipality, town, township, village, or other unit of general government, including tribal governments, below the State level.

Material adverse change. Any change in circumstance associated with a guaranteed loan, including the borrower's financial condition or collateral, that could be reasonably expected to jeopardize loan performance.

Natural resource value-added product. Any naturally occurring resource, including agricultural resources, that is processed to add value or the generation of renewable energy from a natural resource.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing. The failure of a lender to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business. A startup or otherwise new business that has been in operation for less than 1 full year. New businesses include newly-formed entities leasing space or building ground up facilities, even if the owners of the new or startup business own affiliated businesses doing the same kind of business.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on an equal basis.

Participation. Sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead

lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement. The participants and the borrower have no rights or obligations to one another.

Person. An individual or entity.

Poverty. A community or area is considered a poverty area if the county, city, or equivalent (such as parish, borough, municipio or census designated place) where the community or area is located has a population of which 20 percent or more have income below the poverty line.

Pro rata. On a proportional basis.

Promissory note. Evidence of debt with stipulated repayment terms. ''Note'' or ''promissory note'' shall also be construed to include ''Bond'' or other evidence of debt, where appropriate.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances affecting the collateral made for property taxes, rent, hazard and flood insurance premiums, and annual assessments. Legal/attorney fees are not a protective advance.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian tribe on a Federal or State reservation or other Federally-recognized Indian tribe; or an organization controlled by any of the above.

Report of loss. Form RD 449–30, ''Guaranteed Loan Report of Loss,'' used by lenders when reporting a financial loss under an Agency guarantee.

Rural Development. The mission area of USDA that is comprised of the Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service and is under the policy direction and operational oversight of the Under Secretary for Rural Development.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States of the U.S., the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement among the lender, borrower, and Agency whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency's borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Tangible balance sheet equity. Tangible equity divided by tangible assets. Formula: ((Assets – intangible assets) – liabilities)/(Assets – intangible assets) or (Equity – intangible assets)/(Assets – intangible assets)

Transfer and assumption. The conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the loan in return for the assuming borrower's binding promise to pay the outstanding debt.

USDA Lender Interactive Network Connection (LINC). The portal Web site currently at *https://usdalinc.sc.egov.usda.gov/* used by lenders to update loan data in the Agency's Guaranteed Loan System. Current capabilities include loan closing and status reporting.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in title 38 U.S.C. 101(12).

Working capital. Current assets available to support a business's operations and growth. Working capital is calculated as current assets less current liabilities.

(b) *Abbreviations.*

B&I—Business and Industry
CFR—Code of Federal Regulations
DCIA—Debt Collection Improvement Act
FDIC—Federal Deposit Insurance Corporation
FSA—Farm Service Agency
GAAP—Generally Accepted Accounting Principles of the U.S.
GLS—Guaranteed Loan System
LINC—USDA Lender Interactive Network Connection
NAD—National Appeals Division
OMB—Office of Management and Budget
REAP—Rural Energy for America Program
U.S.—United States of America
USDA—United States Department of Agriculture

(c) *Accounting terms.* Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

§ 4279.16 Appeals.

Applicants, borrowers, lenders, and holders have appeal or review rights for Agency decisions made under this subpart, subpart B of this part, or subpart B of part 4287. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the NAD. The borrower, lender, and holder can appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the borrower, the lender and borrower must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the lender may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

An eligible lender must be domiciled in a State as defined in § 4279.2 and must not be debarred or suspended by the Federal government. If the lender is under a cease and desist order, or similar constraint, from a Federal agency, the lender must inform the Agency. The Agency will evaluate the lender's eligibility on a case-by-case basis given the risk of loss posed by the cease and desist order. The Agency will only approve loan guarantees for lenders with adequate capital to fund and cover potential liquidation expenses for guaranteed loans it proposes to make and adequate experience and expertise to make, secure, service, and collect B&I loans. The lender must provide documentation as to its capital and experience in commercial lending. The lender and the Agency will execute a Lender's Agreement for each lender approved to participate in the program. If a valid Lender's Agreement already exists, it is

not necessary to execute a new Lender's Agreement with each loan guarantee; however, a new Lender's Agreement must be executed with any existing lenders making new loans on or after [DATE OF FINAL RULE PUBLICATION]. The Agency may revoke a lender's eligible status at any time for cause, including those examples cited in § 4279.29(c).

(a) *Regulated lenders.* A regulated lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Savings Bank, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the U.S. or a State. Eligible lenders may also include the National Rural Utilities Cooperative Finance Corporation and credit unions provided that they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency.

(b) *Non-regulated lenders.* The Agency may consider an applicant lender that does not meet the criteria of paragraph (a) of this section for eligibility to become a guaranteed lender for a 3-year period provided that the Agency determines that the applicant lender has the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program. When the applicant lender is a multi-tiered entity, it will be considered in its entirety. Insurance companies (formerly included as traditional lenders) and non-regulated lenders (formerly known as other lenders) previously approved as guaranteed lenders prior to [DATE OF FINAL RULE PUBLICATION] must reapply to become an approved non-regulated lender in order to originate new guaranteed loans. However, both insurance companies and non-regulated lenders that have executed a Lender's Agreement must continue to service the guaranteed loans in their portfolios in accordance with that agreement.

(1) Non-regulated lenders must:

(i) Have been making commercial loans for at least 5 years;

(ii) Have a record of successfully making at least 10 commercial loans annually totaling at least $1 million for each of the last 5 years, with lender's delinquent commercial loan portfolio over this period not exceeding (a) 6 percent of all commercial loans made and (b) 3 percent in commercial loan losses (based on the original principal loan amount);

(iii) Have and maintain tangible balance sheet equity of at least 10 percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender;

(iv) Agree to establish and maintain an Agency approved loss reserve equal to 3 percent of each B&I loan closed and agree to increase the loss reserve for anticipated losses as required by the Agency;

(v) Have adequate policies and procedures to ensure that internal credit controls provide adequate loanmaking and servicing guidance; and

(vi) Have undergone a credit examination at its own expense from a recognized independent reviewer acceptable to the Agency. The applicant lender should consult with the Agency prior to receiving an examination to ensure the examiner will be acceptable.

(2) A non-regulated lender that wishes consideration to become a guaranteed lender must submit a request in writing to the Agency. The Agency will notify the prospective lender whether the lender's request for eligibility is approved or rejected. If rejected, the Agency will notify the prospective lender, in writing, of the reasons for the rejection. The lender must include in its written request the following:

(i) An audited financial statement not more than 1 year old that evidences that the lender has the required tangible balance sheet equity and the resources to successfully meet its responsibilities;

(ii) A copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the entity has the legal authority to engage in the proposed loanmaking and servicing activities must be submitted;

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity, including a list of the industries for which it has provided financing; status of its loan portfolio, including a list of loans in the portfolio with each loan's current loan classification code and delinquency and loss rates as outlined in § 4279.29(b)(1)(ii); experience of management and loan officers; sources of funds for the proposed loans; office location and proposed lending area; an estimate of the number and size of guaranteed loan applications the lender will develop; and proposed rates and fees, including loan origination, loan preparation, and servicing fees. Such rates and fees must not be greater than those charged by similarly located regulated commercial lenders in the ordinary course of business;

(iv) A copy of the examination required under paragraph (b)(1)(vi) of this section; and

(v) Documentation as to how the lender will fulfill the requirements of § 4279.30.

(3) Renewal of eligible lender status to continue making B&I loans is not automatic. Eligible lender status will lapse 3 years from the date of Agency approval and execution of the Lender's Agreement unless the lender obtains a renewal. A lender whose eligible status has lapsed must continue to service any outstanding loans guaranteed under this part but may not submit requests for new loan guarantees. Lenders whose eligibility has lapsed may file a subsequent request under this subsection. Lenders requesting renewal must complete and execute a new Lender's Agreement, along with a written update of the eligibility criteria required by this section for approval. Lenders requesting renewal must resubmit the information required by paragraph (b)(2) of this section and must address how the lender is complying with each of the required criteria described in paragraph (b)(1) of this section. The written update of the eligibility criteria must also include any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of eligible lender status. The lender must provide this information to the Agency at least 60 days prior to the expiration of the existing agreement to be assured of a timely renewal.

(c) *Revocation of eligible lender status.* The Agency may revoke a lender's status at any time for cause. Cause for revoking eligible status includes:

(1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;

(3) Making a guaranteed loan with deficiencies that may cause losses not to be covered by the Loan Note Guarantee, such as negligent loan origination;

(4) Conviction of the lender or its officers for criminal acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(5) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency;

(6) Failure to obtain and maintain the required security for any loan guaranteed by the Agency;

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment;

(8) Violation of any term of the Lender's Agreement;

(9) Failure to correct any Agency cited deficiency in loan documents in a timely manner;

(10) Failure to submit reports required by the Agency in a timely manner;

(11) Failure to process Agency guaranteed loans as would a reasonably prudent lender;

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;

(13) Repetitive recommendations for servicing actions or guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;

(14) Negligent loan origination;

(15) Negligent loan servicing;

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan; or

(17) Violation of applicable nondiscrimination law, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the Secretary's Civil Rights Policy Statement, and the Equal Credit Opportunity Act.

(d) *Debarment of lender.* The Agency may debar a lender in addition to the revocation of the lender's status.

§ 4279.30 Lenders' functions and responsibilities.

(a) *General.* (1) Lenders have the primary responsibility for the successful delivery of the guaranteed loan program. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities to originate and service the loan guaranteed under this subpart, subpart B of this part, and subpart B of part 4287. Lenders may contract for services but are ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. Agents and persons are prohibited from acting as both loan packager and loan service provider on the same guaranteed loan. All lenders obtaining or requesting a loan guarantee are responsible for:

(i) Processing applications for guaranteed loans;

(ii) Developing and maintaining adequately documented loan files, which must be maintained for at least 3 years after any final loss has been paid;

(iii) Recommending only loan proposals that are eligible and financially feasible;

(iv) Properly closing the loan and obtaining valid evidence of debt and collateral in accordance with sound lending practices prior to disbursing loan proceeds;

(v) Keeping an inventory accounting of all collateral items and reconciling the inventory of all collateral sold during loan servicing, including liquidation;

(vi) Supervising construction;

(vii) Distributing loan funds;

(viii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary;

(ix) Reporting all conflicts of interest, or appearances thereof, to the Agency;

(x) Following Agency regulations and agreements; and

(xi) Obtaining Agency approvals or concurrence as required.

(2) This subpart, subpart B of this part, and subpart B of part 4287 contain the regulations for this program, including the lenders' responsibilities. If a lender fails to comply with these requirements, the Agency may reduce any loss payment in accordance with the applicable regulations.

(b) *Credit evaluation.* The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by persons other than the originating officer, and there must be good credit documentation procedures. The Agency will only guarantee loans that are sound and have reasonable assurance of repayment. The Agency will not guarantee marginal or substandard loans.

(c) *Environmental responsibilities.* Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(1) Lenders must assist the borrower in completing Form RD 1940–20, ''Request for Environmental Information,'' (when required by 7 CFR part 1940, subpart G) or successor forms; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(2) Lenders must ensure the borrower has:

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1940, subpart G, or successor regulations, including the provision of all required Federal, State, and local permits;

(ii) Complied with any mitigation measures required by the Agency; and

(iii) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(3) Lenders must alert the Agency to any environmental issues related to a proposed project or items that may require extensive environmental review.

§§ 4279.31—4279.43 [Reserved]

§ 4279.44 Access to records.

The lender must permit representatives of the Agency (or other agencies of the U.S.) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this subpart, subpart B of this part, and subpart B of part 4287. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders in accordance with subpart B of part 4287.

§§ 4279.45—4279.58 [Reserved]

§ 4279.59 Environmental requirements.

The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 (under 40 CFR part 1500) and related compliance actions (such as Section 106 of the National Historic Preservation Act (under 36 CFR part 800) and Section 7 of the Endangered Species Act) are met and will complete the appropriate level of environmental review in accordance with subpart G of part 1940 or successor regulations.

Because development of the loan application occurs simultaneously with development of the environmental review, applicants, including lenders and borrowers, must not take any actions or incur any obligations that would either limit the range of alternatives to be considered in the environmental review or that would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to issuance of the Conditional Commitment to the lender.

§ 4279.60 Civil Rights Impact Analysis.

Issuance of a Conditional Commitment is conditioned on the Agency being able to satisfactorily complete a Civil Rights Impact Analysis.

§ 4279.61 Equal Credit Opportunity Act.

In accordance with Title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender must comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202) prior to loan closing.

§§ 4279.62—4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB must provide an audit in accordance with applicable regulations. Any audit meeting OMB's requirements will be adequate to meet any audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. The provisions of this part and part 4287 will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, these regulations will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the U.S. and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest or default or penalty interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, use of loan proceeds for unauthorized purposes, negligent loan origination, negligent servicing, or failure to obtain or maintain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds were used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency may for cause terminate or reduce the Loan Note Guarantee at any time. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan it owns and on interest due on such portion less any servicing fee. For those loans closed on or after [DATE OF FINAL RULE PUBLICATION], the guarantee will not cover note interest to any holder after 90 days from the date of the first repurchase demand to the lender made by a holder. Upon receipt of the first demand letter from a holder, the Agency will notify any remaining holders known by the Agency in writing that interest will discontinue after 90 days from the date of the first holder's demand.

(2) To the lender, subject to the provisions of this part and subpart B of part 4287, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder will succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The full, legal interest in the note must remain with the lender, and the lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates in or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder on the lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and must promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§ 4279.73 [Reserved]

§ 4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender must fully disburse and properly close a loan prior to sale of the note(s) on the secondary market. The lender cannot sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or its parent, subsidiary, or affiliate or to officers, directors, stockholders, other owners, or members of their immediate families. The lender cannot share any premium received from the sale of a guaranteed loan in the secondary market with a loan packager or other loan service provider. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Lenders may use either the single note or multi-note system as outlined in paragraphs (a) and (b) of this section.

(a) *Single note system.* The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. When the loan is evidenced by one note, the lender may not at a later date cause any additional notes to be issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using Form RD 4279–6, ''Assignment Guarantee Agreement.'' The lender must complete and execute the Assignment Guarantee Agreement and return it to the Agency for

execution prior to holder execution. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, sold under the Assignment Guarantee Agreement. Holders may only reassign the guaranteed portion in the complete Block they have received and cannot subdivide or further split the guaranteed portion of a loan or retain an interest strip. Upon notification and completion of the assignment through the use of Form RD 4279–6, the assignee shall succeed to all rights and obligations of the holder there under. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Bond Market Association, together with the transfer of the original Assignment Guarantee Agreement. The Agency will neither execute a new Assignment Guarantee Agreement to effect a subsequent reassignment nor reissue a duplicate Assignment Guarantee Agreement unless the original was lost, stolen, destroyed, mutilated, or defaced in accordance with § 4279.84. The Assignment Guarantee Agreement clearly states the percentage and corresponding amount of the guaranteed portion it represents and the lender's servicing fee. A servicing fee may be charged by the lender to a holder and is calculated as a percentage per annum of the unpaid balance of the guaranteed portion of the loan assigned by the Assignment Guarantee Agreement. The Agency is not and will not be a party to any contract between the lender and another party where the lender sells its servicing fee in an arm's length marketplace transaction. The Agency will not acknowledge, approve, or have any liability to any of the parties of this contract.

(b) *Multinote system.* Under this option, the lender may provide one note for the unguaranteed portion of the loan and no more than ten notes for the guaranteed portion. All promissory notes must reflect the same payment terms. When the lender selects this option, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to each note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

§ 4279.76 [Reserved]

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the original total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may enter into no agreement that reduces its exposure below the minimum 5 percent it is required to retain in its portfolio. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. The lender must retain title to the notes, retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or when the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lenders receipt thereof. The repurchase by the lender must be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. For loans closed on or after [DATE OF FINAL RULE PUBLICATION], the guarantee will not cover note interest to any holder accruing after 90 days from the date of the first demand letter of a holder to the lender requesting the repurchase. The lender must accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve any loan problems, and prevent default, where and when reasonable. The benefit to the lender is that it may resell the guaranteed portion of the loan in order to continue collection of its servicing fee if the default is cured. The lender will notify the holder and the Agency of its decision.

(b) *Agency repurchase.* (1) The lender's servicing fee will stop on the date that interest was last paid by the borrower when the Agency purchases the guaranteed portion of the loan from a holder. The lender cannot charge such servicing fee to the Agency and must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(2) If the Agency repurchases 100 percent of the guaranteed portion of the loan, the Agency will not continue collection of the annual renewal fee from the lender.

(3) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. For loans closed on or after [DATE OF FINAL RULE PUBLICATION], the guarantee will not cover note interest to any holder accruing after 90 days from the date of the first demand letter of a holder to the lender requesting the repurchase. Accrued interest paid to the holder will be calculated from the date interest was last paid on the loan with a cutoff date being not more than 90 days from the date any holder makes demand. If there is more than one holder, all subsequent holders will be paid using the same date as the first holder (first holder's date of demand to the lender). Once the holder makes demand upon the Agency, the request cannot be rescinded.

(4) When the guaranteed loan has been delinquent more than 60 days and no holder comes forward, the Agency may issue a letter to the holder(s) establishing the cutoff date for interest accrual. Accrued interest to be paid the holder will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the date of the most recent delinquency effective date as reported by the lender.

(5) When the lender has accelerated the account and the lender holds all or a portion of the guaranteed loan, an estimated loss claim (loan in the liquidation process) must be filed by the lender with the Agency within 60 days. Accrued interest paid to the lender will be calculated from the date interest was last paid on the loan with a cutoff date being no more than 90 days from the most recent delinquency effective date as reported by the lender.

(6) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence must consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. When the single-note system is utilized and the initial holder has sold its interest, the current holder must present the original Assignment Guarantee Agreement and an original of each Agency approved

reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(7) Upon request by the Agency, the lender must promptly furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(8) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the program.

(c) *Repurchase for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and promissory note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond must be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million verified by the lender in writing in a letter of certification of balance due. The surety must be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the Agency. The bond must be in an amount not less than the unpaid principal and interest. The bond must hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. The holder is responsible for bearing the costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

§§ 4279.85–4279.99 [Reserved]

§ 4279.100 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number _____. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 12 hours per response, with an average of 6 hours per response, including time for reviewing the collection of information. The burden may increase beyond the estimate reported here, if RBS determines additional data will need to be collected to facilitate evaluation, which can enhance the operation and performance of the program. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, DC 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

■ 3. Revise Subpart B to read as follows:

Subpart B—Business and Industry Loans

Sec.

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4279.102 Definitions and abbreviations.
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4279.188–4279.199 [Reserved]
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PART 4279—GUARANTEED LOANMAKING

Subpart B—Business and Industry Loans

§ 4279.101 Introduction.

(a) *Content.* This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(b) *Purpose.* The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans that will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) *Documents.* Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms, regulations, and Instructions referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *www.rurdev.usda.gov/rbs.* Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

§ 4279.102 Definitions and abbreviations.

The definitions and abbreviations in § 4279.2 of this chapter are applicable to this subpart.

§ 4279.103 Exception Authority.

Section 4279.15 of this chapter applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 of this chapter applies to this subpart.

§§ 4279.105–4279.107 [Reserved]

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will provide employment and improve the economic or environmental climate.

(b) *Citizenship.* Individual borrowers must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. For purposes of this subpart, citizens and residents of the Republic of Palau, the Federated States of Micronesia, American Samoa, and the Republic of the Marshall Islands are considered U.S. citizens. Corporations or other non public-body type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence. Individuals that reside in the U.S. after being legally admitted for permanent residence must provide a permanent green card as evidence of eligibility.

(c) *Rural area.* The business financed with a guaranteed loan under this subpart must be located in a rural area, except for cooperative organizations financed in accordance with § 4279.113(j)(2) and local foods projects financed in accordance with § 4279.113(x)(2). Loans to borrowers with facilities located in both rural and non-rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area, except for those cooperative organizations financed in accordance with § 4279.113(j)(2) and those local foods projects financed in accordance with § 4279.113(x)(2).

(1) Rural areas are any area of a State other than a city or town that has a population of greater than 50,000 inhabitants and any urbanized area contiguous and adjacent to such a city or town. In making this determination, the Agency will use the latest decennial census of the U.S.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self government, and legal powers set forth in a charter granted by the State.

(3) For the Commonwealth of Puerto Rico, the island is considered rural, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. However, CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be eligible if they are determined to be ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural, except for the Honolulu CDP within the County of Honolulu.

(5) For the Republic of Palau, the Federated States of Micronesia, American Samoa, and the Republic of the Marshall Islands, the Agency will determine what constitutes a rural area based on available population data.

(6) Notwithstanding any other provision of this definition, in determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(7)(i) The Under Secretary, whose authority may not be redelegated, may determine that an area is ''rural in character.'' Any determination made by the Under Secretary under this provision will be to areas that are

determined to be ''rural in character'' and are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such city or town; or

(B) An area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary for a ''rural in character'' designation by submitting a petition to both the appropriate Rural Development State Director and the Administrator on behalf of the Under Secretary. The petition must document how the area meets the requirements of paragraph (c)(7) of this section and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density; demographics; topography; and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor and Rural Development State Director and request comments within 10 business days, unless those comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of notice in a local newspaper and notice on the applicable Rural Development State Office Web site. The Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. The public notice will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary for reconsideration, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

(d) *Other credit.* All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

(e) *Prohibition under Agency programs.* No loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric or other services from any particular utility, supplier, or cooperative.

§§ 4279.109–4279.112 [Reserved]

§ 4279.113 Eligible uses of funds.

Eligible uses of funds must be consistent with § 4279.101(b) of this subpart and include, but are not limited, to the following:

(a) Purchase and development of land, buildings, and associated infrastructure, including expansion or modernization.

(b) Business acquisitions provided that jobs will be created or saved.

(c) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan.

(d) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations. Financing for mixed-use properties involving both commercial business and residential space is authorized provided that not less than 50 percent of the building's projected revenue will be generated from business use.

(e) Purchase of machinery and equipment.

(f) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(g) Debt refinancing when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Debt being refinanced must be debt of the borrower reflected on its balance sheet, and the lender's analysis must document that the debt being refinanced was for an eligible loan purpose under this subpart. Except as provided for in paragraph (k)(3) of this section, existing lender debt may be included provided that, at the time of application, the loan being refinanced has been closed and current for at least the past 12 months (current status cannot be achieved by the lender forgiving the borrower's debt or servicing actions that impact the borrower's repayment schedule), and the lender is providing better rates or terms. Unless the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed, the existing lender debt refinancing must be less than 50 percent of the overall loan.

(h) Takeout of interim financing. Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans.

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers and is the minimum amount required.

(j) Loans to cooperative organizations.

(1) Guaranteed loans to eligible cooperative organizations may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year.

(2) Guaranteed loans to eligible cooperative organizations may also be made in non-rural areas provided:

(i) The primary purpose of the loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(ii) The applicant satisfactorily demonstrates that the primary benefit of the loan will be to provide employment for rural residents;

(iii) The principal amount of the loan does not exceed $25 million; and

(iv) The total amount of loans guaranteed under this paragraph does not exceed 10 percent of the funds available for the fiscal year.

(3) An eligible cooperative organization may refinance an existing B&I loan provided that the existing loan is current and performing; the existing loan is not and has not been in monetary default (more than 30 days late) or the collateral of which has not been converted; and there is adequate security or full collateral for the new guaranteed loan.

(k) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative in accordance with § 4279.115(a).

(l) The purchase of preferred stock or similar equity issued by a cooperative organization or a fund that invests

primarily in cooperative organizations in accordance with § 4279.115(b).

(m) Taxable corporate bonds when the bonds are fully amortized and comply with all provisions of § 4279.126, and the bond holder (lender) retains 5 percent of the bond in accordance with § 4279.77. The bonds must be fully secured with collateral in accordance with § 4279.131(b). The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower.

(1) The bond issuer (borrower) must not issue more than 11 bonds with no more than 10 of those bonds being guaranteed under this program. The bond issuer must obtain the services and opinion of an experienced bond counsel who must present a legal opinion stating that the bonds are legal, valid and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(2) The bond holder must purchase all of the bonds and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to what is required to be in a loan agreement in accordance with § 4279.161(b)(11) and must not be in conflict with subparts A or B of part 4279 or subpart B of part 4287. The bond holder is responsible for all servicing of the loan (bond), although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(n) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(o) Fees and charges outlined in § 4279.120(a), (c) and (d).

(p) Feasibility studies.

(q) Agricultural production, when not eligible for Farm Service Agency (FSA) farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products. Any agricultural production considered for guaranteed loan financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Except for cooperative stock purchase loans in accordance with § 4279.115(a), independent agricultural production operations are not eligible, even if not eligible for FSA farmer programs assistance.

(1) The agricultural-production portion of any loan must not exceed 50 percent of the total loan or $5 million, whichever is less.

(2) This paragraph does not preclude financing the following types of businesses:

(i) Commercial nurseries engaged in the production of ornamental plants; trees and other nursery products, such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage; and forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(ii) The growing of mushrooms or hydroponics.

(iii) The boarding and/or training of animals.

(iv) Commercial fishing.

(v) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(r) Educational or training facilities.

(s) Industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(t) Community facility projects that are not listed as an ineligible loan purpose in § 4279.117.

(u) Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes in § 4279.117.

(v) Pollution control and abatement.

(w) Energy projects that are not eligible under 7 CFR 4280, subpart B, Rural Energy for America Program, unless sufficient funding is not available under subpart B of part 4280, and when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application. Eligible energy projects must be commercially available. Eligible energy projects also include those that reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems and other renewable energy systems (including wind energy systems and anaerobic digesters for the purpose of energy generation), including the modification of existing systems in rural areas.

(1) Projects that produce biomass fuel or biogas as an output must utilize commercially available technologies and have completed two operating cycles at design performance levels prior to issuance of a Loan Note Guarantee.

(2) Projects that produce steam or electricity as an output must have met acceptance test performance criteria acceptable to the Agency and be successfully interconnected with the purchaser of the output. An executed power purchase agreement acceptable to the Agency will be required prior to issuance of a Loan Note Guarantee.

(3) Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case-by-case basis.

(x) Projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income, subject to each of the following:

(1) The term ''locally or regionally produced agricultural food product'' means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(2) Projects in non-rural areas may be included when the project provides an economic benefit to the surrounding rural communities.

(3) A significant amount of the food product sold by the borrower is locally or regionally produced, and a significant amount of the locally or regionally produced food product is sold locally or regionally.

(4) The borrower must include in an appropriate agreement, with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products, a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

(5) The Agency will give funding priority to projects that provide a benefit to underserved communities in accordance with § 4279.166(b)(4)(i)(G). An underserved community is a community (including an urban or rural

community and an Indian tribal community) that has limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer to consumer direct markets and that has either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency approved census.

§ 4279.114 [Reserved]

§ 4279.115 Cooperative stock/cooperative equity.

(a) *Cooperative stock purchase program.* The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative may use the proceeds from the stock sale to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative. Loan proceeds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity.

(1) The maximum loan amount is the threshold established in § 4279.161(c), and all applications will be processed in accordance with § 4279.161(c).

(2) The maximum term is 7 years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default.

(4) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative prior to making its first stock purchase loan.

(5) The borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(6) A feasibility study of the cooperative is required for startup cooperatives and may be required by the Agency for existing cooperatives when the cooperative's operations will be significantly affected by the proceeds that were generated from the stock sale.

(7) The Agency will conduct an appropriate environmental assessment on the processing facility and will not process individual applications for the purchase of stock until the environmental assessment on the cooperative processing facility is completed. Typically, an individual loan for the purchase of cooperative stock is considered a categorical exclusion.

(b) *Cooperative equity security guarantees.* The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative organization or for a fund that invests primarily in cooperative organizations. In either case, the guarantee must significantly benefit one or more entities eligible for assistance under the B&I program.

(1) ''Similar equity'' is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(2) A fund that invests ''primarily'' in cooperative organizations is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(3) The principal amount of the loan will not exceed $10 million.

(4) The maximum term is 7 years or no longer than the specified holding period for redemption as stated by the stock offering, whichever is less.

(5) All borrowers purchasing preferred stock or similar equity must provide a prospectus on the preferred stock being offered and financial information about the issuer of the preferred stock to both the lender and the Agency.

(6) Issuer(s) of preferred stock must be a cooperative organization or a fund and must be able to issue preferred stock to the public in accordance with the securities' regulations as set forth by the Securities and Exchange Commission and any other applicable regulatory body, if required.

(7) A fund must use a loan guaranteed under this subpart to purchase preferred stock that is issued by cooperatives.

(8) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. For the purpose of recovering losses from loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from re-investment of dividends.

(9) Shares of preferred stock that are purchased with guaranteed loan proceeds cannot be converted to common or voting stock.

(10) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a borrower defaults on a loan financed under the guaranteed loan program, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(11) Guaranteed loans for the purchase of preferred stock must be pre-paid in the event a cooperative or fund that issued the stock has either exercised an early redemption or subsequently enters into bankruptcy.

§ 4279.116 New Markets Tax Credit program.

This section identifies the provisions specific to guaranteed loans involving projects that include new markets tax credits available under the New Markets Tax Credit (NMTC) program. Such applicants and applications must comply with the provisions in subparts A and B of this part, except as modified in this section.

(a) *NMTC eligible lenders.* To be an eligible lender for a loan guarantee that involves NMTC, the organization must meet the applicable eligibility criteria in § 4279.29 as otherwise modified by paragraphs (a)(1) and (2) of this section.

(1) Sub-entities under the control of a non-regulated lender approved as a lender for this program do not need to separately meet the requirements of § 4279.29(b). An eligible non-regulated lender may modify its list of eligible sub-entities under its control at any time by notifying the Agency in writing.

(2) In order to take advantage of the requirement exemption in paragraph (a)(1) of this section, the non-regulated lender must include in its application to be a lender each sub-entity under its control and must clearly define the multiple-entity organizational and control structure. In addition, the lender must include each such sub-entity in the audited financial statements, commercial loan portfolio, and commercial loan performance statistics.

(b) *NMTC eligible purposes.* The provisions of § 4279.117(r) notwithstanding, a lender that is a Department of Treasury certified Community Development Entity (CDE) or subsidiary of a CDE (sub-CDE) may

have an ownership interest in the borrower provided that each of the conditions specified in paragraphs (b)(1) through (4) of this section is met.

(1) The lender does not have an ownership interest in the borrower prior to the guaranteed loan application.

(2) The lender does not take a controlling interest in the borrower.

(3) The lender cannot provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(4) In its guaranteed loan application, the lender provides an Agency approved exit strategy when the NMTCs expire after the seventh year. The CDE's (or sub-CDE's) exit strategy must include a general plan to address the lender's equity in the project, and, if the lender will divest their equity interest, how this will be accomplished and the impact on the borrower.

(c) *Conflict of interest.* Notwithstanding § 4279.117(q), a CDE's (or sub-CDE's) ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for or appearance of a conflict interest by requiring appropriate loan covenants regarding limitations on dividends and distributions of earnings be established as well as other covenants in accordance with § 4279.161(b)(11). The Agency will also ensure that the lender limits waivers of loan covenants and future modifications of loan documents.

(d) *Eligible borrowers.* The provisions of § 4279.117(t) notwithstanding, a sub-CDE may be an eligible borrower as specified in paragraph (d)(1) of this section. Paragraphs (d)(2) through (13) of this section identify modifications to subpart B of this part that apply when the eligible borrower is a sub-CDE.

(1) To be an eligible borrower for a NMTC loan, each of the following conditions must be met:

(i) The sub-CDE must be established for a single specific NMTC investment;

(ii) The lender is not an affiliate of the sub-CDE;

(iii) One hundred percent of the guaranteed loan funds are or will be loaned by the sub-CDE to the Qualified Active Low-Income Community Business (QALICB), as defined by applicable regulations of the Internal Revenue Service and are or will be used by the QALICB in accordance with §§ 4279.113 and 4279.117. All of the B&I guaranteed loan funds must be ''passed through'' the sub-CDE to the QALICB. The QALICB's project must be the ultimate use of the B&I guaranteed loan funds; and

(iv) The QALICB meets the requirements of § 4279.108.

(2) The provisions of § 4279.119 apply except that the loan guarantee limits apply to the QALICB and not to the sub-CDE, who would otherwise be understood to be the ''borrower.''

(3) Section 4279.126 applies to both the borrower (sub-CDE) and the QALICB. The terms and payment schedule of the lender's loan to the sub-CDE must be at least equal to the terms and payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments may be used for a NMTC loan. The lender may require additional principle repayment by a co-borrower such as an owner or principle of the QALICB. The lender or sub-CDE may require a debt repayment reserve fund or sinking fund; however, such fund is not in lieu of a principal repayment schedule in accordance with § 4279.126 as amended by this paragraph.

(4) Except for § 4279.131(b), section 4279.131 applies to both the lender's loan to the sub-CDE and the sub-CDE's loan to the QALICB. Section 4279.131(b) applies only to the sub-CDE's loan to the QALICB.

(5) The personal and corporate guarantee provisions of § 4279.132 and the insurance provisions of § 4279.136 apply only to the QALICB and the sub-CDE's loan to the QALICB.

(6) Section 4279.137 applies to both the borrower (sub-CDE) and the QALICB.

(7) Sections 4279.144 and 4279.150 apply to both the QALICB and the sub-CDE's loan to the QALICB.

(8) Section 4279.161 applies to both the borrower (sub-CDE) and the QALICB. As part of the application completed by the lender in accordance with § 4279.161, the lender application documentation the lender submits to the Agency must include comparable information for the loan (using the B&I guaranteed loan funds) between the sub-CDE and QALICB. The requirements of § 4279.161 apply to the loan application, application analysis and underwriting, and loan documents between the sub-CDE and QALICB. The lender must include these materials in its guaranteed loan application to the Agency.

(9) The environmental requirements specified in § 4279.165(b) apply to both the loan between the sub-CDE and QALICB and the QALICB's project.

(10) When assigning the priority score to a NMTC loan application under § 4279.166, the Agency will score the project based on the sub-CDE's loan to the QALICB, the QALICB, and the QALICB's project as the ultimate use of B&I guaranteed loan funds.

(11) When complying with the planning and performing development provisions in § 4279.167, the lender is responsible for ensuring that both the sub-CDE's loan to the QALICB and the QALICB's project comply with the provisions in § 4279.167.

(12) Section 4279.180 applies to both the sub-CDE (borrower) and the QALICB.

(13) Section 4279.181 applies to both the sub-CDE (borrower) and the QALICB.

(e) *Subordinated debt as equity.* For purposes of calculating tangible balance sheet equity, the CDE's or sub-CDE's loan that is subordinated to the guaranteed loan will be considered equity when calculating tangible balance sheet equity. The QALICB's financial statements must be prepared by an accountant in accordance with GAAP.

§ 4279.117 Ineligible purposes and entity types.

(a) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower. Distribution or payment to a member of the immediate family of an owner, partner, or stockholder will not be permitted, except for a change in ownership of the business where the selling immediate family member does not retain an ownership interest and the Agency determines the price paid to be reasonable. In situations where there is common ownership or an otherwise closely-related company is being paid to do construction or installation work for a borrower, only documented costs associated with construction or installation can be paid with loan proceeds. This paragraph does not apply to transfers of ownership for Employee Stock Ownership Plans or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative.

(b) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business

operations, unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area or its original location or in any other area where it conducts such operations.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, which is calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(d) The financing of timeshares, residential or resort trailer parks and campgrounds, housing, housing development sites, apartments, duplexes, or other residential housing, except as authorized in § 4279.113(d).

(e) Owner-occupied housing—bed and breakfasts, hotels and motels, storage facilities, etc.—are only allowed when the pro rata value of the owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(f) Guaranteeing lease payments or any lines of credit.

(g) Guaranteeing loans made by other Federal agencies.

(h) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations shall neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor shall an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(i) Guarantees supporting inherently religious activities such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted.

(j) Businesses that derive more than 10 percent of annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds.

(k) Businesses deriving income from activities of a prurient sexual nature or illegal activities.

(l) Racetracks or facilities for the conduct of races by animals, professional or amateur drivers, jockeys, etc.

(m) Golf courses and golf course infrastructure, including par 3 and executive golf courses.

(n) Cemeteries.

(o) Research and development projects and projects that involve technology that is not commercially available.

(p) Debt service reserves.

(q) Any project that the Agency determines creates a conflict of interest or an appearance thereof between any party related to the project.

(r) Guarantees where the lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower or where the borrower or any of its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(s) Notwithstanding cooperative stock purchase loans and cooperative equity security guarantees in accordance with § 4279.115, guarantees supporting investment or arbitrage or speculative real estate investment.

(t) Lending institutions, investment institutions, or insurance companies.

(u) Charitable institutions or fraternal organizations.

(v) Any business located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 et seq.

(w) Any business located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

§ 4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of B&I loans to one borrower (including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing B&I guaranteed loans, and the new loan request) must not exceed $10 million, except as outlined in paragraphs (a)(1) and (2) of this section.

(1) The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit for loans of $25 million or less under the following circumstances:

(i) The project to be financed is a high-priority project as defined in § 4279.2 of this chapter. Priority points will be awarded in accordance with the criteria contained in § 4279.166 of this subpart;

(ii) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guaranteed loan is not approved; and

(iii) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million.

(2) The Secretary, whose authority may not be redelegated, may approve guaranteed loans in excess of $25 million, at the Secretary's discretion, for rural cooperative organizations that process value-added agricultural commodities in accordance with § 4279.113(j)(1) of this subpart.

(b) *Percentage of guarantee.* The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of $5 million or less, 70 percent for loans between $5 and $10 million, and 60 percent for loans exceeding $10 million. For subsequent guaranteed loans, the maximum percentage of guarantee will be based on the total amount of outstanding principal and interest of any existing B&I guaranteed loans and the new loan request. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of $5 million or less if the conditions of either paragraph (b)(1) or (b)(2) are met. Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with an increased percentage of guarantee. The Agency will publish a notice announcing this limit in the **Federal Register**.

(1) The project to be financed is a high-priority project as defined in § 4279.2 of this chapter. Priority points will be awarded in accordance with the criteria contained in § 4279.166 of this subpart; or

(2) The lender documents, to the satisfaction of the Agency, that the loan will not be made and the project will not be completed due to the bank's legal or regulatory lending limit if the higher percentage of guarantee is not approved.

§ 4279.120 Fees and charges.

There are two types of non-refundable fees; the guarantee fee and the annual renewal fee. These fees are to be paid by the lender but may be passed on to the borrower.

(a) *Guarantee fee.* The guarantee fee is paid at the time the Loan Note Guarantee is issued and may be included as an eligible use of guaranteed loan proceeds. The amount of the guarantee fee is determined by multiplying the total loan amount by the guarantee fee rate by the percent of guarantee. The rate of the guarantee fee is established by the Agency in an annual notice published in the **Federal Register**. Subject to annual limits set by the Agency in the published notice, the Agency may charge a reduced guarantee fee if requested by the lender for loans of $5 million or less when the borrower's business:

(1) Supports value-added agriculture and results in farmers benefiting financially,

(2) Promotes access to healthy foods, or

(3) Is a high impact business development investment as defined in § 4279.2 of this chapter and applied in accordance with § 4279.166(b)(4), and is located in a rural community that:

(i) Is experiencing long-term population decline;

(ii) Has remained in poverty for the last 30 years;

(iii) Is experiencing trauma as a result of natural disaster or fundamental structural changes in its economic base;

(iv) Is located in a city or county with an unemployment rate 125 percent of the statewide rate or greater; or

(v) Is located within the boundaries of a Federally recognized Indian Tribe's reservation or within tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(b) *Annual renewal fee.* The annual renewal fee is paid by the lender to the Agency once a year. Payment of the annual renewal fee is required in order to maintain the enforceability of the guarantee as to the lender.

(1) The Agency will establish the rate of the annual renewal fee in an annual notice published in the **Federal Register**. The amount of the annual renewal fee is determined by multiplying the outstanding principal loan balance as of December 31 of each year by the annual renewal fee rate by the percent of guarantee. The rate that is in effect at the time the loan is obligated remains in effect for the life of the guarantee on the loan.

(2) Annual renewal fees are due on January 31. Payments not received by April 1 are considered delinquent and, at the Agency's discretion, may result in the Agency terminating the guarantee to the lender. The Agency will provide the lender 30 calendar days notice that the annual renewal fee is delinquent before terminating the guarantee. Holders' rights will continue in effect as specified in Form RD 4279–5, ''Loan Note Guarantee,'' and Form RD 4279–6, ''Assignment Guarantee Agreement,'' unless the holder took possession of an interest in the Loan Note Guarantee knowing the annual renewal fee had not been paid. Until the Loan Note Guarantee is terminated by the Agency, any delinquent annual renewal fees will bear interest at the note rate, and any delinquent annual renewal fees, including any interest due thereon, will be deducted from any loss payment due the lender. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual renewal fee payment is due January 31 of the second year following the date the Loan Note Guarantee was issued.

(3) Lenders are prohibited from selling guaranteed loans on the secondary market if there are unpaid annual renewal fees.

(c) *Routine lender fees.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The lender must document such routine fees on Form RD 4279–1, ''Application for Loan Guarantee.'' The lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are reasonable and customary; however, the Loan Note Guarantee will not cover either prepayment penalties or late payment fees.

(d) *Professional services.* Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers. The borrower may pay fees for professional services needed for planning and developing a project. Such fees are an eligible use of loan proceeds provided that the Agency agrees that the amounts are reasonable and customary. The lender must document these fees on Form RD 4279–1.

§§ 4279.121–4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rate swaps must not be used in conjunction with guaranteed loans made under this subpart. Interest rates will not be more than those rates customarily charged borrowers for loans without guarantees and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower.

(a) A variable interest rate must be a rate that is tied to a published base rate agreed to by the lender and the Agency. The variable interest rate must be specified in the promissory note and may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly. The lender must incorporate, within the variable rate promissory note at loan closing, the provision for adjustment of payment installments. The lender must properly amortize the outstanding principal balance within the prescribed loan maturity in order to eliminate the possibility of a balloon payment at the end of the loan.

(b) It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan provided that the rate of the guaranteed portion does not exceed the rate on the unguaranteed portion, except for situations where a fixed rate on the guaranteed portion becomes a higher rate than the variable rate on the unguaranteed portion due to the normal fluctuations in the approved variable interest rate.

(c) Any change in the base rate or fixed interest rate between issuance of Form RD 4279–3, ''Conditional Commitment,'' and Form RD 4279–5 must be approved in writing by the Agency. Approval of such change must be shown as an amendment to the attachment to Form 4279–3 and must be reflected on Form RD 1980–19, ''Guaranteed Loan Closing Report.''

(d) The lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees or charges be paid under the Loan Note Guarantee.

§ 4279.126 Loan terms.

(a) The length of the loan term must be the same for both the guaranteed and unguaranteed portions of the loan. The maximum repayment for loans for real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a debt refinancing loan may be based on the collateral the lender will take to secure the loan.

(b) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed and those used as collateral, and the borrower's ability to repay the loan.

(c) Only loans that require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) The first installment of principal and interest will, if possible, be scheduled for payment after the facility is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the promissory note and be paid at least annually thereafter. In cases where there is an interest-only period, interest will be paid at least annually from the date of the note.

(e) There must be no ''due-on-demand'' clauses without cause. Regardless of any ''due-on-demand'' with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the loan if the sole basis for acceleration is a nonmonetary default.

§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

The Agency will only guarantee loans that are sound and that have a reasonable assurance of repayment. The lender is responsible for conducting a financial analysis that involves the systematic examination and interpretation of information to assess a company's past performance, present condition, and future viability. The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a comprehensive, written credit analysis including capacity (sufficient cash flow to service the debt), collateral (assets to secure the loan), conditions (borrower, economy, and industry), capital (equity/net worth), and character (integrity of management), as further described in paragraphs (a) through (e) of this section. The lender's analysis is the central underwriting document and must be sufficiently detailed to describe the proposed loan and business situation and document that the proposed loan is sound. The lender's analysis must include a written discussion of repayment ability with a cash-flow analysis, history of debt repayment, borrower's management, necessity of any debt refinancing, and credit reports of the borrower, principals, and any parent, affiliate or subsidiary. The lender's analysis must also include spreadsheets and discussion of the 3 years of historical balance sheets and income statements (for existing businesses) and 2 years of projected balance sheets, income statements and cash flow statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Risk Management Association). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales.

(a) *Capacity/Cash Flow.* The lender must make all efforts to ensure the borrower has adequate working capital or operating capital and to structure or restructure debt so that the borrower has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* The lender must ensure that the collateral for the loan has a documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b)(2) of this section, the discounted collateral value must be at least equal to the loan amount.

(1) The lender must discount collateral consistent with the sound loan-to-discounted value policy outlined in paragraphs (b)(1)(i) through (iv) of this section. The type, quality, and location of collateral are relevant factors used to assess collateral adequacy and appropriate levels of discounting. Other factors to be considered in the discounted value of collateral must include the marketability and alternative uses of the collateral. That is, specialized buildings or equipment will be discounted greater than multi-purpose facilities or equipment. When using discounts other than those outlined below, the lender must document why such discounts are appropriate.

(i) A maximum of 80 percent of current fair market value will be given to real estate. Special purpose real estate must be assigned less value.

(ii) A maximum of 70 percent of cost or current fair market value will be given to machinery, equipment, and furniture and fixtures and will be based on its marketability, mobility, useful life, specialization, and alternative uses, if any.

(iii) A maximum of 60 percent of book value will be assigned to acceptable inventory and accounts receivable; however, all accounts over 90 days past due, contra accounts, affiliated accounts, and other accounts deemed not to be acceptable collateral, as determined by the Agency, will be omitted. Calculations to determine the percentage to be applied in the analysis are to be based on the realizable value of the accounts receivable taken from a current aging of accounts receivable from the borrower's most recent financial statement. At a minimum, reviewed annual financial statements will be required when there is a predominant reliance on inventory and/or receivable collateral that exceeds $250,000. Except for working capital loans, term debt must not be dependent upon accounts receivable and inventory to meet collateral requirements.

(iv) No value will be assigned to unsecured personal, partnership, or corporate guarantees.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value discounts may be adjusted accordingly with satisfactory documentation. A loan primarily based on cash flow must be supported by a successful and documented financial history. Under no circumstances must the loan-to-value of the collateral (loan-to-fair market value) ever be equal to or greater than 100 percent.

(3) A parity or junior lien position may be considered provided the loan-to-discounted value is adequate to secure the guaranteed loan in accordance with this section.

(4) The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion.

(c) *Conditions.* The lender must consider the current status of the borrower, overall economy, and industry for which credit is being extended. The regulatory environment surrounding the particular business or industry must also be considered. Businesses in areas of decline will be required to provide strong business plans that outline how they differ from the current trends. Local, regional and national condition of the industry must be addressed.

(d) *Capital/Equity.* (1) A minimum of 10 percent tangible balance sheet equity

(or a maximum debt to tangible net worth ratio of 9:1) will be required at loan closing for borrowers that are existing businesses. A minimum of 20 percent tangible balance sheet equity (or a maximum debt to tangible net worth ratio of 4:1) will be required at loan closing for borrowers that are new businesses. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent (or a maximum debt to tangible net worth ratio between 3:1 and 1.5:1) at loan closing, considering whether the business is an existing business with a successful financial and management history or a new business; the value of personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study.

(2) Tangible balance sheet equity will be determined based upon financial statements prepared by an accountant in accordance with GAAP. The capital/equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the borrower's balance sheet. Transfers of assets at fair market value must be an arm's length transaction. Tangible equity cannot include appraisal surplus, bargain purchase gains, or intangible assets. Owner subordinated debt may be included when the subordinated debt is in exchange for cash injected into the business that remains in the business for the life of the guaranteed loan. The note or other form of evidence must be submitted to the Agency in order for subordinated debt to count towards meeting the tangible balance sheet equity requirement.

(3) The lender must certify, in accordance with § 4279.181(a)(9)(i), that the capital/equity requirement was determined, based on a balance sheet prepared by an accountant in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification.

(4) In situations where a real estate holding company and an operating entity are dependent upon one another's operations and are effectively one business, they must be co-borrowers. The capital/equity requirement will apply to both entities on a consolidated basis, and financial statements must be prepared both individually and on a consolidated basis.

(5) In situations where co-borrowers are independent operations, the capital/equity requirement will apply to all co-borrowers on an individual basis.

(6) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the business. Assets, plus any improvements, must be valued at the lower of cost or fair market value.

(7) Increases in the equity requirement may be imposed by the Agency. A reduction in the capital/equity requirement for existing businesses may be permitted by the Administrator under the following conditions:

(i) Collateralized personal and corporate guarantees, in accordance with § 4279.132 of this subpart, when feasible and legally permissible are obtained; and

(ii) Pro forma and historical financial statements indicate the business to be financed meets or exceeds the median quartile (as identified in Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt coverage ratio.

(e) *Character.* The lender must conduct a thorough review of key management personnel to ensure that the business has adequately trained and experienced managers. The borrower and all owners with a 20 percent or more ownership interest must have a good credit history, reflecting a record of meeting obligations in a timely manner. If there have been credit problems in the past, the lender must provide a satisfactory explanation to show that the problems are unlikely to recur.

§ 4279.132 Personal and corporate guarantees.

(a) Full, unconditional personal and/or corporate guarantees for the full term of the loan are required from those owning 20 percent or more interest in the borrower, unless the Agency grants an exception. The Agency may grant an exception only when the lender requests it and documents to the Agency's satisfaction that collateral, equity, cash flow and profitability indicate an above-average ability to repay the loan. Partial guarantees for the full term of the loan at least equal to each owner's percentage of interest in the borrower times the loan amount may be required in lieu of full, unconditional guarantees when the guarantors' percentages equal 100 percent so that the loan is fully guaranteed.

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

(1) Guarantees to be secured;

(2) Guarantees of parent, subsidiaries, or affiliated companies owning less than a 20 percent interest in the borrower; and

(3) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate entities.

(c) All personal and corporate guarantors must execute Form RD 4279–14, ''Unconditional Guarantee,'' and any guarantee form required by the lender. The Agency will retain the original, executed Form RD 4279–14.

(1) Any amounts paid by the Agency on behalf of an Agency guaranteed loan borrower will constitute a Federal debt owed to the Agency by the guaranteed loan borrower.

(2) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

(3) In all instances under paragraphs (c)(1) and (2) of this section, interest charges will be assessed in accordance with 7 CFR 1951.133.

§§ 4279.133–4279.135 [Reserved]

§ 4279.136 Insurance.

The lender is responsible for ensuring that required insurance is maintained by the borrower.

(a) *Hazard.* Hazard insurance with a standard clause naming the lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the collateral or the outstanding balance of the loan, whichever is the greater amount.

(b) *Life.* The lender may require a collateral assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. The Agency may require life insurance on key individuals for loans where the lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance that could be assigned without requiring additional expense.

(c) *Worker compensation.* Worker compensation insurance is required in accordance with State law.

(d) *Flood.* National flood insurance is required in accordance with applicable law.

(e) *Other.* The lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the borrower's particular business and circumstances and must require the borrower to obtain such insurance as is necessary to protect the interests of the borrower, the lender, or the Agency.

§ 4279.137 Financial statements.

The lender will determine the type and frequency of submission of financial statements by the borrower and any guarantors. At a minimum, annual financial statements prepared by an accountant in accordance with GAAP are required, except for personal financial statements and cooperative stock purchase loans in accordance with § 4279.115(a). However, if the loan amount exceeds $3 million or if circumstances warrant, the Agency may require annual audited financial statements.

§§ 4279.138–4279.143 [Reserved]

§ 4279.144 Appraisals.

Lenders must obtain appraisals for real estate and chattel collateral when the value of the collateral exceeds $250,000. Lenders must use the market value as established by the appraisal and discounting policies outlined in § 4279.131(b) to meet the discounted collateral coverage requirements of this subpart. Lenders are responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. The Agency will require documentation that the appraiser has the necessary experience and competency to appraise the property in question. Appraisals must not be more than 1 year old, and a more recent appraisal may be requested by the Agency in order to reflect more current market conditions. For loan servicing purposes, an appraisal may be updated in lieu of a complete new appraisal when the original appraisal is more than 1 year old but less than 2 years old. Failure by the lender to follow these requirements will be considered an act of fraud or misrepresentation.

(a) All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions must meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP) and be performed by a State Certified General Appraiser. Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the lender for loanmaking and servicing must conform to the Interagency Appraisal and Evaluations Guidelines established by the lender's primary Federal or State regulator. All appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the fair market value of the collateral, if applicable. The lender must complete and submit its technical review of the appraisal. For construction projects, the lender must use the ''as-completed'' market value of the real estate to determine value of the real estate property.

(b) Values attributed to business valuation or as a going concern are not allowed.

(c) Chattels must be evaluated in accordance with normal banking practices and generally accepted methods of determining value. Chattel appraisals must reflect the age, condition, and remaining useful life of the equipment. If the appraisal is completed by a state licensed/certified appraiser, the appraisal report must comply with USPAP Standards 7 and 8.

§ 4279.145–4279.149 [Reserved]

§ 4279.150 Feasibility studies.

A feasibility study, by a qualified independent consultant acceptable to the Agency, is required for new businesses. The Agency may require a feasibility study for existing businesses when the project will significantly affect the borrower's operations. A feasibility study is also required for all biofuels proposals, regardless of whether the business is new or existing. At a minimum, a feasibility study must include an evaluation of the economic, market, technical, financial, and management feasibility and an executive summary that reaches an overall conclusion as to the business' chance of success. The income approach of an appraisal is not an acceptable feasibility study.

§ 4279.151–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, borrowers and lenders may file a complete application without filing a preapplication. The Agency will neither accept nor process preapplications and applications unless a lender has agreed to finance the proposal. Guaranteed loans exceeding $600,000 must be submitted under the requirements specified in paragraph (b) of this section. However, guaranteed loans of $600,000 and less may be submitted under the requirements of either paragraph (b) or (c) of this section.

(a) *Preapplications.* Lenders may file preapplications by submitting the following to the Agency:

(1) A letter or preliminary lender credit analysis, signed by the lender, containing the following:

(i) Name of the proposed borrower, organization type, address, contact person, federal tax identification number, email address, and telephone number;

(ii) Name of the proposed lender, address, telephone number, contact person, email address, and lender's Internal Revenue Service (IRS) identification number;

(iii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms;

(iv) Description of collateral to be offered with estimated values and the amount and source of equity to be contributed to the project;

(v) A brief description of the project, products, services provided, and availability of raw materials and supplies; and

(vi) The number of current full-time equivalent jobs, the number of jobs to be created as a result of the proposed loan, and the overall average wage rate.

(2) The borrower's current (not more than 90 days old) balance sheet and year-to-date income statement. For existing businesses, also include balance sheets and income statements for the last 3 years; and

(3) A completed Form RD 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(b) *Applications.* Lenders must submit the information specified in paragraphs (b)(1) through (19) of this section when filing an application with the Agency.

(1) A completed Form RD 4279–1.

(2) A completed Form RD 4279–2, if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(3) A completed Form RD 1940–20, ''Request for Environmental Information,'' and attachments, unless the project is categorically excluded

under Agency environmental regulations.

(4) A personal or commercial credit report from an acceptable credit reporting company for each individual or entity owning 20 percent or more interest in the borrower, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body or non-profit corporation.

(5) Commercial credit reports for the borrower(s) and any parent, affiliate, and subsidiary companies.

(6) Current (not more than 90 days old) financial statements for any parent, affiliate, and subsidiary companies.

(7) Current (not more than 90 days old) personal and corporate financial statements of any guarantors.

(8) For all borrowers, a current (not more than 90 days old) balance sheet and year-to-date income statement, a pro forma balance sheet projected for loan closing, and projected balance sheets, income statements and cash flow statements for the next 2 years. Projections must be supported by a list of assumptions showing the basis for the projections. In the event processing of the loan is not complete within 90 days, a current set of financial statements will be required every 90 days.

(9) For borrowers that are existing businesses, balance sheets and income statements for the last 3 years. If the business has been in operation for less than 3 years, balance sheets and income statements for all years for which financial information is available.

(10) The lender's comprehensive, written credit analysis of the proposal, as described in § 4279.131.

(11) A draft loan agreement. A final loan agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee and must contain any additional requirements imposed by the Agency in its Conditional Commitment. The loan agreement must establish prudent, adequate controls to protect the interests of the lender and Agency. At a minimum, the following requirements must be included in the loan agreement:

(i) Type and frequency of borrower and guarantor financial statements to be required for the duration of the loan;

(ii) Prohibition against assuming liabilities or obligations of others;

(iii) Limitations on dividend payments and compensation of officers and owners;

(iv) Limitation on the purchase and sale of equipment and other fixed assets;

(v) Restrictions concerning consolidations, mergers, or other circumstances and a limitation on selling the business without the concurrence of the lender;

(vi) Maximum debt-to-net worth ratio; and

(vii) Minimum debt service coverage ratio.

(12) Intergovernmental consultation comments in accordance with 7 CFR, part 3015, subpart V, or successor regulation, unless exemptions have been granted by the State single point of contact.

(13) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available.

(14) A business plan or similar document that must include a description of the business and project, management experience, sources of capital, products and services and pricing, marketing plan, proposed use of funds, availability of labor, raw materials and supplies, contracts in place, distribution channels, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. A business plan may be omitted if the information is included in a feasibility study. At the Agency's discretion, a business plan may be omitted when loan proceeds are used exclusively for debt refinancing and fees.

(15) Independent feasibility study, if required.

(16) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.''

(17) For health care facilities, a certificate of need, if required by statute or State law.

(18) For guaranteed loan applications for five or more residential units, including nursing homes and assisted-living facilities, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3).

(19) Any additional information required by the Agency to make a decision.

(c) *Applications of $600,000 and less.* Guaranteed loan applications may be processed under this paragraph if the request does not exceed $600,000, provided the Agency determines that there is not a significant increased risk of a default on the loan. A lender may need to resubmit an application under paragraph (b) of this section if the application under this paragraph does not contain sufficient information for the Agency to make a decision whether to guarantee the loan. Applications submitted under this paragraph must include the information contained in paragraphs (b)(1) (with the short application box marked at the top of Form RD 4279–1), (b)(3), (b)(8) through (10), (b)(12), and (b)(13) of this section. The lender must have the documentation identified in paragraph (b) of this section, with the exception of paragraph (b)(2), available in its file for review.

§§ 4279.162–4279.164 [Reserved]

§ 4279.165 Evaluation of application.

(a) *General review.* The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, it will inform the lender in writing.

(b) *Environmental requirements.* The environmental review process must be completed, in accordance with 7 CFR part 1940, subpart G or successor regulation, prior to loan approval.

§ 4279.166 Loan priority scoring.

The Agency will consider applications and preapplications in the order they are received by the Agency; however, for the purpose of assigning priority points as described in paragraph (b) of this section, the Agency will compare an application to other pending applications that are competing for funding. The Agency may establish a minimum loan priority score to fund projects from the National Office reserve and will publish any minimum loan priority score in a notice published in the **Federal Register**.

(a) When applications on hand otherwise have equal priority, the Agency will give preference to applications for loans from qualified veterans.

(b) The Agency will assign priority points on the basis of the point system contained in this section. The Agency will use the application and supporting information to determine an eligible proposed project's priority for available guarantee authority. To the extent possible, all lenders must consider Agency priorities when choosing projects for guarantee. The lender must provide necessary information related to determining the score, if requested.

(1) *Population priority.* Projects located in an unincorporated area or in a city with a population under 25,000 (10 points).

(2) *Demographics priority.* The priority score for demographics priority

will be the total score for the following categories:

(i) Located in an eligible area of long-term population decline according to the last three decennial censuses (5 points);

(ii) Located in a rural county that has had 20 percent or more of its population living in poverty based on the last three decennial censuses (5 points);

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster (5 points);

(iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points);

(v) Located within the boundaries of a Federally recognized Indian Tribe's reservation or within tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act (5 points); and

(vi) Business is owned by a qualified veteran as defined by § 4279.2 of this chapter (5 points).

(3) *Loan features.* The priority score for loan features will be the total score for the following categories:

(i) Lender will price a variable rate loan at a rate equal to or less than the Wall Street Journal published Prime Rate plus 1.5 percent (5 points);

(ii) Lender will price a variable rate loan at a rate equal to or less than the Wall Street Journal published Prime Rate plus 1 percent (5 points);

(iii) Lender will price a fixed rate loan equal to or less than the Farmer Mac II rate plus 2.5 percent (5 points);

(iv) Lender will price a fixed rate loan equal to or less than the Farmer Mac II rate plus 2 percent (5 points);

(v) The Agency guaranteed loan is less than 60 percent of project cost (5 points);

(vi) The Agency guaranteed loan is less than 50 percent of project cost (5 points);

(vii) The Agency guaranteed loan is less than 40 percent of project cost (5 points);

(viii) The loan-to-job ratio (loan amount/number of jobs created and saved) is less than $75,000 in loan proceeds per job created and saved (5 points);

(ix) The loan-to-job ratio is less than $50,000 in loan proceeds per job created and saved (5 points); and

(x) For loans not requesting an exception under § 4279.119(b) of this subpart, the percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(4) *High impact business investment priorities.* The priority score for high impact business investment will be the total score for the following two categories:

(i) *Business/industry.* The priority score for business/industry will be the total score for the following:

(A) Industry that is not already present in the community (5 points);

(B) Business that has 20 percent or more of its sales in international markets (5 points);

(C) Business that offers high value, specialized products and/or services that command high prices (2 points);

(D) Business that provides an additional market for existing local businesses (3 points);

(E) Business that is locally owned and managed (3 points);

(F) Business that will produce a natural resource value-added product or an agricultural resource value-added product (2 points); and

(G) Business that processes, distributes, aggregates, stores and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with § 4279.113(x)(5) (5 points); and

(ii) *Occupations.* The priority score for occupations will be the total score for the following:

(A) Business that creates or saves jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points);

(B) Business that creates or saves jobs with an average wage exceeding 150 percent of the Federal minimum wage (5 points); and

(C) Business that offers a healthcare benefits package to all employees, with at least 50 percent of the premium paid by the employer, or a business that qualifies under the Work Opportunity Tax Credit Program authorized by the Small Business and Work Opportunity Tax Act of 2007 (5 points).

(5) *Administrative points.* The State Director may assign up to 10 additional points to an application to account for statewide distribution of funds, natural disasters or economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency initiative. In addition to the State Director assigned points, if an application is considered in the National Office, the Administrator may assign up to an additional 10 points to account for geographic distribution of funds, emergency conditions caused by economic problems or natural disasters, or projects that will fulfill an Agency initiative.

§ 4279.167 Planning and performing development.

(a) *Design policy.* The lender must ensure that all facilities constructed with program funds are designed, and costs estimated, by an independent professional utilizing accepted architectural, engineering and design practices. The Agency may require an independent professional architect on complex projects. The lender must ensure the design conforms to applicable Federal, State, and local codes and requirements. The lender must also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce in the quality and quantity proposed in the completed application approved by the Agency. Once construction is completed, the lender must provide the Agency with a copy of the Notice of Completion.

(b) *Issuing the Loan Note Guarantee prior to project completion.* If the lender requests that the Loan Note Guarantee be issued prior to completion of a construction project, the lender must have a construction monitoring plan acceptable to the Agency and undertake the added responsibilities set forth in this paragraph. The lender must monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, State, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(1) In cases of takeout of interim financing where the Loan Note Guarantee is issued prior to completion of a project, the promissory note must contain the terms and conditions of the interim financing and the permanent financing and convert the interim financing to the permanent note as the Loan Note Guarantee can only be placed on one note.

(2) Prior to disbursement of construction funds, the lender must have:

(i) A complete set of plans and specifications for the project on file;

(ii) A detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget must be agreed to by the borrower;

(iii) A person, with demonstrated experience relating to the project's industry, confirm that the budget is adequate for the planned development;

(iv) A firm, fixed-price construction contract with an independent general contractor with costs and provisions for change order approvals, a retainage percentage, and a disbursement schedule or a 100 percent performance/payment bond on the borrower's contactor will be required in cases when the lender requests issuance of a Loan Note Guarantee prior to completion of construction. The bonding agent must be listed on Treasury Circular 570. A performance/payment bond will be made a part of the contract if the borrower requests it or if the contractor requests partial payments for construction work; and

(v) Contingencies in place to handle unforeseen cost overruns without seeking additional guaranteed assistance. These are to be agreed to by the borrower.

(3) Once construction begins, the lender is to:

(i) Use any borrower funds in the project first;

(ii) Ensure that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices. There is no absolute requirement that the goal be achieved by the use of a professional inspection. However, if after careful review, it appears that the use of a professional inspector is the only method that ensures that the project is built to support the functions at the level and quality contemplated by the borrower through the use of accepted architectural and engineering practices, one may be required by the Agency. If one is required, inspections must be made by a qualified, independent inspector prior to any progress payments. If other less expensive or rigorous methods will achieve the same result, they may be utilized. The decision will be made on a case-by-case basis and must be reasonable under the specific circumstances of the case;

(iii) Obtain lien waivers from all contractors and materialmen prior to any disbursement; and

(iv) Provide at least monthly, written reports to the Agency on fund disbursement and project status.

(4) Once construction is completed, the lender is to provide the Agency with a copy of the Notice of Completion.

(c) *Compliance with other Federal laws.* Lenders must comply with other applicable Federal laws including Equal Employment Opportunities, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the Americans with Disabilities Act (ADA), must comply with the ADA. The borrower and lender are responsible for ensuring compliance with these requirements.

(d) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with subpart G of 7 CFR part 1940 or successor regulations, including the provision of all required Federal, State, and local permits;

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or that would have an adverse effect on the environment.

§ 4279.168 Timeframe for processing applications.

All complete guaranteed loan applications will be approved or disapproved within 60 days, unless approval is prevented by a lack of guarantee authority or there are delays resulting from public comment requirements of the environmental assessment or outstanding DOL clearance issues.

§§ 4279.169–4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued. No Conditional Commitment can be issued until the loan is obligated. If a Loan Note Guarantee is not issued by the Conditional Commitment expiration date, the Conditional Commitment may be extended at the request of the lender and only if there has been no material adverse change in the borrower or the borrower's financial condition since issuance of the Conditional Commitment. If the Conditional Commitment is not accepted, the Conditional Commitment may be withdrawn and funds may be deobligated. Likewise, if the Conditional Commitment expires, funds may be deobligated.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and borrower may request changes to the Conditional Commitment. Within the requirements of the applicable regulations and prudent lending practices, the Agency may negotiate with the lender and the borrower regarding any proposed changes to the Conditional Commitment. Any changes to the Conditional Commitment must be documented by written amendment to the Conditional Commitment.

(c) The borrower must comply with all Federal requirements then in effect for receiving Federal assistance.

§ 4279.174 Transfer of lenders.

(a) The Agency may approve the substitution of a new eligible lender in place of a former lender who has been issued and has accepted an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued; provided that there are no changes in the borrower's ownership or control, loan purposes, or scope of project and the loan terms and conditions in the Conditional Commitment and the loan agreement remain the same.

(b) Unless the new lender is already an approved lender, the Agency will analyze the new lender's servicing capability, eligibility, and experience prior to approving the substitution. The original lender must provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279–1, Form RD 4279–4, ''Lender's Agreement,'' (unless a valid Lender's Agreement with the Agency already exists), and must complete a new lender's analysis in accordance with § 4279.131. The new lender may also be required to provide other updated application items outlined in § 4279.161(b).

§§ 4279.175–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency.

§ 4279.181 Conditions precedent to issuance of the Loan Note Guarantee.

(a) The lender must not close the loan until all conditions of the Conditional Commitment are met. When loan closing plans are established, the lender must notify the Agency. Coincident with, or immediately after loan closing, the lender must provide the following to the Agency:

(1) An executed Form RD 4279–4, unless a valid Lender's Agreement

exists that was issued after [DATE OF FINAL RULE PUBLICATION];

(2) Form RD 1980–19 and appropriate guarantee fee;

(3) Copy of the executed promissory note(s);

(4) Copy of the executed loan agreement;

(5) Copy of the executed settlement statement;

(6) Original, executed Forms RD 4279–14, as required;

(7) Any other documents required to comply with applicable law or required by the Conditional Commitment.

(8) Borrower's loan closing balance sheet, supporting paragraph (a)(9)(i) of this section of the lender certification, demonstrating required tangible balance sheet equity; and

(9) The lender's certification to each of the following certifications:

(i) The capital/equity requirement was determined, based on a balance sheet prepared by an accountant in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced.

(ii) All requirements of the Conditional Commitment have been met.

(iii) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency in writing.

(iv) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application for loan guarantee.

(v) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications and conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

(vi) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.

(vii) The loan has been properly closed, and the required security instruments have been properly executed, or will be obtained on any acquired property that cannot be covered initially under State law.

(viii) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(ix) When required, personal or corporate guarantees have been obtained in accordance with § 4279.132.

(x) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and the application submitted to the Agency. When applicable, the entire amount of the loan for working capital has been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed.

(xi) All truth-in-lending and equal credit opportunity requirements have been met.

(xii) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(xiii) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(xiv) The loan agreement includes all measures identified in the Agency's environmental impact analysis for this proposal with which the borrower must comply for the purpose of avoiding or reducing adverse environmental impacts of the project's construction or operation.

(xv) If required, hazard, flood, liability, workers compensation, and life insurance are in effect.

(b) The Agency may, at its discretion, request copies of additional loan documents for its file.

(c) When the Agency is satisfied that all conditions for the guarantee have been met, the Agency will issue the Loan Note Guarantee and the following documents, as appropriate.

(1) *Assignment Guarantee Agreement.* In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute Form RD 4279–6, and

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a certification on Form RD 4279–7, ''Certificate of Incumbency and Signature,'' of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

§§ 4279.182–4279.186 [Reserved]

§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the Loan Note Guarantee. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request.

§§ 4279.188–4279.199 [Reserved]

§ 4279.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number _____. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 24 hours per response, with an average of 3 hours per response, including time for reviewing the collection of information. The burden may increase beyond the estimates reported here, if RBS determines additional data will need to be collected to facilitate evaluation, which can enhance the operation and performance of the program.

PART 4287—SERVICING

■ 4. The authority citation for part 4287 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

■ 5. Revise Subpart B to read as follows:

Subpart B—Servicing Business and Industry Guaranteed Loans

Sec.
4287.101 Introduction.
4287.102 Definitions and abbreviations.
4287.103 Exception Authority.

4287.104 [Reserved]
4287.105 [Reserved]
4287.106 Appeals.
4287.107 Routine servicing.
4287.108–4287.111 [Reserved]
4287.112 Interest rate changes.
4287.113 Release of collateral.
4287.114–4287.122 [Reserved]
4287.123 Subordination of lien position.
4287.124 Alterations of loan instruments.
4287.125–4287.132 [Reserved]
4287.133 Sale of corporate stock.
4287.134 Transfer and assumption.
4287.135 Substitution of lender.
4287.136 Lender failure.
4287.137–4287.144 [Reserved]
4287.145 Default by borrower.
4287.146–4287.155 [Reserved]
4287.156 Protective advances.
4287.157 Liquidation.
4287.158 Determination of loss and payment.
4287.159–4287.168 [Reserved]
4287.169 Future recovery.
4287.170 Bankruptcy.
4287.171–4287.179 [Reserved]
4287.180 Termination of guarantee.
4287.181–4287.199 [Reserved]
4287.200 OMB control number.

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements subparts A and B of part 4279 of this chapter by providing additional requirements and instructions for servicing and liquidating all B&I guaranteed loans and loans guaranteed under the Rural Energy for America Program. This includes Drought and Disaster, Disaster Assistance for Rural Business Enterprises, Business and Industry Disaster, and American Recovery and Reinvestment Act guaranteed loans.

(b) The lender is responsible for servicing the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(c) Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms, regulations, and Instructions referenced in this subpart may be obtained from any Agency office and from the USDA Rural Development Web site at *www.rurdev.usda.gov/rbs.* Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the Agency.

§ 4287.102 Definitions and abbreviations.

The definitions and abbreviations contained in § 4279.2 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of this chapter applies to this subpart.

§ 4287.104 [Reserved]

§ 4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of this chapter applies to this subpart.

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender may contract for services but is ultimately responsible for underwriting, loan origination, loan servicing, and compliance with all Agency regulations. Form RD 4279–4, ''Lender's Agreement,'' is the contractual agreement between the lender and the Agency that sets forth some of the lender's loan servicing responsibilities. These responsibilities include, but are not limited to, periodic borrower visits, the collection of payments, obtaining compliance with the covenants and provisions in the loan agreement, obtaining and analyzing financial statements, ensuring payment of taxes and insurance premiums, maintaining liens on collateral, and keeping an inventory accounting of all collateral items and reconciling the inventory of all collateral sold during loan servicing, including liquidation.

(a) *Lender reports and annual renewal fee.* The lender must report the outstanding principal and interest balance and the current loan classification on each guaranteed loan semiannually (at June 30 and December 31) using either the USDA Lender Interactive Network Connection (LINC) system or Form RD 1980–41, ''Guaranteed Loan Status Report.'' The lender must transmit the annual renewal fee to the Agency in accordance with § 4279.120(b) of this chapter calculated based on the December 31 semiannual status report.

(b) *Loan classification.* The lender must provide the loan classification or rating under its regulatory standards as of loan closing on Form RD 1980–19, ''Guaranteed Loan Closing Report.'' When the lender changes the loan classification in the future, the lender must notify the Agency within 30 days, in writing, of any change in the loan classification.

(c) *Agency and lender conference.* At the Agency's request, the lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.

(d) *Borrower financial reports.* The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year. The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency will provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain financial statements will not impair the validity of the Loan Note Guarantee.

(e) *Protection of Agency interests.* If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation. In determining any loss, the Agency will assess against the lender any cost to the Agency associated with such action.

§§ 4287.108–4287.111 [Reserved]

§ 4287.112 Interest rate changes.

(a) The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The lender must obtain prior Agency concurrence and must provide a copy of the modification agreement to the Agency. If any of the guaranteed portion has been purchased by the Agency, the Agency (as a holder) will affirm or reject interest rate change proposals in writing.

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred.

(c) The interest rate, after adjustments, must comply with the interest rate

requirements set forth in § 4279.125 of this chapter.

(d) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes shall be issued. The lender must provide copies of all legal documents to the Agency.

§ 4287.113 Release of collateral.

(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan has not been accelerated.

(b) If a release of collateral does not meet the requirements of paragraph (a) of this section, the lender must complete a written evaluation to justify the release and must obtain written Agency concurrence in advance of the release.

(c) Collateral must remain sufficient to provide for adequate collateral coverage. The lender must support all releases of collateral with a value exceeding $250,000 with a current appraisal on the collateral being released. The appraisal must meet the requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The lender's written request must detail how the borrower's debt service ability will be improved; or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the program. Such assurance must be supported by written documentation from the lender acceptable to the Agency.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred with in writing by the Agency in advance of the subordination. The lender's subordination proposal must include a financial analysis of the servicing action and be fully supported by current financial statements of the borrower and guarantors that are less than 90 days old.

(a) The subordination of lien position must enhance the borrower's business and be in the best financial interest of the Agency.

(b) The lien to which the guaranteed loan is subordinated is for a fixed dollar limit and for a fixed term after which the guaranteed loan lien priority will be restored.

(c) Collateral must remain sufficient to provide for adequate collateral coverage. The Agency may require a current independent appraisal in accordance with § 4279.144 of this chapter.

(d) Lien priorities must remain for the portion of the loan that was not subordinated.

(e) A subordination to a line of credit cannot exceed 1 year. The term of the line of credit cannot be extended.

§ 4287.124 Alterations of loan instruments.

The lender must neither alter nor approve any alterations or modifications of any loan instrument without the prior written approval of the Agency.

§§ 4287.125–4287.132 [Reserved]

§ 4287.133 Sale of corporate stock.

Any sale or transfer of corporate stock must be approved by the Agency in writing and must be to an eligible individual or entity in accordance with §§ 4279.108(a) and 4279.108(b) of this chapter. In the event a portion of the borrower's stock is sold or transferred, the Agency may require personal or corporate guarantees from those then owning a 20 percent or more interest in the borrower in accordance with § 4279.132 of this chapter.

§ 4287.134 Transfer and assumption.

The lender may request a transfer and assumption of a guaranteed loan in situations where the total indebtedness, or less than the total indebtedness, is transferred to another eligible borrower on the same or different terms. A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted. Additionally, no transfer and assumption is permitted when the Agency has repurchased 100 percent of the guaranteed portion of the loan.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to an eligible borrower. The lender must provide credit reports for each individual or entity owning 20 percent or more interest in the transferee, along with such other documentation as the Agency may request to determine eligibility. In accordance with § 4279.132 of this chapter, the Agency will require personal and/or corporate guarantee(s) from all owners that have a 20 percent or more interest in the transferee. When warranted by an Agency assessment of potential financial risk, the Agency may also require guarantees of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and may require security for any guarantee. The new borrower must sign Form RD 4279–1, ''Application for a Loan Guarantee,'' and any guarantors of the guaranteed loan must sign Form RD 4279–14, ''Unconditional Guarantee.''

(b) *Terms.* Loan terms may be changed with the concurrence of the Agency, all holders, and the transferor (including guarantors) if the transferor has not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4279.126 of this chapter.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and

a current financial statement of the transferee. The Agency will not pay for the appraisal. If the transfer is for less than the debt, for a release of liability, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) *Proceeds.* The lender must credit any proceeds received from the sale of collateral before a transfer and assumption to the transferor's guaranteed loan debt in order of lien priority before the transfer and assumption is closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered a new loan application, which requires submission of a complete Agency application in accordance with § 4279.161(b) of this chapter.

(f) *Credit quality.* The lender will provide a credit analysis of the proposal that addresses capacity (sufficient cash flow to service the debt), capital (net worth), collateral (assets to secure the debt), conditions (of the borrower, industry trends, and the overall economy), and character (integrity of the transferee management) in accordance with § 4279.131 of this chapter.

(g) *Appraisals.* If the proposed transfer and assumption is for the full amount of the Agency guaranteed loan, the Agency will not require an appraisal. If the proposed transfer and assumption is for less than the full amount of the Agency guaranteed loan, the Agency will require an appraisal on all of the collateral being transferred, and the amount of the assumption must not be less than this appraised value. The lender is responsible for obtaining this appraisal, which must conform to the requirements of § 4279.144 of this chapter. The Agency will not pay the appraisal fee or any other costs associated with this transfer.

(h) *Documents.* Prior to Agency approval, the lender must provide the Agency a written legal opinion that the transaction can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded.

(1) The lender must not issue any new promissory notes. The assumption must be completed in accordance with applicable law and must contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new loan agreement, consistent in principle with the original loan agreement, must be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) Upon execution of the transfer and assumption, the lender must provide the Agency with a written legal opinion that the transfer and assumption is completed, valid, enforceable, and certification that the transfer and assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(i) *Loss/repurchase resulting from transfer.* (1) Any resulting loss must be processed in accordance with § 4287.158.

(2) If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78 of this chapter.

(j) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(k) *Cash downpayment.* The lender may allow the transferee to make cash downpayments directly to the transferor provided:

(1) The transfer and assumption is made for the total indebtedness;

(2) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(3) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness; and

(4) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(l) *Transfer/annual renewal fees.*

(1) The Agency will charge a nonrefundable transfer fee at the time of transfer, which may be passed on to the borrower by the lender. The transfer fee rate will be equal to the rate of the guarantee fee authorized in § 4279.120 of this chapter for the fiscal year in which the transfer occurs. The amount of the transfer fee is determined by multiplying the principal balance at the time of the transfer by the transfer fee rate by the percentage of guarantee on the original loan.

(2) The lender must pay any annual renewal fee published in the **Federal Register** and then in effect at the time the loan is closed for the duration of the Loan Note Guarantee. Annual renewal fees are due for the entire year even if the Loan Note Guarantee is terminated before the end of the year.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender is prohibited from selling or transferring the entire loan without the prior written approval of the Agency. Because the Loan Note Guarantee is associated with a specific promissory note and cannot be transferred to a new promissory note, the lender must transfer the original promissory note to the new lender, who must agree to its current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender must also obtain the original Loan Note Guarantee, original personal and corporate guarantee(s), and the loan payment history from the transferor lender. If the new lender wishes to modify the loan terms after acquisition, the new lender must submit a request to the Agency.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with § 4279.29 of this chapter and is approved as such;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(2) The substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender of record, if still in existence.

(b) The Agency will not pay any loss or share in any costs (e.g., appraisal fees and environmental assessments) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes situations where a lender is acquired by another lender and situations where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC)

and the loan is subsequently sold to another lender.

(c) Where the lender has failed and been taken over by the FDIC and the loan is liquidated by the FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if the FDIC were an approved substitute lender.

(d) In cases where there is a substitution of lender or a lender has been merged with or acquired by another lender, the Agency and the new lender must execute a new Form RD 4279–4, ''Lender's Agreement,'' unless a valid Lender's Agreement already exists with the new lender.

§ 4287.136 Lender failure.

(a) *Uninsured lender.* The lender or insuring agency cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan, and the Agency will make the successor to the failed institution aware of the statutory and regulatory requirements. If the acquiring institution is not an eligible lender as set forth in § 4279.29 of this chapter, the Loan Note Guarantee will not be enforceable, and the institution must promptly apply to become an eligible lender. The failure of the uninsured lender to become an eligible lender will result in the Loan Note Guarantee being unenforceable. A new lender approved by the Agency will be afforded the benefits of the Loan Note Guarantee in sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the program.

(b) *Insured lender.* The FDIC and the Agency have entered into an Inter Agency Agreement and all parties are to abide by this Agreement or successor document(s). This document sets forth the duties and responsibilities of each Agency when an institution fails. The lender must take such action that a prudent lender would take if it did not have a Loan Note Guarantee to protect the lender and Agency's mutual interest.

§§ 4287.137–4287.144 [Reserved]

§ 4287.145 Default by borrower.

The lender's primary responsibilities in default are to act prudently and expeditiously, to work with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in a manner that will minimize any potential loss. The lender may initiate liquidation subject to submission and approval of a complete liquidation plan.

(a) The lender must notify the Agency when a borrower is more than 30 days past due on a payment and the delinquency cannot be cured within 30 days or when a borrower is otherwise in default of covenants in the loan agreement by promptly submitting Form RD 1980–44, ''Guaranteed Loan Borrower Default Status,'' or processing the Default Status report in LINC. The lender must update the loan's status each month using either Form RD 1980–44 or the LINC Default Status report until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender must meet with the Agency and, if practical, the borrower to discuss the situation.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions (subject to the rights of any holder) include, but are not limited to:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan;

(iv) Transfer and assumption of the loan in accordance with § 4287.134 of this subpart;

(v) Reorganization;

(vi) Liquidation; and

(vii) Changes in interest rates with the Agency's, the lender's, and any holder's approval. Any interest rate changes must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan.

(2) The term of any deferment, rescheduling, reamortization, or moratorium will be limited to the lesser of the remaining useful life of the collateral or remaining limits as set forth in § 4279.126 of this chapter (excluding paragraph (c)). Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for success and the remaining life of the collateral supports the action.

(3) In the event of a loss or a repurchase, the lender cannot claim default or penalty interest, late payment fees, or interest on interest. If the restructuring includes the capitalization of interest, interest accrued on the capitalized interest will not be covered by the guarantee. Consequently, it is not eligible for repurchase from the holder and cannot be included in the loss claim.

(c) Debt write-downs for an existing borrower, where the same principals retain control of and decisionmaking authority for the business, are prohibited, except as directed or ordered by the Bankruptcy Court.

(d) For loans closed on or after [DATE OF FINAL RULE PUBLICATION], in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(e) For loans closed on or after [DATE OF FINAL RULE PUBLICATION], the guarantee will not cover note interest to any holder accruing after 90 days from the date of the first demand letter from a holder to the lender requesting the repurchase of the loan guarantee.

(f) For repurchases of guaranteed loans, refer to § 4279.78 of this chapter.

§§ 4286.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Lenders must exercise sound judgment in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Lenders cannot make protective advances in lieu of additional loans. A protective advance claim will be paid only at the time of the final report of loss payment.

(a) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(b) In the event of a final loss, protective advances will accrue interest at the note rate and will be guaranteed at the same percentage of guarantee as provided for in the Loan Note Guarantee. The guarantee will not cover interest on the protective advance accruing after 90 days from the most recent delinquency effective date.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when the cumulative total of protective advances exceeds $200,000 or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the lender, with Agency consent, must liquidate the loan. In accordance with § 4287.145(d), for loans closed on

or after [DATE OF FINAL RULE PUBLICATION], in the event of a loss, the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date.

(a) *Decision to liquidate.* A decision to liquidate must be made when the lender determines that the default cannot be cured through actions such as those contained in § 4287.145, or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when one or more of the following exist:

(1) A loan is 90 days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency through actions such as those contained in § 4287.145.

(2) It is determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and it would improve the position of the guarantee to liquidate immediately.

(b) *Repurchase of loan.* When the decision to liquidate is made, if any portion of the loan has been sold or assigned under § 4279.75 of this chapter and not already repurchased, provisions will be made for repurchase in accordance with § 4279.78 of this chapter.

(c) *Lender's liquidation plan.* The lender is responsible for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. Within 30 days after a decision to liquidate, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger, if available, that reflects the current loan balance, accrued interest to date, and the method of computing the interest;

(2) A full and complete list of all collateral, including any personal and corporate guarantees;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's most recently available financial statements;

(6) Copies of each guarantor's most recently available financial statements;

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(8) A schedule to periodically report to the Agency on the progress of liquidation;

(9) Estimated protective advance amounts with justification;

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined. A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and must be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(12) Legal opinions, if needed by the lender's legal counsel; and

(13) An estimate of fair market and potential liquidation value of the collateral. If the value of the collateral is $250,000 or more, the lender must obtain an independent appraisal report meeting the requirements of § 4279.144 of this chapter for the collateral securing the loan, which reflects the fair market value and potential liquidation value. The liquidation appraisal of the collateral must evaluate the impact on market value of any release of hazardous substances, petroleum products, or other environmental hazards. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender. In order to assure prompt action, the liquidation plan can be submitted with an estimate of collateral value, and the liquidation plan may be approved by the Agency subject to the results of the final liquidation appraisal.

(d) *Approval of liquidation plan.* The lender's liquidation plan must be approved by the Agency in writing. The lender and Agency must attempt to resolve any Agency concerns. If the liquidation plan is approved by the Agency, the lender must proceed expeditiously with liquidation and must take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan. The lender must update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal. If the liquidation plan is not approved by the Agency, the lender must take such actions that a prudent lender would take without a guarantee and keep the Agency informed in writing. The lender must continue to develop a liquidation plan in accordance with this section.

(e) *Acceleration.* The lender will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other legal actions required. The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower. The lender must obtain from the Agency concurrence prior to the acceleration of the loan if the sole basis for acceleration is a nonmonetary default. In the case of monetary default, prior approval by the Agency of the lender's acceleration is not required, although Agency concurrence must still be given not later than at the time the liquidation plan is approved. The lender will provide a copy of the acceleration notice or other acceleration document to the Agency.

(f) *Filing an estimated loss claim.* When the lender owns any of the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation is expected to exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, for loans closed on or after [FINAL RULE PUBLICATION DATE], the guarantee will not cover note interest to the lender accruing after 90 days from the most recent delinquency effective date. The Agency will promptly process the loss claim in accordance with applicable Agency regulations as set forth in § 4287.158.

(g) *Accounting and reports.* The lender must account for funds during the period of liquidation and must, in accordance with the Agency-approved liquidation plan, provide the Agency with reports on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the

Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds using Form RD 1980–43, ''Lender's Guaranteed Loan Payment to Rural Development.''

(i) *Abandonment of collateral.* When the lender adequately documents that the cost of liquidation would exceed the potential recovery value of certain collateral and receives Agency concurrence, the lender may abandon that collateral. When the lender makes a recommendation for abandonment of collateral, it must comply with 7 CFR part 1940, subpart G.

(j) *Personal or corporate guarantees.* The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

(k) *Compromise settlement.* Compromise settlements must be approved by the lender and the Agency. Complete current financial information on all parties obligated for the loan must be provided. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. The guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In weighing whether the compromise settlement should be accepted, among other things, the Agency will weigh whether the comparison is more financially advantageous than collecting on the guarantee.

(l) *Litigation.* In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender and the Agency with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender, on behalf of the lender, or the Agency with respect to the loan. If the Agency exercises this right, the lender must cooperate with the Agency. Any cost to the Agency associated with such action will be assessed against the lender.

§ 4287.158 Determination of loss and payment.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement with the lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* Form RD 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for reporting and calculating all estimated and final loss determinations.

(b) *Estimated loss.* In accordance with the requirements of § 4287.157(f), the lender must prepare an estimated loss claim, based on liquidation appraisal value, and submit it to the Agency.

(1) Interest accrual eligible for payment under the guarantee on the defaulted loan will be discontinued when the estimated loss is paid.

(2) A protective advance claim will be paid only at the time of the final report of loss payment.

(3) The estimated loss payment is a payment to the lender and is not to be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the borrower or for status reporting (semi-annual status/default status reports).

(c) *Final loss.* Within 30 days after liquidation of all collateral is completed (except for certain unsecured personal or corporate guarantees as provided for in this section), the lender must prepare a final report of loss and submit it to the Agency. The Agency will not guarantee interest beyond 90 days from the date any holder makes demand, or, if the lender holds all or a portion of the guaranteed loan, no more than 90 days from the most recent delinquency effective date as reported by the lender. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts reported as losses on Form RD 449–30.

(1) The lender must make a determination regarding the collectability of unsecured personal and corporate guarantees. If reasonably possible, the lender must promptly collect or otherwise dispose of such guarantees in accordance with § 4287.157(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the lender must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final loss claim will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. Debts owed to the Agency (Federal debt) may be collected using DCIA authority. The Agency may consider a compromise settlement of Federal debt after it has processed a final report of loss and issued a 60 day due process letter. Any funds collected on Federal debt will not be shared with the lender.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and liquidation proceeds have been accounted for and applied correctly to the loan.

(3) The lender must provide receipts and a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper.

(4) The lender must provide receipts and a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper. Liquidation expenses are recoverable only from liquidation proceeds. The Agency may approve attorney/legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its employees.

(5) The lender must support accrued interest by documenting how the amount was accrued. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(6) The Agency will pay loss payments within 60 days after it has reviewed the complete final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Liquidation expenses.* The Agency will deduct liquidation expenses from the liquidation proceeds of the collateral. The lender cannot claim any liquidation expenses in excess of liquidation proceeds. Any changes to

the liquidation expenses that exceed 10 percent of the amount proposed in the liquidation plan must be approved by the Agency. Reasonable attorney/legal expenses will be shared by the lender and Agency equally, including those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets. The lender cannot claim the guarantee fee or the annual renewal fee as authorized liquidation expenses, and no in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(f) *Rent.* The lender must apply any net rental or other income that it receives from the collateral to the guaranteed loan debt.

(g) *Payment.* Once the Agency approves the Form RD 449–30 and supporting documents submitted by the lender:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

Unless notified otherwise by the Agency, after the final loss claim has been paid, the lender must use reasonable efforts to attempt collection from any party still liable on any loan that was guaranteed. Any net proceeds from that effort must be split pro rata between the lender and the Agency based on the original amount of the loan guarantee. Any collection of Federal debt made by the U.S. from any liable party to the guaranteed loan will not be split with the lender.

§ 4287.170 Bankruptcy.

(a) *Lender's responsibilities.* It is the lender's responsibility to protect the guaranteed loan and all of the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to the following:

(1) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, seeking a dismissal of the bankruptcy plan;

(2) Filing a proof of claim, where necessary, and all the necessary papers and pleadings concerning the case;

(3) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(4) Requesting modifications of any bankruptcy plan whenever it appears that additional recoveries are likely; and

(5) Keeping the Agency adequately and regularly informed in writing of all aspects of the proceedings.

(6) The lender must submit a default status report when the borrower defaults and every 30 days until the default is resolved or a final loss claim is paid by the Agency. The default status report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, when the plan is complete, and when the borrower is not in compliance with the plan.

(7) With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(b) *Reports of loss during bankruptcy.* In bankruptcy proceedings, payment of loss claims will be made as provided in this section. Attorney/legal fees and protective advances as a result of a bankruptcy are only recoverable from liquidation proceeds and not the guarantee on the loan.

(1) *Estimated loss payments.* (i) If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy. All subsequent claims of the lender during bankruptcy will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the bankruptcy plan.

(ii) The lender must use Form RD 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the lender must complete a Form RD 1980–44 and forward this form to the Agency.

(iv) Upon completion of the bankruptcy plan, the lender must provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the bankruptcy is less than the estimated loss, the lender must reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender must submit a revised estimated loss claim in order to obtain payment of the additional amount owed by the Agency to the lender.

(2) *Bankruptcy loss payments.* (i) The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless the Bankruptcy Court approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once the Bankruptcy Court has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and interest.

(ii) The lender must use Form RD 449–30 to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must either complete a Form RD 1980–44 and forward this form to the Agency or enter the data directly into LINC.

(iv) If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Interest rate losses as a result of bankruptcy reorganization.* (i) For guaranteed loans approved prior to [DATE OF FINAL RULE PUBLICATION]:

(A) Interest losses sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (b)(1) of this section;

(B) Interest losses sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends

beyond the period of the bankruptcy plan;

(C) If a bankruptcy loss claim is paid during the operation of the bankruptcy plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(ii) For guaranteed loans approved on or after [DATE OF FINAL RULE PUBLICATION], the Agency will not compensate the lender for any difference in the interest rate specified in the Loan Note Guarantee and the rate of interest specified in the bankruptcy plan.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

(6) *Protective advances.* If approved protective advances, as authorized by § 4287.156 were incurred in connection with the initiation of liquidation action and were required to provide repairs, insurance, etc., to protect the collateral as result of delays in the case of failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, are payable under the guarantee in the final loss claim.

(c) *Expenses during bankruptcy proceedings.* (1) Under no circumstances will the guarantee cover liquidation expenses in excess of liquidation proceeds.

(2) Expenses, such as reasonable attorney/legal fees and the cost of appraisals incurred by the lender as a direct result of the borrower's bankruptcy filing, are considered liquidation expenses and will be shared equally by the lender and the Agency. Liquidation expenses must be deducted from collateral sale proceeds. Liquidation expenses are covered under the guarantee, provided they are reasonable, customary, and provide a demonstrated economic benefit to the lender and the Agency. Lender's in-house expenses, which are those expenses that would normally be incurred for administration of the loan, including in-house lawyers, are not covered by the guarantee.

(3) When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.

(4) If the property is abandoned by the bankruptcy trustee, the lender will conduct the liquidation in accordance with § 4287.157.

(5) Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim.

(6) Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

The Loan Note Guarantee will terminate under any of the following conditions:

(a) Upon full payment of the guaranteed loan;

(b) Upon full payment of any loss obligation; or

(c) Upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number _____. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 25 hours per response, with an average of 2.5 hours per response, including time for reviewing the collection of information. The burden may increase beyond the estimate reported here, if RBS determines additional data will need to be collected to facilitate evaluation, which can enhance the operation and performance of the program.

Dated: August 28, 2014.

Doug O'Brien,

Acting Under Secretary, Rural Development.

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