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Presidential Documents

Title 3—

The President

Proclamation 9170 of September 19, 2014

National Farm Safety and Health Week, 2014

By the President of the United States of America

A Proclamation

Across our Nation, farmers and ranchers labor through difficult and often dangerous conditions to write their chapter in the narrative that sustains our Union. It is the story of hard work and ingenuity that built our country—of a farmer who stretches the last moments of daylight to tend his crops and a rancher who gathers her herd and teaches her son the family trade. It is the story of America's agricultural sector, which powers progress in our rural communities and moves our Nation forward. As we recognize National Farm Safety and Health Week, we pay tribute to our agriculturists and renew our efforts to ensure their safety.

America depends on our farmers and ranchers to clothe our families, feed our people, and fuel our cars and trucks. And with their determined spirit and know-how, they have bolstered our economy with the strongest 5-year stretch of farm exports in our history. To support this vital industry and build on its record growth, this year I signed the Farm Bill, which lifts up small ranches and family farms by investing in farmers markets and organic agriculture. It also provides crop insurance, so that when disasters strike, our farmers do not lose everything they have worked to build.

While our farmers and ranchers are the best in the world, agriculture remains one of our country's most hazardous industries. Producers and their families are exposed to numerous safety and health dangers—from vehicular fatalities and heat-related illnesses to injuries from falls and sicknesses from exposure to pesticides and chemicals. With preparation and proper training, these risks can be limited and lives can be saved. That is why my Administration continues to pursue innovative and comprehensive ways to lessen these hazards. We have invested in programs that improve youth farm safety, and last year, we announced plans to support the development of a national safety training curriculum for young agricultural workers.

This week, we salute all those who carry forward our Nation's proud tradition on sprawling ranches and cross-hatched fields. Let us recommit to raising awareness of the dangers they face and doing our part to protect their health and well-being. Together, we can ensure a safer future for this great American industry.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 21 through September 27, 2014, as National Farm Safety and Health Week. I call upon the agencies, organizations, businesses, and extension services that serve America's agricultural workers to strengthen their commitment to promoting farm safety and health programs. I also urge Americans to honor our agricultural heritage and express appreciation to our farmers, ranchers, and farmworkers for their contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.

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Federal Register

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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 ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 38

[Docket No. RM05–5–022; Order No. 676–H]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) as mandatory enforceable requirements. These standards update NAESB's WEQ Version 002 and Version 002.1 Standards to reflect policy determinations made by the Commission in the Order Nos. 890 series of orders and other orders. In addition, the Commission is listing informationally, as guidance, NAESB's Smart Grid Standards (WEQ–016 through WEQ–020) in Part 2 of the Commission's regulations.

DATES: This rule will become effective October 24, 2014. Dates for implementation are provided in the Final Rule. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 24, 2014.

FOR FURTHER INFORMATION CONTACT:

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Gary D. Cohen (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8321.

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) [1] to incorporate by reference into its regulations as mandatory enforceable requirements, with certain enumerated exceptions, the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale

[1] 16 U.S.C. 791a, *et seq.*

Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) and filed with the Commission as a package on September 18, 2012 (September 18 Filing), as modified in a report filed with the Commission on January 30, 2013. In addition, the Commission is listing informationally, as guidance, NAESB's Smart Grid Standards (Standards WEQ–016, WEQ–017, WEQ–018, WEQ–019 and WEQ–020) in Part 2 of the Commission's Regulations.

2. These revised standards update earlier versions of these standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2. These new and revised standards include modifications to support Order Nos. 890, 890–A, 890–B and 890–C,[2] including the standards to support Network Integration Transmission Service on an Open Access Same-Time Information System (OASIS), Service Across Multiple Transmission Systems (SAMTS), standards to support the Commission's policy regarding rollover rights for redirects on a firm basis, standards that incorporate the functionality for Transmission Providers to credit redirect requests with the capacity of the parent reservation and standards modifications to support consistency across the OASIS-related standards.

3. The Version 003 Standards also include modifications to the OASIS-related standards that NAESB states support Order Nos. 676, 676–A, 676–E and 717 and add consistency.[3] In addition, NAESB states that it made modifications to the Coordinate Interchange standards to complement the updates to the e-Tag specifications,[4] modifications to the Gas/Electric Coordination standards to provide consistency between the two markets [5] and re-organized and revised definitions to create a standard set of terms, definitions and acronyms applicable to all NAESB WEQ standards.[6] NAESB states that the Version 003 Standards also include standards related to Demand Side Management and Energy Efficiency,[7] which the Commission incorporated by reference in Docket No. RM05–5–020 [8] after NAESB filed its Version 003 report, and Smart Grid-related standards that NAESB previously filed with the Commission in Docket No. RM05–5–021.[9]

I. Background

4. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development and promotion of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity. Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.

5. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries—wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.

6. NAESB develops its standards under a consensus process so that the standards draw support from a wide range of industry members. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted.

7. In Order No. 676, the Commission not only adopted business practice standards and communication protocols for the wholesale electric industry, it also established a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other wholesale electric industry business practice standards. In later orders in this series, the Commission incorporated by reference: (1) The Version 001 Business Practice Standards; [10] (2) the Version 002.1 Business Practice Standards; [11] (3) business practice standards categorizing various demand response products and services; [12] and (4) OASIS-related Business Practice Standards related to Demand Side Management and Energy Efficiency.[13]

8. In Order No. 890, the Commission revisited the *pro forma* Open Access Transmission Tariff (OATT) first established in Order No. 888 [14] and adopted a revised *pro forma* OATT designed to better achieve the objectives of preventing undue discrimination and providing greater specificity and transparency. In later orders in this series, the Commission affirmed, with clarifications, the basic findings that it made in Order No. 890.

9. A number of the findings made by the Commission in the Order No. 890 series of orders necessitated revisions to

[2] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification,* Order No. 890–C, 126 FERC ¶ 61,228 (2009) (Order No. 890–C). The Version 002 standards also included revisions made in response to Order No. 890.

[3] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216, (2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006), *Final Rule,* Order No. 676–B, FERC Stats. & Regs. ¶ 31,246 (2007), *Final Rule,* Order No. 676–C, FERC Stats. & Regs. ¶ 31,274 (2008), *order granting clarification and denying reh'g,* Order No. 676–D, 124 FERC ¶ 61,317 (2008), *Final Rule,* Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 (2009) (Order No. 676–E); *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008) (Order No. 717).

[4] September 18 Filing, transmittal at 2 (citing NAESB WEQ Electronic Tagging—Functional Specifications, Version 1.8.1).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–G, 78 FR 14654 (Mar. 7, 2013), FERC Stats. & Regs. ¶ 31,343 (2013). In this rule, the Commission incorporated by reference into its regulations updated business practice standards adopted by NAESB's WEQ to categorize various products and services for demand response and energy efficiency and to support the measurement and verification of these products and services in organized wholesale electric markets. These same standards are included without revision in the Version 003 standards.

[9] These standards were originally cited in a NAESB July 2011 report filed with the Commission and were resubmitted as part of WEQ Version 003. *See* Report of the North American Energy Standards Board on Smart Grid Related Standards, Docket No. RM05–5–021 (filed July 7, 2011); NAESB September 18 Filing at 2.

[10] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–C, FERC Stats. & Regs. ¶ 31,274, *reh'g denied,* Order No. 676–D, 124 FERC ¶ 61,317 (2008).

[11] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 (2009). This order also incorporated revisions made in response to Order Nos. 890, 890–A, and 890–B.

[12] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010).

[13] Order No. 676–G, *see supra* n.8.

[14] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

the Business Practice Standards for Public Utilities so that there would be no inconsistency between the requirements of Order No. 890 and the Business Practice Standards. Accordingly, NAESB set up a work project to review the existing business practice standards, identify which standards would need revision to prevent any inconsistencies with the Order No. 890 requirements, and develop and adopt the needed revised standards. Those revised standards form part of the package of revisions included in the WEQ Version 003 Standards. These revisions are in addition to the Order No. 890-related revisions incorporated by reference in Order No. 676–E.

10. The Version 003 standards include five categories of standards not previously incorporated by reference by the Commission that were developed by NAESB in response to the Order No. 890 series of orders. These include: (1) Standards that NAESB previously submitted to support SAMTS; [15] (2) part two of the standards modifications to the WEQ–001–9.7 Business Practice Standard requested in Order No. 890–A [16] related to rollover rights to requests for redirect on a firm basis; (3) the WEQ–001–9.1.3.1 and WEQ–001–10.3.1.1 Business Practice Standards that provide for Transmission Providers to process redirect requests in a manner that counts the available transfer capability encumbered by the parent reservation as available for the redirected request; [17] (4) standards to support Network Integration Transmission Service on the OASIS; [18] and (5) standards modifications to support consistency across the NAESB OASIS standards.[19]

11. In Order No. 717, the Commission made several modifications related to the posting requirements associated with the Standards of Conduct. Specifically, the Commission discontinued the requirement for public utilities to post standards of conduct information on their OASIS sites.[20] In response, WEQ's Business Practice Subcommittee modified the WEQ–001, WEQ–002 and WEQ–003 Business Practice Standards to remove reference to the standards of conduct-related obligations with the exception of a few template structures that may be implemented at the option of the Transmission Provider. WEQ's OASIS Subcommittee also modified standards WEQ–013–2.6.81 and WEQ–013–2.6.82 to clarify the listing of service types, modified standards WEQ–001–14.1.3 and WEQ–001–15.1.2 regarding the timing of required postings of narratives, and made modifications to standards WEQ–001, WEQ–002 and WEQ–003 (concerning standards of conduct posting requirements) in response to Order No. 717.

12. The Joint Electric Scheduling Subcommittee (JESS), a standing joint subcommittee made up of participants from NAESB and the North American Electric Reliability Corporation (NERC), has been tasked with coordinating efforts to maintain and modify, as needed, the coordinate interchange business practice standards in WEQ–004 with their associated reliability standards. JESS now leads the effort to harmonize the Coordinate Interchange (WEQ–004) standards with the WEQ–001, WEQ–003 and WEQ–013 Business Practice Standards in light of revisions made to the Electronic Tagging Functional Specification, previously maintained by NERC, and now maintained and updated, as needed, by NAESB. The WEQ adopted additional modifications to the WEQ–004 standards to use abbreviations, acronyms, definitions and terms consistent with those in Standard WEQ–000 and to provide consistency across all WEQ standards.

13. WEQ adopted modifications to support consistency between the WEQ business practice standards and the Wholesale Gas Quadrant (WGQ) Gas/Electric Coordination standards. In addition, WEQ made modifications to the business practice standards to harmonize the terms and definitions contained within the WEQ business practice standards with the definitions of those terms used in the business practice standards for other quadrants. These changes were also coordinated to be consistent with definitions and terms contained in the NERC Glossary.

14. Also included in the WEQ Version 003 standards are standards developed to support Smart Grid applications as well as standards related to the measurement and verification of Demand Response (DR) and Energy Efficiency (EE) products. These standards have been referenced in earlier reports filed with the Commission before the completion of the WEQ Version 003 standards. The Smart Grid application standards had been referenced in a report filed with the Commission on July 7, 2011 in Docket No. RM05–5–021. The DR and EE measurement and verification standards were referenced in a report filed with the Commission on May 2, 2011 in Docket No. RM05–5–021 and have been the subject of Commission action.[21]

15. NAESB's September 18 Filing includes an interpretation of standards WEQ–001–9.1 and WEQ–001–10.1 and recites the results of a quadrant-wide effort to provide a common location for all abbreviations, acronyms and definitions of terms that created the WEQ–000 Business Practice Standards and addresses both internal inconsistencies and inconsistencies between the standards and terms and definitions in the NERC Glossary.

16. In a notice of proposed rulemaking issued on July 18, 2013, the Commission proposed to amend its regulations to incorporate by reference, with certain enumerated exceptions, the WEQ Version 003 Standards.[22] In response to the WEQ Version 003 NOPR, 11 comments and one reply comment were filed.[23]

17. Finally, on November 27, 2013 NAESB filed a report with the Commission stating that it made minor corrections to Standards WEQ–000, WEQ–001, WEQ–002, WEQ–003, WEQ–013, and WEQ–014. The Commission considers these corrections non-substantive and we will incorporate these corrections by reference to ensure the standards we adopt are as accurate and up-to-date as possible.

II. Discussion

A. Overview

18. The specific NAESB standards that we are incorporating by reference in this Final Rule are:

- WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013) with the exception of Standards WEQ–001–9.5,

[15] *See* September 18 Filing at 3 & n.13 (citing submittal of NAESB Standards Development to Support Coordination of Requests for Transmission Service Across Multiple Transmission Systems (Docket No. RM05–5–013) on October 7, 2011, with minor corrections on January 25, 2012).

[16] *See* September 18 Filing at 3 (citing NAESB WEQ Business Practices Standards Crediting Redirect Requests with the Capacity of the Parent Reservation).

[17] *Id.* 3.

[18] *Id.*

[19] *Id.*

[20] Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 213–218 and PP 235–239.

[21] Order No. 676–G, *supra* n.8.

[22] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 78 FR 45,096 (July 26, 2013), FERC Stats. & Regs. ¶ 32,698 (2013) (WEQ Version 003 NOPR).

[23] Commenters on the WEQ Version 003 NOPR, and the abbreviations used in this Final Rule to identify them, are listed in the Appendix.

WEQ–001–10.5, WEQ–001–14.1.3, WEQ–001–15.1.2 and WEQ–001–106.2.5;[24]

- WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–004, Coordinate Interchange, WEQ Version 003, July 31, 2012 (as modified by NAESB final actions ratified on December 28, 2012);
- WEQ–005, Area Control Error (ACE) Equation Special Cases, WEQ Version 003, July 31, 2012);
- WEQ–006, Manual Time Error Correction, WEQ Version 003, July 31, 2012;
- WEQ–007, Inadvertent Interchange Payback, WEQ Version 003, July 31, 2012;
- WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection, WEQ Version 003, July 31, 2012 (with minor corrections applied November 28, 2012);
- WEQ–011, Gas/Electric Coordination, WEQ Version 003, July 31, 2012;
- WEQ–012, Public Key Infrastructure (PKI) WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on October 4, 2012);
- WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response, WEQ Version 003, July 31, 2012; and
- WEQ–021, Measurement and Verification of Energy Efficiency Products, WEQ Version 003, July 31, 2012.

19. In addition, in this Final Rule, we will list informationally, in Part 2 of our regulations, as non-mandatory guidance:

- WEQ–016, NAESB Specifications for Common Electricity Product and Pricing Definition, WEQ Version 003, July 31, 2012;
- WEQ–017, Specifications for Common Schedule Communication Mechanism for Energy Transactions, WEQ Version 003, July 31, 2012;
- WEQ–018, Specifications for Wholesale Standard Demand Response Signals, WEQ Version 003, July 31, 2012;
- WEQ–019, NAESB Customer Energy Usage Information Communication WEQ Version 003, July 31, 2012 (as amended on March 21, 2013); and
- WEQ–020, Smart Grid Standards Data Element Table, WEQ Version 003, July 31, 2012.

These standards define use cases, data requirements, and a common model to represent customer energy usage.[25]

20. In a change from our prior practice, we are requiring public utilities and those entities with reciprocity tariffs to modify their open access transmission tariffs (OATTs) to include the WEQ standards that we are incorporating by reference by making a compliance filing by December 1, 2014.[26] Any waiver requests must be filed at the same time or in a separate FPA section 205 filing. Additionally, consistent with the timeline prescribed in Standard 002–5.10.3, we have established a separate 18-month compliance schedule for implementation of the Network Integration Transmission Service (NITS) OASIS templates, with a compliance filing due two months before that.

21. NAESB approved the standards under its consensus procedures.[27] Adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.[28]

B. Issues Raised by Commenters

22. Comments in response to the WEQ Version 003 NOPR were filed by eleven commenters and one reply commenter. A number of comments expressed general support for the Commission's proposals[29] and no comments were received opposing the basic direction of the NOPR, although comments were received taking issue with specific details of the NOPR proposals. Specifically, there were concerns raised by a few commenters about, among other matters, the appropriate implementation schedule for the requirements of the rule and there was a split among the comments as to whether the Commission should incorporate the standards on redirects. We will incorporate by reference into the Commission's regulations without further discussion all of the WEQ Version 003 Business Practice Standards that we proposed for incorporation in the WEQ Version 003 NOPR that did not occasion comment and we will separately discuss each of the issues raised by commenters.

1. Five-Day Required Posting (Standards WEQ–001–14.1.3 and WEQ–001–15.1.2)

a. NOPR Proposal

23. In Order No. 676–E, the Commission declined to incorporate by reference NAESB Standards WEQ–001–14.1.3 and WEQ–001–15.1.2 (both related to ATC Narrative) because these

[24] The latest version of NAESB's OASIS Standards (Standards WEQ–001, WEQ–002 and WEQ–003) have been designated by NAESB as the Version 2.0 OASIS Standards, even though they are also part of the WEQ Version 003 Business Practice Standards.

[25] In its report to the Commission, NAESB stated that the subcommittee working on these standards ''developed a set of use cases to describe price communication scenarios related to shifts in demand and environmental and economic changes. These use cases were then used to develop the price attributes and product identification information or data requirements necessary to communicate price. As a second phase, the subcommittee refined both the use cases and the data requirements in an effort to create a more complete robust standard.'' NAESB Smart Grid Report in Docket No. RM05–5–021 (July 7, 2011) at 3.

[26] To the extent a public utility's OASIS obligations are administered by an independent system operator or regional transmission operator (RTO) and are not covered in the public utility's OATT, the public utility will not need to modify its OATT to include the OASIS standards. Such a public utility will, however, be required to comply with these standards unless granted a waiver by the Commission.

[27] The WEQ's procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the seven industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, end users, independent grid operators/planners, and technology services. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the seven industry segments. For final approval, 67 percent of the WEQ's general membership must ratify the standards.

[28] Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[29] EEI, ISO/RTO Council, OATI, PJM, Tacoma Power, and TDU Systems. Bonneville specifically endorses the WEQ Version 003 NOPR proposals incorporating business practice standards on Public Key Infrastructure and Smart Grid. Bonneville at 6, 7.

standards did not meet the Commission's requirement to post the ATC narrative ''as soon as feasible.'' [30] In the WEQ–003 NOPR, we explained that NAESB modified those two standards to correct this deficiency by adding language providing that Transmission Providers should strive to post their ATC narratives within one business day and are required to make this posting within five business days. We explained that NAESB's report does not present any reason why a Transmission Provider would need five business days to post an ATC narrative and that we remained concerned that the five-business day requirement does not meet the Commission's requirement to post the ATC narrative as soon as feasible. We invited comments on the necessity for taking longer than one day to post the ATC narrative.

b. Comments

24. PJM believes that the proposed one-day posting goal and five-day posting requirement are reasonable.[31] PJM believes that the posting timing requirements set forth in the proposed standards strikes an appropriate balance in encouraging postings within one business day, but still allowing the flexibility to post within five business days.[32] It maintains that more stringent requirements simply do not take into account system outages and application failures that could prevent a Transmission Provider from meeting a strict one day posting requirement.[33]

25. PJM states that, in the event that the Commission would prefer a strict one-day posting requirement, it could specify that an entity could avoid self-reports of administrative violations of the rule so long as the average missed postings per year does not exceed a set value (e.g., 75 percent of postings) and does not exceed, for example, three days for posting. PJM states that, with such a structure, a preference for one-day posting could be implemented, while avoiding the need for administratively burdensome self-reporting in those instances where, due to unforeseen circumstances, the Transmission Provider is unable to meet the requirement.[34]

26. In Duke Energy's view there are instances when a Transmission Provider will need longer than one day to post an ATC narrative.[35] Thus, Duke Energy concludes that the deadlines in WEQ–001–14.1.3 and WEQ–001–15.1.2 are reasonable.[36] Duke Energy explains that these deadlines take into account the (1) large volume of data underlying the ATC values, (2) complexity of the ATC calculations, (3) inability to utilize an automated process to produce an accurate and coherent narrative that meets relevant standards, (4) limited number of Transmission Provider subject matter experts that analyze such data and calculations to post the narratives, and (5) time consuming nature of such analytical processes.[37]

27. TDU Systems expressed concern with the timetable in Standard WEQ–001–14.1.3 and WEQ–001–15.1.2 encouraging the Transmission Provider to strive to post a zero ATC narrative for each Constrained Posted Path within one business day and the requirement to post the narrative within five business days and urges that Transmission Providers post this information as soon as feasible. In addition TDU Systems indicates the requirement should be for Transmission Providers to post the zero ATC narrative and the ATC change narrative at the same time that the ATC results are published.[38] TDU Systems urges this deadline because it considers this information critical to allowing the transmission customer to audit the results and to find alternative means to acquire the transmission that they need. In TDU Systems' view, requiring that Transmission Providers ''strive'' to post the narratives within one business day while actually requiring posting of the narrative within five business days is meaningless as a standard. It argues that there is absolutely no incentive for Transmission Providers to do anything other than wait until the last possible minute, i.e., five business days later, to make these postings. It further argues that the burden on the Transmission Provider to post the ATC narrative is negligible at most. But TDU Systems asserts the harm to customers that are denied transmission service because of a lack of ATC can be substantial.[39]

c. Commission Determination

28. As we did in Order No. 676–E, in this Final Rule the Commission will decline to incorporate Standards 001–14.1.3 (on the posting of zero ATC narratives) and 001–15.1.2 (on the posting of ATC change narratives) by reference, as they permit Transmission Providers to post an available transfer capability change narrative within five business days of meeting the criteria under which a narrative is required to be posted, which is inconsistent with the Commission's rejection in Order No. 890 of delays in posting data.[40] In Order No. 890, the Commission stated that posting within one day appears reasonable. In light of the change to those standards in Version 003 requiring utilities to ''strive'' to post that data within one day while requiring the data to be posted within five days, the Commission invited comments as to the necessity for taking longer than one day to post the ATC narrative.

29. The two comments challenging a one-day posting requirement for ATC narratives did not provide a compelling reason why longer than one day would be necessary to post this narrative under normal circumstances. Commenters' examples of times when extenuating circumstances would require additional time to post the narrative could arise, but would likely not reflect a normal circumstance. While we would be receptive to incorporating a revised standard that would create a self-reporting mechanism to deal with instances when special circumstances have prevented timely postings, we would not be receptive to a standard with an expansive exception from self-reporting, as suggested by PJM. Nor are we satisfied that the revised Standard adopted in WEQ Version 003 is adequate to ensure the timely posting of ATC narratives. Thus, we will decline to incorporate Standards 001–14.1.3 and 001–15.1.2 by reference and request that NAESB revise these standards to provide for a one-day posting requirement.

30. TDU Systems not only argues that the postings required by Standards 001–14.1.3 and 001–15.1.2 should be required to be made more promptly, it also argues they should be required to be made at the same time the Transmission Provider publishes its ATC results. We find, however, that TDU Systems has not demonstrated why simultaneous posting is necessary, nor has it informed us of any efforts it has made to build a consensus within NAESB for this suggested requirement. Nor has TDU Systems shown that the Standard, as adopted by NAESB is unreasonable. If TDU Systems believes that its proposal would improve upon the standards adopted by NAESB, we encourage it to work through the NAESB process to build consensus for its position and implement this change at the time when NAESB works on revisions to Standards 001–14.1.3 and 001–15.1.2 to implement our policy in

[30] Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at P 39.

[31] PJM at 5.

[32] *Id.*

[33] *Id.*

[34] PJM at 6.

[35] Duke Energy at 5.

[36] *Id.* at 5–6.

[37] *Id.*

[38] TDU Systems at 9.

[39] *Id.*

[40] Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at PP 38–39 & n.41.

Order No. 890 that data be posted without unreasonable delay.[41] Meanwhile, consistent with our findings in Order No. 676–E, each public utility and each utility with a reciprocity OATT, is expected to timely post this information as soon as feasible and, in most cases, one day would appear to be a reasonable timeframe to accomplish this.[42]

2. Redirects (Standards WEQ–001–9.1.3.1, WEQ–001–9.5, WEQ–001.9.7 and WEQ–001–10.3.1)

a. NOPR Proposal

31. As we explained in the WEQ Version 003 NOPR, in the Version 003 standards, NAESB modified WEQ–001–9.7 so that it would conform to the Commission's policy granting rollover rights to requests for redirect on a firm basis.[43] We also explained that NAESB added standards WEQ–001–10.3.1.1 and WEQ–001–9.1.3.1, which provide that Transmission Providers are to process redirect requests in a manner that considers the available transfer capability encumbered by the parent reservation as available for the redirected request. The revised standards were designed to avoid violation of first-come, first-served queue priority principles.

32. NAESB modified the WEQ–001–9 Business Practice Standards (Requirements for Dealing with Redirects on a Firm Basis) and modified the definition of Unexercised Rollover Rights and added a definition for Capacity Eligible for Rollover to make the NAESB standards consistent with the Commission's regulations. NAESB also made relevant modifications to standards WEQ–001, WEQ–002 and WEQ–013 and provided examples for the conveyance of rollover rights with a redirect on a firm basis provided in Appendix B of the WEQ–001 standards. Our discussion in the WEQ Version 003 NOPR also took note of our precedent in *Entergy Services, Inc.,* 143 FERC ¶ 61,143, at P 25 & n.68 (2013) (*Entergy*) and in *Dynegy Power Marketing, Inc.,* 99 FERC ¶ 61,054, at P 9 (2002) (*Dynegy*). NAESB's standards in this area aroused considerable interest.

b. Comments

33. Bonneville sees a conflict between the Commission's policy in *Entergy* and *Dynegy* related to rollover rights and Standards WEQ–001–9.1.3, WEQ–001–9.5.3, WEQ–001–9.6.1, WEQ–001–9.6.2, WEQ–001–10.1.4, WEQ–001–11.6, 001–11.7 and WEQ–013–3.2.6.5.1 and suggests that the Commission not incorporate these standards until it decides the *Entergy* rehearing and directs NAESB to revise such standards in order to align them with applicable Commission guidance.[44] Putting this aside, however, Bonneville also expresses strong support for the outcome in Standards WEQ–001–9.1.3.1 and WEQ–001–10.3.1.1 that allows the crediting of ATC to firm and non-firm redirect requests respectively based on the capacity encumbered by the parent reservation that is also needed by the redirect request.[45] Bonneville agrees with the Commission that these standards do not violate first-come, first-served principles.[46] OATI supports the inclusion of WEQ–001–9.7 with the rest of the WEQ–001–9 standards.[47]

34. Duke Energy argues that standard WEQ–001–9.7 does not reflect the guidance provided by the Commission in *Entergy*[48] and notes the standards were drafted prior to the dissemination of the Commission's guidance in such case.[49] Instead, Duke Energy maintains that the NAESB Version 003 standards reflect the guidance that the Commission provided in *Dynegy*[50] and in Order No. 890 and its progeny.[51] As a result, Duke Energy comments that the NAESB Version 003 standards are blatantly contradictory to the guidance the Commission provided in the *Entergy* case.[52] Similarly, EEI comments that the Commission should not incorporate by reference Standard WEQ–001–9.7 into its regulations because it is inconsistent with policy announced in *Entergy*.[53]

35. Seattle is concerned that NAESB Version 003 standard WEQ–001–9.7 does not align with the Commission's policy regarding when a customer requesting a redirect loses its rights on the parent path.[54] Seattle comments that, in *Entergy,* the Commission affirmed an earlier ruling from 2002 where it held that a transmission customer receiving firm transmission service does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) It is accepted by the Transmission Provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under tariff section 13.2.3.[55] Seattle comments that the Commission also held in *Entergy* that a redirect for the ''full remaining term'' of the parent reservation receives the reservation priority of the parent.[56] Seattle believes NAESB Version 003 WEQ–001–10.3.1.1 and WEQ–001–9.1.3.1, which provide for ATC crediting for redirect requests are appropriate mechanisms to apply in evaluating those requests.[57] But it requests guidance from the Commission on how the crediting process should be implemented to follow *Entergy*.[58]

36. TDU Systems comment that Standard WEQ 001–9.7.11 does not fully conform to the Commission's policy granting rollover rights to requests for redirect on a firm basis.[59] In the view of TDU Systems, this standard does not include the third criterion of the Commission's policy, i.e., that the redirect request has passed the conditional reservation deadline under OATT section 13.2.[60] Additionally, TDU Systems seek clarification of the scope of this standard.[61] They ask if standard WEQ 001–9.7 only applies to long-term firm point-to-point service, or whether it applies to short-term point-to-point service as well.[62]

37. Tacoma Power encourages the Commission to adopt recently proposed standards by NAESB that provide for the crediting of transmission capacity toward redirect requests.[63] Tacoma Power strongly supports the Commission's proposed incorporation of WEQ–001–9.1.3.1 and WEQ–001–10.3.1.1 because they enable greater and more efficient utilization of transmission systems without violating the important principle of first-come, first-served when granting requests for firm transmission service.[64] Tacoma Power supports the comments submitted by the Bonneville Power Administration in the present docket that relate to the crediting of existing transmission rights to redirect requests.[65]

38. Clark Public Utilities comments that several standards, including WEQ–001–9.1.3, WEQ–001–9.1.3.1, WEQ–

[41] *See* Order No. 890 at P 370.

[42] *See* Order No 676–E at P 39.

[43] WEQ Version 003 NOPR, FERC Stats. & Regs. ¶ 32,698 at P 25.

[44] Bonneville at 3–5.

[45] WEQ Version 003 NOPR, FERC Stats. & Regs. ¶ 32,698 at P 6.

[46] *Id.*

[47] *Id.* PP 6–7. OATI notes that WEQ–001–9.7 is not impacted by the *Entergy* ruling as long-term firm point-to-point transmission service is not subject to a conditional time period.

[48] *Entergy Services, Inc.,* 143 FERC ¶ 61,143 (2013).

[49] Duke Energy at 8.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] EEI at 6–7.

[54] Seattle at 2.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] TDU Systems at 4.

[60] *Id.* at 8.

[61] *Id.*

[62] *Id.*

[63] Tacoma Power at 2.

[64] *Id.* at 3.

[65] *Id.* at 2.

001.9.5.3, WEQ–001–9.6.2, WEQ–001–10.1.4, WEQ–001–11.6, WEQ–001–11.7, and WEQ–013–2.6.5.1, also are inconsistent with the Commission's decision in *Entergy*.[66] In Clark Public Utilities' view, *Entergy* institutes sweeping changes that are not reflected in NAESB's Version 003 Standards.[67] Clark Public Utilities suggests that the Commission should take a more critical look at the NAESB standards given that agreement for these standards was reached prior to issuance of *Entergy*.[68] As a result of the numerous conflicts between the Commission's guidance and the draft NAESB Version 003 standards identified above, Clark Public Utilities respectfully requests that the Commission not incorporate by reference in its regulations the NAESB Version 003 standards that bear upon redirects until a final decision is reached in the *Entergy* case and/or NAESB is directed by the Commission to revise such standards in order to align them with the Commission's recent guidance and software is available to facilitate the changes.[69]

39. The ISO/RTO Council requests that the Commission clarify that, under Standard WEQ–001–9.5, capacity on original path is released for resale when a Transmission Provider confirms a redirect request.[70]

40. On redirects, OATI notes the inconsistency between the standards and the Commission's findings in *Entergy* and observes that in most, if not all OASIS implementations, the release of capacity from the original path occurs on confirmation of the redirect request by the transmission customer.[71] OATI comments that implementation of the policy set forth in *Entergy* will require modification to a number of the NAESB WEQ–001–9 standards in addition to significant software and business process changes in OASIS.[72] OATI further requests that any changes to the current NAESB WEQ–001–9 standards and associated OASIS implementation of those standards not be required until such later time as (i) a final agency decision is provided in the ongoing *Entergy* matter and (ii) the Commission directs NAESB to revise such standards in order to align them with applicable Commission guidance.[73]

41. Snohomish supports the comments that argue that the Commission should not incorporate standards bearing on redirects (Seattle, Bonneville, Duke Energy and Clark Public Utilities).[74] Snohomish comments that, as suggested by other commenters in this proceeding, the Commission should direct NAESB to revise proposed Version 003 Standard WEQ–013–2.6.5.1 to align it with the Commission's policy regarding redirects and should hold off on incorporating these standards until this is done.[75]

c. Commission Determination

42. The Commission has issued three separate orders incorporating by reference into the Commission's regulations the Business Practice Standards of NAESB's WEQ.[76] In all of these final rules, the Commission declined to incorporate Standard WEQ–001–9.7 dealing with rollover rights on redirects, because it failed to match up with the Commission's prevailing policies as explained in Order No. 676.[77]

43. In Order No. 676, the Commission rejected NAESB Standard WEQ–001–9.7, which stated in pertinent part that, unless the transmission owner agrees, a request to redirect does not ''confer any renewal rights on the redirected path.'' The Commission explained that this standard (WEQ–001–9.7) did not meet the requirements of section 22.2 of the Commission's *pro forma* OATT. The Commission explained that:

> Section 22.2 provides that, while a transmission customer's request for new service on a firm basis is pending, the transmission customer retains its priority for service on its existing path, including rollover rights on its existing path. However, once a transmission customer's request for firm transmission service at new receipt and delivery points is accepted and confirmed, the new reservation governs the rights at the new receipt and delivery points and the transmission customer can obtain rollover rights with respect to the redirected capacity.[78]

44. NAESB sought to correct this deficiency by revising Standard WEQ–001–9.7 to make clear that a customer can obtain rollover rights on the redirected path. The revised Standard WEQ–001–9.7 states:

> A Transmission Customer holding long-term firm PTP that is eligible for continued rollover rights of service may convey those rights to an alternate path or PORs and PODs through a request to Redirect on a firm basis subject to the following requirements.

45. We find that the revised Standard WEQ–001–9.7 meets the requirements of Order No. 676 by providing a customer with the ability to obtain rollover rights on a redirected path. We, therefore, will incorporate this standard by reference into our regulations.

46. In the past, the Commission has incorporated by reference Standard WEQ–001–9.5.

However, as reinforced in the Commission's recent order in *Entergy Services, Inc.,* 137 FERC ¶ 61,199 (2011), *order on reh'g and compliance,* 143 FERC ¶ 61,143 (2013),[79] upon further review it is clear that Standard WEQ–001–9.5 does not meet the standard set in *Dynegy.* In *Dynegy,* the Commission held that ''a transmission customer does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) It is accepted by the Transmission Provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2.'' [80]

47. In light of the comments filed and our additional evaluation of the standards, we will decline to incorporate by reference Standard WEQ–001–9.5 into the Commission's regulations. We reach this decision because the confirmation criteria in Standard WEQ–001–9.5 do not satisfy all the factors delineated in *Dynegy*.[81] As currently written, the Capacity Available to Redirect in Standard WEQ–001–9.5 would be reduced before a redirect has passed the conditional reservation deadline, contrary to the Commission's findings in *Entergy* and *Dynegy*.[82] As we found in these orders, reducing the capacity available to redirect prior to the passage of the

[66] Clark Public Utilities at 3.

[67] *Id.* at 2.

[68] *Id.* at 6.

[69] *Id.*

[70] ISO/RTO Council at 4.

[71] OATI at 4.

[72] *Id.* at 4–5.

[73] *Id.* at 7.

[74] Snohomish at 3.

[75] *Id.* at 4.

[76] The Commission incorporated by reference the WEQ Version 000 Business Practice Standards in Order No. 676 (issued in 2006), the Version 001 Business Practice Standards in Order No. 676–C (*see* n.12 & P 52) (issued July 2008), and the WEQ Version 002.1 Business Practice Standards in Order No. 676–E (issued in Nov. 2009). *See supra* n.3.

[77] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216 (2006).

[78] *Id.* P 57.

[79] A further order on compliance and rehearing, affirming our policy in *Dynegy,* is being issued in Docket No. ER05–1065–008 concurrently with issuance of this Final Rule.

[80] *Dynegy,* 99 FERC ¶ 61,054 at 61,233.

[81] Standard WEQ–001–9.5 states: ''Upon confirmation of the request to Redirect on a firm basis, the Capacity Available to Redirect shall be reduced by the amount of the redirected capacity granted for the time period of that Redirect. An example is shown in Business Practice Standard WEQ–001–B.''

[82] We note that our incorporation by reference here, with enumerated exceptions, of the WEQ Version 003 Standards effectively revokes our current incorporation of the WEQ Version 002 iteration of the standards, so no version of Standard WEQ–001–9.5 will any longer be a Commission-incorporated standard once this rule becomes effective.

conditional reservation deadline could lead to a customer paying firm transmission charges and losing capacity on both its original path and its redirect path. The *Dynegy* policy, as reinforced in *Entergy,* effects a reasonable balancing of interests between the customer and the transmission owner by ensuring that the customer does not potentially lose rights to capacity, while at the same time still permitting the transmission owner to sell available capacity on a short term basis until the redirect becomes unconditional.

48. Standard WEQ–001–10.5 provides that the capacity available for a redirect will be reduced at the time when the request for a firm redirect is confirmed, which precedes expiration of the conditional reservation deadline.[83] Thus, this standard is also inconsistent with the Commission's redirect policy in *Dynegy.*

49. To ensure that the NAESB standards conform to the Commission's *Dynegy* policy, we request that NAESB revise Standards WEQ–001–9.5, WEQ–001–10.5, and any other standards affected by these standards, to conform to the *Dynegy* policy.[84] Having NAESB revise all of its standards to accommodate the Commission's policy in this area will help avoid confusion by public utilities as to their responsibilities under the Commission's policy and under the NAESB standards. Accordingly, we request that NAESB make this project a priority.

3. Network Integration Transmission Service (NITS)

a. NOPR Proposal

50. As explained in the WEQ Version 003 NOPR, NITS allows a Network Customer to integrate and economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to the way a Transmission Provider uses its Transmission System to serve its Native Load Customers. In the WEQ Version 003 Standards, NAESB has included new and revised standards related to NITS within the WEQ–000, WEQ–001, WEQ–002 and WEQ–003 Business Practice Standards. We also explained that NAESB has proposed Standard WEQ–001–106.2.5, which appears to contemplate a Transmission Provider refusing a request to terminate a secondary network service.[85] We invited comment on the purpose of this standard and on whether the Commission should incorporate this standard by reference. We further noted that, in Order No. 890–A, the Commission found that it was not appropriate to allow a Transmission Provider to deny requests to terminate network resource designations, although Order No. 890–A did not directly address the issue of terminating secondary network service.[86]

b. Comments

51. Duke Energy comments that the Commission should incorporate Standard WEQ–001–106.2.5, so that Transmission Providers can deny termination of scheduled (tagged) capacity associated with a reservation for Secondary Network Service.[87] This refusal is acceptable when the capacity requested for termination is still scheduled upon.[88] When the non-firm network reservation is terminated, the Transmission Provider reinstates the capacity to its ATC offering.[89] Based on this rationale, Duke Energy submits that the Commission should incorporate this standard by reference in its regulations.[90] Duke Energy further encourages the Commission to permit Transmission Providers to deny the undesignation of tagged network resource designations for the same reason.[91]

52. APPA believes that Standard WEQ–001–106.2.5 as drafted may not accurately reflect its intended application.[92] It argues that the standard should be revised to ensure that it will not inadvertently limit network customers' ability to modify either their secondary network service reservations or their actual use of the transmission capacity available to them under such reservations.[93] APPA finds the language of Standard WEQ–001–106.2.5 confusing and comments that the focus of Standard WEQ–001–106.2.5 properly should be on the Transmission Provider's treatment of capacity that becomes available when a customer terminates all or part of its unscheduled capacity and there should be no question as to whether the transmission customer can reduce unscheduled capacity associated with a secondary network service reservation as, in APPA's view, this right is without question.[94]

53. Thus, APPA asserts that the Commission should require NAESB to clarify its proposed Standard WEQ–001–106.2, and Standard WEQ–001–106.2.5 in particular, to avoid unduly restricting network customers' flexibility in their use of secondary network service and should give the Transmission Provider the ability to restrict the release on the OASIS of that terminated capacity if, for some reason, it is subsequently unavailable, rather than allowing a Transmission Provider to refuse the transmission customer's request to ''terminate'' the unscheduled portion of an existing secondary network service reservation.[95]

54. Consistent with this change, APPA argues other sections also would need to be reworded.[96] For example, proposed Standard WEQ–001–106.2.6 should also focus on the release of transmission capacity, and proposed Standard WEQ–001–106.2.7 should make clear that the reduction in the network customer's reservation is not contingent on the Transmission Provider's finding that the ''capacity is available to be terminated.'' [97] APPA also urges that the Commission clarify that the standard does not in any way restrict a network customer from revising its tags (within whatever timing requirements apply to tagging changes) to reduce its scheduled use of a secondary network service reservation.[98]

55. EEI supports incorporation by reference of Standard WEQ–001–106.25.[99] EEI believes that the Commission should incorporate this standard by reference into its regulations, allowing Transmission Providers the ability to refuse a termination request under these specific circumstance (of customer requesting termination of more capacity than the customer had reserved), which may compromise the stability of the electric power system.[100] EEI notes that, in that circumstance, the transmission customer has the option of submitting a

[83] Standard WEQ–001–10.5 provides: ''[u]pon confirmation of the request to Redirect on a non-firm basis, the Capacity Available to Redirect shall be reduced by the amount of the redirected capacity granted for the time period of that Redirect. An example is shown in Business Practice Standard WEQ–001–B.''

[84] As our policy in *Dynegy* and *Entergy* reflects our interpretation of the *pro forma* OATT, we expect transmission providers to adhere to this policy while NAESB develops conforming standards. *See, e.g., Transmission Loading Relief Reliability Standard and Curtailment Priorities,* 139 FERC ¶ 61,218, at P 9 (2012) (noting that all transmission providers are required to comply with the Commission's *pro forma* OATT).

[85] WEQ Version 003 NOPR at P 23.

[86] *Id.* P 950.

[87] Duke Energy at 4.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] APPA at 4.

[93] *Id.*

[94] *Id.* at 4–5.

[95] *Id.* at 5.

[96] *Id.* at 8.

[97] *Id.*

[98] *Id.*

[99] EEI at 5.

[100] *Id.* at 6.

revised and accurate termination request for approval.[101] Bonneville's comments also express support for the Commission's incorporation of the proposed standards regarding NITS on OASIS.[102]

56. OATI comments that the intent of Standard WEQ–001–106.2.5 was to allow Transmission Providers to refuse requests for termination of a secondary network resource where the requested amount of capacity to be terminated is in excess of that amount of reserved capacity that has not been scheduled, and therefore not free to be released to available transfer capability as stipulated in WEQ–001–106.2.6.[103] OATI states that the release of terminated capacity from a secondary network resource to non-firm available transfer capability that is still scheduled for energy delivery would likely pose a reliability concern for the Transmission Provider.[104] WEQ–001–106.2.5 provides the condition upon which the Transmission Provider could refuse such a request. For these reasons, OATI supports incorporation of WEQ–001–106.2.5 in the Commission's ruling.[105]

57. TDU Systems suggests that the Commission should direct NAESB to revise the NITS Standards to eliminate the discretion of a Transmission Provider to refuse a request to terminate secondary network service and to eliminate discretion in tracking designated network resource scheduling rights.[106] They also suggest directing NAESB to establish guidelines for processing applications including a Transmission Provider's discretion to determine what information is required to establish the queue time for the NITS application or for the response to the application.[107]

c. Commission Determination

58. Standard WEQ–001–16.2.5 as currently adopted by NAESB is unclear in its application and could be read to allow Transmission Providers discretion to deny requests to terminate service in situations where this might not be warranted. The differing comments on the application and use of this standard highlight the lack of clarity in this area. Therefore, the Commission declines to incorporate WEQ–001–106.2.5 by reference at this time because, as currently drafted, it is not clear how and when this standard should be applied.

59. Thus, the Commission will incorporate by reference all of the NITS standards proposed for incorporation in the WEQ Version 003 NOPR with the exception of Standard WEQ–001–106.2. We encourage NAESB to revise and clarify this entire standard and resubmit it to the Commission with changes that make clear when and how it should be applied.

4. Service Across Multiple Transmission Systems (SAMTS)

a. NOPR Proposal

60. In the WEQ Version 003 NOPR, the Commission proposed SAMTS business practice standards to provide a process for customers to complete cross-regional transactions. As explained in the WEQ Version 003 NOPR, the SAMTS standards address the coordination of point-to-point transmission service and/or network transmission service requests across multiple transmission systems. The process requires each affected provider independently to evaluate its portion of the linked request with the opportunity for reconciliation by the customer once all the evaluations are complete. The customer then communicates reconciled information to each of the affected providers.

b. Comments

61. Bonneville generally supports the proposed standards allowing transmission customers to link requests and reservations over multiple transmission systems on OASIS through coordinated groups.[108] But Bonneville asks the Commission to clarify that a transmission customer is required to update the status of a coordinated group when a conditional reservation is displaced through preemption under sections 13.2 or 14.2 of the *pro forma* tariff so that updates regarding the disposition of requests and conditional reservations included in a coordinated group that are preempted are treated comparably.[109]

62. PJM supports the initiative to develop a coordinated process for SAMTS, but PJM expresses concern that the proposed standards addressing SAMTS may result in it taking longer to evaluate Transmission Service Requests with no discernible benefit to customers.[110] For example, PJM maintains that the 24 hour attestation period for approvals could cause delays in evaluating a request and subsequent requests, which could be addressed by an automated system, if allowed.[111]

63. TDU Systems believes that the SAMTS standards are a step in the right direction and generally support them.[112] However, TDU Systems urges the Commission to require Transmission Providers to create a dispute resolution mechanism for transmission customers to use in case there are disagreements over implementation of the SAMTS standards.[113] TDU Systems asserts that, because the standards address practices across regions, it is not obvious that any particular Transmission Provider's tariff dispute resolution procedures would govern, and, therefore, there may be no clear avenue for resolving disputes. TDU Systems urges the Commission to direct NAESB to correct this omission in its final rule.

64. TDU Systems also recommends that the Commission direct NAESB to broaden the applicability of the SAMTS standards.[114] TDU Systems believe that treatment of the Coordinated Requests as ''linked'' should not be limited to the purpose of procurement of service.[115] Rather, these Coordinated Requests should continue to be ''linked'' after evaluations for application of service are complete. In particular, it believes these transmission services should be linked for purposes of long-term planning and conveying rollover rights.[116] Finally, TDU Systems argues the Commission should require Transmission Providers that deny a request under the new SAMTS process to post information including an explanation of why the service was denied and the expected duration of the constraint.[117] Such a requirement, it argues, would be consistent with section 37.6(e)(2) of the Commission's OASIS regulations and the transparency requirements of Order No. 890.[118]

c. Commission Determination

65. After consideration of the SAMTS Standards and the comments, the Commission will incorporate by reference NAESB's SAMTS standards. We note, however, that we find reasonable Bonneville's request to treat a conditional point-to-point reservation included in a coordinated group displaced through preemption comparably to a reservation that is superseded as a result of preemption. Thus, we request that NAESB consider

[101] *Id.* at 5–6.
[102] Bonneville at 2.
[103] OATI at 3–4.
[104] *Id.* at 4.
[105] *Id.*
[106] TDU Systems at 4–6.
[107] *Id.* at 7.
[108] Bonneville at 2.
[109] *Id.*
[110] PJM at 3.
[111] *Id.* at 3.
[112] TDU Systems at 3.
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.* at 4.
[118] *Id.*

this suggestion as part of its ongoing standards development process so that both actions are updated similarly. This can be reported in the next relevant WEQ standards update report filed by NAESB with the Commission.

66. PJM has raised a concern that this standard may significantly expand the time that will be required to evaluate Transmission Service Requests without any benefit to customers. We note that, consistent with Commission precedent, PJM may request a waiver and attest that its policies are ''consistent with or superior'' to specific newly incorporated NAESB standards. In such a proceeding, PJM would have the opportunity to substantiate its claim that these regulations would adversely affect its timeframe to evaluate Transmission Service Requests, with no discernable benefit to customers. Waivers are evaluated on a case by case basis and any waiver request from PJM will be evaluated on its individual merits. We make no determination here as to the outcome of such a request.

67. We will deny TDU Systems' request to require Transmission Providers to create a dispute resolution mechanism for transmission customers to use in case there are disagreements over implementation of the SAMTS, as we find no necessity to make this change at this time. Thus, we will adopt the standards as adopted by NAESB, which reflects the industry consensus and we will not at this time request that NAESB make the modifications to the standard recommended by TDU Systems. We reach this decision because we find the standard as adopted by NAESB to be reasonable and see no evidence that this process will not be successful in addressing and resolving disputes between transmission customers and Transmission Providers. Under the SAMTS Standards included in WEQ Version 003, a customer will have access to each transmission owner's dispute resolution process and also will be able to file a complaint with the Commission if the dispute resolution process does not resolve the problems presented. We find it premature to modify the newly adopted SAMTS standard without any evidence that it will not be successful as is. Moreover, there has been an industry consensus for the standard as adopted by NAESB. TDU Systems may raise this issue at NAESB in the future if it finds that a sufficient number of complaints warrant seeking a consensus for revisions to this standard within NAESB. As a general matter, we encourage participation in the NAESB process in the first instance. Those advocating changes to NAESB standards would be well advised to first participate in the NAESB process and seek consensus support for their positions within the NAESB process.

68. TDU Systems also requests that we broaden the applicability of the SAMTS standards and that these Coordinated Requests should continue to be ''linked'' after evaluations for application of service are complete. TDU Systems provides no justification for extending linkage beyond the procurement of service and a consensus of the industry saw no need for such a change. Thus, we find the consensus standard reasonable without such an expansion. Adoption of such a modification should not be implemented until NAESB has had an opportunity to consider whether an industry consensus supports the standard. Once again, we encourage TDU Systems to seek support for its positions within the NAESB process.

69. As noted by TDU Systems, 18 CFR 37.6(e)(2) already requires that ''[w]hen a request for service is denied, the Responsible Party must provide the reason for that denial as part of any response to the request. . . .'' We see no need for a further change to the standards as, at this point, the standards are not inconsistent with the Commission's regulation and parties are required to comply with the Commission's regulations.

5. Conflicts Between Standards and Approved Tariffs

a. Comments

70. PJM requests clarification that, if there is a conflict between terms of a Commission-approved tariff and NAESB Business Practice Standards, the tariff takes precedence and that an ISO/RTO following the terms of its Commission-approved tariff need not seek waiver of specific NAESB standards to avoid being deemed in violation of the standards.[119] PJM notes that specific NAESB language contemplates the precedence of Commission-approved tariffs over NAESB standards in the event of conflict. PJM requests the Commission ''recognize'' this interaction between the NAESB Business Practice Standards and RTO/ISO tariffs. PJM goes on to request that the Commission clarify that ISO/RTO Transmission Providers do not need to seek specific waivers of those NAESB rules that are inconsistent with Commission-approved tariff rules or market designs. Alternatively, PJM requests that the Commission grant waivers if a tariff is consistent with or superior to the requirements of the standards.[120]

b. Commission Determination

71. As discussed earlier, the Commission previously permitted a public utility to defer making its compliance filing until it makes an unrelated filing with the Commission to reduce the burden on filers of a stand-alone filing.[121] As PJM's comments indicate, this policy may result in confusion as to whether the tariff or the standards apply to the extent they are inconsistent.[122] For this reason, we are revising our policy to follow our practice with respect to the standards for natural gas pipelines, and will require compliance filings on the requirements not related to Standard WEQ–002–5.10.3 to be made by December 1, 2014. We will, however, allow public utilities that want to incorporate the complete set of NAESB standards into their tariffs without modification to specify in their compliance filing that they are incorporating into their tariff all the standards incorporated by reference by the Commission as specified in Part 38 of the Commission's Rules of Practice and Procedure as updated and revised. This will mean that those public utilities may not need to make compliance filings in future years to incorporate the standards so long as they continue to abide by all the newly incorporated standards. It would also obviate the need for a compliance filing related to Standard WEQ–002–5.10.3.

72. Public utilities may seek waiver of the standards for newly developed or newly revised standards and for the renewal of existing waivers. Our policy on when these waivers will be granted or denied is not being changed in this Final Rule. All requests for waiver and requests for renewals of prior granted waiver requests must be submitted by December 1, 2014, the same date on which the compliance filing is due.

73. Furthermore, consistent with previous practice, the Commission does not automatically extend existing waivers without Commission review and approval. When the Commission adopts new requirements, it is incumbent on a public utility that wishes to maintain a previously granted waiver applicable to the previous

[119] PJM at 2. PJM cites to ''WEQ–001–C Appendix C, relating to OASIS Business Practice Standards Exemptions. 'In the event of conflict between NAESB Business Practice Standards and an individual Commission approved tariff or Commission approved market design, the tariff or market design shall prevail.' ''

[120] *Id.*

[121] *See, e.g.,* Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at P 128.

[122] PJM at 2.

version of the standard to make a showing to the Commission that, based on the particular facts presented, the waiver should continue. The determination of whether a waiver from a prior requirement should apply to a revised requirement is one that needs to be made on a case-by-case basis.[123] If PJM believes that its circumstances warrant a waiver of any particular NAESB Business Practice Standards that the Commission is incorporating by reference into its regulations in this Final Rule, it may file a request for a waiver wherein it can detail the circumstances that it believes warrant a waiver. The Commission will decide on any such waiver request on a case-by-case basis and we decline to prejudge those circumstances in the context of this rulemaking.

C. Smart Grid Standards

1. Should smart Grid Standards be incorporated by reference into Commission's regulations as mandatory requirements?

a. NOPR Proposal

74. In the WEQ Version 003 NOPR, the Commission proposed to incorporate by reference five Smart Grid standards (WEQ–016, WEQ–017, WEQ–018, WEQ–019 and WEQ–020) into the Commission's regulations. The Commission also invited comment on what version of Standard WEQ–019 should be incorporated (discussed below).

b. Comments

75. Bonneville supports the Commission's incorporation of the proposed standards regarding Smart Grid.[124] By contrast, while EEI and its members fully support the development of Smart Grid technologies, EEI believes that adoption of these standards (standards WEQ–016, WEQ–017, WEQ–018, WEQ–019 and WEQ–020) by the Commission would be contrary to Commission precedent and to the express terms of the standards themselves, and would chill future Smart Grid Standards development.[125] EEI comments that, if the Commission does adopt any WEQ Smart Grid Standards, it should expressly clarify that their use is optional and that incorporation by reference of any of the WEQ Smart Grid Standards into utility tariffs would not negate or limit the optionality or informative nature of the WEQ Smart Grid Standards.[126] EEI also asserts that in no event should the Commission adopt WEQ–019 because that standard only applies to end-use customers and, accordingly, is outside the Commission's jurisdiction.[127] Further, EEI maintains that, if the Commission adopts any of the Smart Grid Standards, the Commission should clarify that some of the standards only apply in certain markets due to their nature.[128] Finally, EEI argues that, in no event should these NAESB smart grid standards be incorporated by reference into the Commission's regulations in the Code of Federal Regulations, claiming that to do so would, at a minimum, create ambiguity and confusion, or worse, could impose the inappropriate mandatory application of these standards.[129]

76. The ISO/RTO Council suggests that the Commission could confirm that the NAESB smart grid standards would not impose enforceable compliance mandates, particularly on ISOs and RTOs.[130] Specifically, with respect to Standard WEQ–019, the ISO–RTO Council suggests that the standard ''is meant to define a set of business processes that would serve as an input into the development of a broader smart grid information model.'' [131] The ISO/RTO Council claims that enforceable requirements would be unworkable at the present time.[132] The ISO/RTO Council also asserts, however, that ''NAESB's proposed Smart Grid-related standards have value and are likely to promote the development of future standards.''[133] In support of its arguments that these Smart Grid Standards should not be enforceable, the ISO/RTO Council quotes from the Commission's statement in Order No. 693 that for a standard to be enforceable, the standard must ''be sufficiently clear so that an entity is aware of what it must do to comply.'' [134]

c. Commission Determination

77. The Commission agrees with Bonneville and the ISO/RTO Council that the NAESB Smart Grid Standards have value and that their use by public utilities should be encouraged by the Commission. At the same time, however, we also find merit in EEI's arguments against incorporating these standards by reference into the Commission's regulations and in ISO/RTO Council's arguments against making these standards enforceable and mandatory. Thus, rather than incorporating these standards by reference as mandatory enforceable standards (as proposed in the WEQ Version 003 NOPR), the Commission instead will list these standards informationally in Part 2 of our regulations as non-mandatory guidance.[135] The NAESB Smart Grid Standards will thus be available for use, but we are not requiring them to be used by public utilities, and declining to use the standards will not be considered a violation of Commission regulations.

78. We are listing informationally the five Smart Grid Standards, as non-mandatory guidance, rather than incorporating them by reference into our regulations as mandatory requirements, because we agree with commenters that the five standards at issue were meant to provide encouragement for the development of new technologies and to foster Smart Grid interoperability by defining a set of business processes that would serve as an input into the development of a broader Smart Grid information model. In addition, we agree with the ISO/RTO Council that these NAESB standards ''are building blocks that support ongoing efforts to develop future smart grid standards.'' [136] Thus, for all these reasons, we are not mandating compliance with these standards; but nonetheless are informationally listing these standards as non-mandatory guidance. Our action here is intended to encourage further developments in interoperability, technological innovation and standardization in this area.

2. Appropriate Version of WEQ–019 To Be Listed Informationally as Guidance

a. NOPR Proposal

79. In the WEQ Version 003 NOPR, the Commission noted that NAESB had ratified changes to Standard WEQ–019 on March 21, 2013 that were provided

[123] Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 at P 107.

[124] Bonneville at 7.

[125] EEI at 7–9.

[126] *Id.* 12.

[127] *Id.* 13.

[128] *Id.* For example, EEI states that WEQ–017 and WEQ–018 should only apply, if at all, in markets with wholesale demand response and WEQ–019 should not apply to utilities that haven't adopted the optional ''Green Button.''

[129] *Id.* at 14. EEI notes that ''18 CFR section 38.2(a) provides that '[a]ll entities to which section 38.1 is applicable must comply with the following business practice . . . standards . . .' (emphasis added).''

[130] ISO/RTO Council at 2, 5.

[131] *Id.* at 7.

[132] *Id.*

[133] *Id.* at 9.

[134] *Id.* at 9, n.12.

[135] In 18 CFR part 2, the Commission has set out various statements of general policy and interpretations. We will house the guidance we are listing informationally on Smart Grid issues within a separate undesignated heading within Part 2 of our regulations. In the next section of this preamble, we will separately address the question of which version of Standard WEQ–019 (i.e, the version contained in the WEQ Version 003 Standards or the version ratified by NAESB on March 21, 2013) should be the one listed informationally as guidance in Part 2 of the Commission's regulations.

[136] ISO/RTO Council at 8.

for energy usage information consistent with the Green Button Initiative, promoted by the White House Office of Science and Technology Policy. The Commission then invited comment on whether the Commission should incorporate by reference the version of Standard WEQ–019 ratified by NAESB membership on March 21, 2013, rather than the version contained in Version 003.

b. Comments

80. Bonneville supports the Commission's incorporation of the version of the Standards ratified by NAESB on March 21, 2013.[137] By contrast, Duke Energy comments that it disagrees with some details of the Green Button Initiative to allow customers access to their energy usage information because it believes this would burden Transmission Providers without necessarily providing useful information to transmission customers.[138] For this reason, Duke Energy requests that the Commission incorporate by reference the version of Standard WEQ–019 ratified by NAESB membership in Version 003, without the revisions ratified on March 21, 2013.[139] In addition, for these same reasons it opposes incorporation by reference of Standard WEQ–019 as a mandatory standard.[140] However, it would not oppose incorporation of this standard as an optional business practice.[141]

81. The ISO/RTO Council takes no position on which version of WEQ–019 be used.[142] EEI opposes any form of incorporation by reference or adoption of WEQ–019 and thus does not state a preference for either version of the standard.[143]

c. Commission Determination

82. All of the concerns raised about our incorporation by reference of the version of Standard WEQ–019 ratified by NAESB on March 21, 2013 hinge on the concern that we might incorporate this standard as a mandatory enforceable standard. Given our decision to only list these standards informationally, as guidance, there is no remaining reason not to go with the most up-to-date version (i.e., the version ratified by NAESB on March 21, 2013) and that is the version we are listing informationally, as guidance, in this Final Rule.

[137] Bonneville at 7.

[138] Duke Energy at 6.

[139] *Id.* at 7.

[140] *Id.*

[141] *Id.*

[142] ISO/RTO Council at 6.

[143] EEI at 13.

III. Compliance and Implementation Issues

A. Applicability of NITS Standards to ISOs and RTOs

1. Comments

83. PJM asks the Commission to continue to acknowledge in its final rule in this matter that NAESB's business practice standards associated with NITS do not apply to PJM's market construct as the NITS Standards and Order No. 890 requirements were developed to eliminate undue discrimination in the provision of transmission service and were not designed to address the more stringent requirements that necessarily apply to resources designated under a capacity construct, such as PJM's.[144] In addition, ISO/RTO Council asks the Commission to confirm that it will give substantial weight to NAESB statements regarding the applicability of business practice standards when considering future ISO/RTO exemption requests.[145]

2. Commission Determination

84. Once again, if PJM believes that its circumstances warrant a continued waiver of the regulations, it may file a request for a waiver wherein it can detail the circumstances that it believes warrant a waiver. The Commission will decide on any such waiver request on a case-by-case basis and we decline to prejudge those circumstances in the context of this rulemaking. Absent a Commission-approved waiver, compliance with the standards is required by all public utilities.

85. The ISO/RTO Council requests ''the Commission attach substantial weight to applicability and scope provisions included in the WEQ standards when it considers individual ISO/RTO waiver requests.'' [146] The Commission reviews waiver requests on a case-by-case basis, considering the specific circumstances presented in each individual waiver justification, as appropriate, and we will not prejudge any such circumstances in the context of this rulemaking.

B. Waiver Requests

86. Any public utility seeking a waiver of these requirements must still comply with the requirement to file a revised tariff acknowledging its obligation to comply with the newly incorporated by reference Business Practice Standards. While it may additionally file a written request for waiver, such waiver request will not excuse compliance with the standards until such time as its waiver request is approved by the Commission. Thus, waiver requests should be filed by December 1, 2014, which is early enough to allow for Commission review prior to the compliance date. Waiver requests should identify the specific requirements from which waiver is sought and should state the reasons why a waiver is warranted. Requests for waiver related to Standard WEQ–002–5.10.3 must be filed by February 24, 2016.

87. In the past, the Commission has allowed a public utility to defer the filing of a revised tariff acknowledging its obligation to comply with the newly incorporated by reference Business Practice Standards until it makes an unrelated tariff filing. In this Final Rule, we have reconsidered that policy and find that, given the broader coverage of the NAESB standards, as well as the waiver requests received, the deferral policy may lead to confusion over the standards applicable to particular public utilities. Moreover, deferral of the filings may lead to NAESB standards being included in FPA section 205 filings, making review of the standards and waiver requests more difficult to process. We have concluded, therefore, that, as we do with respect to incorporation of the NAESB standards for natural gas, all public utilities will need to make a compliance filing that will permit uniform review of the filings and all requests for waiver. For those public utilities that want to incorporate the complete set of NAESB standards into their tariffs without modification, we will permit their initial compliance filing to specify that they are incorporating into their tariff all the standards as specified in Part 38 of the Commission's Rules of Practice and Procedure as updated and revised.[147] This will mean that those public utilities will not need to make compliance filings in future years to incorporate the standards so long as they continue to abide by all of the NAESB WEQ Business Practice Standards and Communication Protocols for Public Utilities that the Commission has incorporated by reference into its regulations.

88. Consistent with this determination, we are requiring each public utility to make the required tariff filing acknowledging its obligation to comply with the newly incorporated by

[144] PJM at 5.

[145] ISO/RTO Council at 13.

[146] ISO/RTO Council at 13.

[147] Public utilities adopting this option should include the following language in their tariff: ''The current versions of the NAESB WEQ Business Practice Standards incorporated by reference into the Commission's regulations as specified in Part 38 of the Commission's regulations (18 CFR Part 38) are incorporated by reference into this tariff.''

reference Business Practice Standards. It may, however, if it wishes, also file a request for a waiver that identifies the specific provisions from which waiver is sought, along with its reasons supporting the request. Waiver requests should be filed by December 1, 2014 to allow time for a Commission decision on the waiver request before the compliance date. To be in compliance with their tariffs, public utilities submitting a late-filed waiver request must comply with the newly incorporated standards until such time as their requests are acted on.

89. Those public utilities that choose not to revise their tariffs to include the statement referenced above acknowledging their obligation to comply with the latest version of the Business Practice Standards incorporated by reference by the Commission must use the following language in their OATTs:

- WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012 (with minor corrections applied Nov. 26, 2013);
- WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013) excluding Standards WEQ–001–9.5, WEQ–001–10.5, WEQ–001–14.1.3, WEQ–001–15.1.2 and WEQ–001–106.2.5;
- WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–004, Coordinate Interchange, WEQ Version 003, July 31, 2012 (with Final Action ratified on December 28, 2012);
- WEQ–005, Area Control Error (ACE) Equation Special Cases, WEQ Version 003, July 31, 2012;
- WEQ–006, Manual Time Error Correction, WEQ Version 003, July 31, 2012;
- WEQ–007, Inadvertent Interchange Payback, WEQ Version 003, July 31, 2012;
- WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection, WEQ Version 003, July 31, 2012 (with minor corrections applied November 28, 2012);
- WEQ–011, Gas/Electric Coordination, WEQ Version 003, July 31, 2012;
- WEQ–012, Public Key Infrastructure (PKI), WEQ Version 003, July 31, 2012, as modified by NAESB final actions ratified on Oct. 4, 2012);
- WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
- WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response, WEQ Version 003, July 31, 2012; and
- WEQ–021, Measurement and Verification of Energy Efficiency Products, WEQ Version 003, July 31, 2012.

90. Public utilities should not incorporate the Smart Grid Standards (WEQ–016, WEQ–017, WEQ–018, WEQ–019 and WEQ–020) by reference, as the Commission is not incorporating these standards by reference as mandatory requirements.

C. Implementation Schedule for NITS OASIS Template Interactions and for Other Requirements in This Final Rule

1. NOPR Proposal

91. In Standard WEQ–002–5.10, NAESB proposed an implementation schedule for NITS OASIS template interactions that would allow public utilities 18 months after the effective date of this Final Rule to transition to posting transmission customers' NITS service arrangements on the Version 2.0 NITS OASIS templates. In the WEQ Version 003 NOPR, while we discussed the details of the standards adopted by NAESB, we did not specifically address its proposed implementation schedule for NITS OASIS templates. We did, however, propose, consistent with past Commission practice, to allow public utilities the option of including these changes as part of an unrelated tariff filing in order to reduce the filing burden.[148] Several comments were filed on the appropriate implementation schedule to be allowed by the Commission.

2. Comments

92. Duke Energy supports an 18-month development plan, plus 6 months for testing, as the implementation timeline for business practice standards associated with service across multiple transmission systems (SAMTS) and network integration transmission service (NITS).[149] ISO/RTO Council requests that the Commission clarify that Transmission Providers will have 24 months to come into compliance with the new standards on redirects and Public Key Infrastructure.[150] Likewise, EEI seeks clarification that implementation will not be required until at least 18 months after a new standard is adopted as a regulation, as proposed by NAESB in Standard WEQ–002–5.10.[151] OATI finds NAESB's 18-month implementation plan aggressive, but attainable, citing the complexity and significant efforts involved to design and implement the needed software and business process revisions.[152] Thus, OATI requests an additional 6 months (beyond the original 18 months) for testing and system updates (for a total of 24 months before implementation is required).[153]

3. Commission Determination

93. Consistent with Order No. 676–E,[154] the Commission notes that Standard WEQ–002–5.10 is applicable only to the actual implementation of updated templates and not to the additional required OASIS functionalities proposed in the WEQ Version 003 Standards, which may require modification to, or development of, supporting software applications.

94. However, an 18-month implementation period appears sufficient to implement the NAESB standards incorporated by reference related to the NITS OASIS templates and commenters have not provided compelling evidence as to why additional time would be necessary. The timeline laid out in Standard WEQ–002–5.10.3 was a product of NAESB's consensus process that has been designed to require support from a wide range of industry members. As noted above, NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are

[148] WEQ Version 003 NOPR, FERC Stats. & Regs. ¶ 32,698 at P 44. As discussed in greater detail in section II.B.6 above, the Commission is no longer allowing public utilities to defer the filing of a revised tariff acknowledging their obligation to comply with the Business Practice Standards incorporated by reference in this Final Rule.

[149] Duke Energy at 3.

[150] ISO/RTO Council at 5.

[151] EEI at 4.

[152] OATI at 2.

[153] *Id.* at 3.

[154] Order No. 676–E, Stats. & Regs. ¶ 32,299 at P 99.

not adopted. Therefore, we will adopt as the implementation schedule for all standards relating to the transition to the NITS OASIS template, the schedule included in Standard WEQ–002–5.10.3, which we are incorporating by reference in this Final Rule and decline the requests to add an additional six months for testing and implementation to the compliance schedule. Compliance filings for Standard WEQ–002–5.10.3 must be filed by January 24, 2016. This will allow two months between the compliance filing and the compliance date for this requirement. As mentioned above, a separate compliance filing on this requirement will not be needed if the filer uses the language prescribed in n.145 in its tariff.

95. As to the other requirements of this Final Rule, we will require compliance with the requirements of this rule that are not related to the transition to the NITS OASIS template beginning on February 2, 2015. Compliance filings and all waiver requests, including renewal of waiver requests, must be filed by December 1, 2014. Those utilities that want to incorporate the complete set of NAESB standards into their tariffs without modification, may submit a compliance filing using the following language: ''The current versions of the NAESB WEQ Business Practice Standards incorporated by reference into the Commission's regulations as specified in Part 38 of the Commission's regulations (18 CFR Part 38) are incorporated by reference into this tariff.'' This will mean that those public utilities that add this provision to their tariffs will not need to make subsequent compliance filings in future years to incorporate the standards incorporated by reference by the Commission in future rulemakings so long as they continue to abide by all the newly incorporated standards. Nor will they need to make a separate tariff filing related to Standard WEQ–002.10.5.3.

IV. Notice of Use of Voluntary Consensus Standards

96. Office of Management and Budget Circular A–119 (section 11) (Feb. 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the Final Rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the NAESB's WEQ.

V. Information Collection Statement

97. The following collections of information contained within this Final Rule are subject to review by the Office of Management and Budget (OMB) under Section 3507(d) of the Paperwork Reduction Act of 1995. OMB's regulations require approval of certain information collection requirements imposed by agency rules.

98. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates are generated.

99. Comments concerning the information collection promulgated in this Final Rule and the associated burden estimates should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–516 (OMB Control No. 1902–0096) and FERC–717 (OMB Control No. 1902–0173) and the docket number of this Final Rule (Docket No. RM05–5–022) in your submission.

100. This Final Rule will affect the following existing data collections: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) and Electric Rate Schedule Filings (FERC–516). The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.1 and to implement the new standards adopted by NAESB that we are incorporating by reference in this Final Rule.

RM05–5–022

[Standards for business practices and communication protocols for public utilities]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost (3)*(4)=(5)	Average cost per respondent ($) (5)÷(1)
FERC–516 (one-time)	132	1	132	6 $436	792 $57,552	$436
FERC–717 (one-time)	132	1	132	10 $727	1,320 $95,964	727
Total			264		2,112 [155] $153,516	1,165

101. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments were filed addressing the reporting burden.[156]

102. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple Transmission Providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

103. OMB regulations[157] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this Final Rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (formerly Open Access Same Time Information System) (FERC–717); Electric Rate Schedule Filings (FERC–516).

Action: Final rule.

OMB Control No.: 1902–0096 (FERC–516); 1902–0173 (FERC–717).

Respondents: Business or other for profit, (Public Utilities—Not applicable to small businesses).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This rule will upgrade the Commission's current business practice and communication standards. Specifically, these standards include several modifications to the existing business practice standards as well as creating new standards to provide additional functionality for OASIS transactions, transmission loading relief and public key infrastructure. The standards will assist in providing greater security for business transactions over the Internet, identify the business practices to be used to relieve potential or actual loading on a constrained facility and facilitate the transfer of electric energy between entities responsible for balancing load and generation. These practices will ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in maintaining a safe and reliable infrastructure and also will assure the reliability of the interstate transmission grid. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid. This Final Rule also informationally lists NAESB's Smart Grid Standards as non-mandatory guidance. This guidance will promote the development of new technologies and standards.

104. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing business practice standards to conducting such transactions under the standards incorporated by reference in this Final Rule and to account for the burden associated with the new standard(s) being incorporated by reference here (e.g., WEQ–000).

105. *Internal Review:* The Commission has reviewed the revised business practice standards and has made a determination that the revisions adopted in this Final Rule are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

106. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, [Attn: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873.

VI. Environmental Analysis

107. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[158] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[159] The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering analysis, and dissemination, and for sales, exchange, and transportation of natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

VII. Regulatory Flexibility Act

108. The Regulatory Flexibility Act of 1980 (RFA)[160] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. As shown in the information collection section, this Final Rule applies to 132 entities. More specifically, this Final Rule imposes the latest version (Version 003) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the WEQ and the associated financial burden upon these entities. Comparison of the applicable entities with the Commission's small business data indicates that approximately 26 are small entities[161] or 19.5 percent of the respondents affected by this Final Rule.

109. The Commission estimates that each of the small entities to whom the Final Rule applies will incur one-time costs of $1,163.[162] The Commission does not consider the estimated costs per small entity to have a significant economic impact on a substantial number of small entities. Accordingly, the Commission certifies that this Final Rule will not have a significant

[155] The total annualized costs for the information collection is $153,516. This number is reached by multiplying the total hours to prepare responses (2,112) by an average hourly wage estimate of $72.67 (a composite estimate that includes legal, technical and support staff rates, $128.39 + $60.70 + $28.93 = $218.02 ÷ 3 = $72.67), 2,112 hours × $72.67/hour = $153,516.

[156] We note, however, that two comments argued that it would be too costly for small entities to obtain copies of the NAESB Standards from NAESB. We addressed these comments in the preamble of this Final Rule.

[157] 5 CFR 1320.11.

[158] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[159] 18 CFR 380.4.

[160] 5 U.S.C. 601–612.

[161] The Small Business Administration sets the threshold for what constitutes a small business. Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this Final Rule, we are using a 500 employee threshold for each affected entity. Each entity is classified as Electric Bulk Power Transmission and Control (NAICS code 221121).

[162] $153,516 (total annual cost) ÷ 132 (number of small entities) = $1,163/small entity.

economic impact on a substantial number of small entities.

VIII. Document Availability

110. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

111. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

112. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

113. These regulations are effective October 24, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 2

Electric utilities, Guidance and policy statments.

18 CFR Part 38

Business practice standards, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Parts 2 and 38, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 5 U.S. C. 601; 15 U.S.C. 717–717z, 3301–3432, 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 4321–4370h, 7101–7352.

■ 2. An undesignated center heading is added after § 2.26 to read as follows:

Non-Mandatory Guidance on Smart Grid Standards

■ 3. Section 2.27 is added to read as follows:

§ 2.27 Availability of North American Energy Standards Board (NAESB) Smart Grid Standards as non-mandatory guidance.

The Commission informationally lists the following NAESB Business Practices Standards as non-mandatory guidance:

(a) WEQ–016, Specifications for Common Electricity Product and Pricing Definition, WEQ Version 003, July 31, 2012;

(b) WEQ–017, Specifications for Common Schedule Communication Mechanism for Energy Transactions, WEQ Version 003, July 31, 2012;

(c) WEQ–018, Specifications for Wholesale Standard Demand Response Signals, WEQ Version 003, July 31, 2012;

(d) WEQ–019, Customer Energy Usage Information Communication, WEQ Version 003, July 31, 2012, as amended on March 21, 2013; and

(e) WEQ–020, Smart Grid Standards Data Element Table, WEQ Version 003, July 31, 2012.

(f) Copies of these standards may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356–0060. NAESB's Web site is at *http://www.naesb.org/.* Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, Tel: (202) 502–8371, *http://www.ferc.gov.*

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

■ 4. The authority citation for Part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 5. Revise § 38.1 to read as follows:

§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions must comply with the business practice and electronic communication standards promulgated by the North American Energy Standards Board Wholesale Electric Quadrant that are incorporated by reference in paragraph (b) of this section. The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board (NAESB), 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356–0060. NAESB's Web site is at *http://www.naesb.org/.* Copies of these standards may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, Tel: (202) 02–8371, *http://www.ferc.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The business practice and electronic communication standards the Commission incorporates by reference are as follows:

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);

(2) WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013) excluding Standards 001–9.5, 001–10.5, 001–14.1.3, 001–15.1.2 and 001–106.2.5;

(3) WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);

(4) WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);

(5) WEQ–004, Coordinate Interchange, WEQ Version 003, July 31, 2012 (with Final Action ratified December 28, 2012);
(6) WEQ–005, Area Control Error (ACE) Equation Special Cases, WEQ Version 003, July 31, 2012;
(7) WEQ–006, Manual Time Error Correction, WEQ Version 003, July 31, 2012;
(8) WEQ–007, Inadvertent Interchange Payback WEQ Version 003, July 31, 2012;
(9) WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection, WEQ Version 003, July 31, 2012 (with minor corrections applied November 28, 2012);
(10) WEQ–011, Gas/Electric Coordination, WEQ Version 003, July 31, 2012;
(11) WEQ–012, Public Key Infrastructure (PKI), WEQ Version 003, July 31, 2012 (with Final Actions ratified on October 4, 2012);
(12) WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.0, WEQ Version 003, July 31, 2012 (with minor corrections applied November 26, 2013);
(13) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response, WEQ Version 003, July 31, 2012; and
(14) WEQ–021, Measurement and Verification of Energy Efficiency Products, WEQ Version 003, July 31, 2012.

Note: The following appendix will not be published in the Code of Federal Regulations.

List of Entities Filing Comments on WEQ Version 003 NOPR in Docket No. RM05–5–022, and the Abbreviations Used To Identify Them

- Bonneville Power Administration (Bonneville)
- Clark Public Utilities (Clark Public Utilities)
- Duke Energy Corporation (Duke Energy)
- Edison Electric Institute (EEI)
- ISO/RTO Council
- American Public Power Association, together with Florida Municipal Power Agency (APPA)
- Open Access Technology International (OATI)
- PJM Interconnection, L.L.C. (PJM)
- City of Seattle, City Light Department (Seattle)
- Public Utility District No. 1 of Snohomish County (Snohomish) (reply comments)
- City of Tacoma, Department of Public Utilities, Light Division (Washington), dba Tacoma Power (Tacoma Power)
- Transmission Dependent Utility Systems (TDU Systems) [163]

[FR Doc. 2014–22601 Filed 9–23–14; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA–S215–2006–0063]

RIN 1218–AB67

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Corrections

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Correcting amendments.

SUMMARY: On April 11, 2014 (79 FR 20316), the Occupational Safety and Health Administration published a final rule: Revising the general industry standards for electric power generation, transmission, and distribution work and for electrical protective equipment; revising the construction standard for electric power transmission and distribution work; and adopting a new construction standard for electrical protective equipment. The final rule updated those standards and made the general industry and construction standards consistent. This document corrects errors in the preamble and regulatory text of the final rule.

DATES: These corrections become effective on September 24, 2014.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilingerfrancis2@dol.gov.*

Technical information: Mr. William Perry, Directorate of Standards and Guidance, Room N3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1950 or fax (202) 693–1678.

SUPPLEMENTARY INFORMATION: On April 11, 2014, OSHA published a final rule: (1) Revising its general industry and construction standards at 29 CFR 1910.269 and 29 CFR part 1926, subpart V, respectively; (2) revising its general industry standard for electrical protective equipment at 29 CFR 1910.137 and adding a corresponding standard for construction at 29 CFR 1926.97; and (3) revising several other related provisions in OSHA's standards for general industry and construction (79 FR 20316).

OSHA has identified some errors in the preamble and regulatory text. One of those errors is in OSHA's explanation of training requirements for unqualified employees. The preamble stated that unqualified employees who operate, but do not maintain, circuit breakers must receive training in accordance with § 1910.269(a)(2)(i) or § 1926.950(b)(1) (79 FR 20348–20349). However, as noted in several other places in the preamble, in general, neither § 1910.269 nor subpart V govern the electrical safety-related work practices used by unqualified employees. (See, for example, 79 FR 20339, 20348, and 20410.) As described later, OSHA is correcting the preamble discussion at 79 FR 20349 to indicate that such unqualified employees generally must receive training under § 1910.332 or § 1926.21(b), as applicable.

In addition, Appendix A–2 to final § 1910.269 inaccurately describes how to determine whether § 1910.269 or subpart S of part 1910 contains the applicable requirements for electrical safety-related work practices. The flow chart in that appendix asks whether the employee is qualified ''as defined in § 1910.269(x).'' In subpart V, final § 1926.950(a)(1)(ii) states explicitly that subpart V does not apply to electrical safety-related work practices for unqualified employees. Thus, for the purposes of subpart V, if a worker is not a qualified employee as defined in § 1926.968, subpart V does not address the electrical safety-related work practices that employee must use. However, the exemption in final (and the previous version of) § 1910.269(a)(1)(ii)(B) is less direct, excluding electrical safety-related work practices covered by subpart S of part 1910. In subpart S, § 1910.331(b) provides that §§ 1910.332 through 1910.335, which address training, selection and use of work practices, use of equipment, and safeguards for personnel protection, apply to work performed by unqualified persons on, near, or with electric power generation, transmission, or distribution installations. Consequently, the

[163] These comments were submitted on behalf of four rural electric generation and transmission cooperatives (Arkansas Electric Cooperative Corporation; Kansas Electric Power Cooperative, Inc.; North Carolina Electric Membership Corporation; and Seminole Electric Cooperative, Inc.).

electrical safety-related work practices for employees who are not qualified persons (employees) as that term is defined in subpart S (§ 1910.399) are in subpart S, not § 1910.269. However, § 1910.269 *does* apply to electrical safety-related work practices for employees who are qualified under subpart S, but not qualified under § 1910.269.[1] This class of employee includes, in particular, line-clearance tree trimmers, as explained in the preamble to the 1994 final rule adopting the previous version of § 1910.269 (59 FR 4320, 4336, 4409–4410, Jan. 31, 1994). For this reason, OSHA is correcting the first question in the flow chart in Appendix A–2 to § 1910.269 so that it refers to the definition of ''qualified'' in § 1910.399 instead of the definition of that term in § 1910.269(x).

Table 1 to Appendix A–2 lists, in separate columns, paragraphs in § 1910.269 that apply regardless of compliance with subpart S and paragraphs in § 1910.269 for which compliance with subpart S is deemed to be compliance with § 1910.269. This table in the final rule inadvertently lists the paragraph numbers as they appeared in the previous version of § 1910.269. OSHA is correcting these references to match the corresponding provisions in the final rule. OSHA is also adding references to new provisions that have no counterpart in subpart S to the list of provisions requiring compliance regardless of compliance with subpart S (specifically, the information-transfer requirements in § 1910.269(a)(3) and the requirements on protection from flames and electric arcs in § 1910.269(l)(8)). In addition, the Agency is moving § 1910.269(i)(3) on portable and vehicle-mounted generators from the list of provisions that apply regardless of compliance with subpart S to the list of provisions for which compliance with subpart S is deemed to be compliance with § 1910.269. When OSHA adopted the previous version of § 1910.269 in 1994, subpart S did not contain requirements for portable or vehicle-mounted generators. However, the 2007 revisions to the installation requirements in subpart S included provisions equivalent to those in § 1910.269(i)(3) (72 FR 7136; Feb. 14, 2007). Those subpart S requirements appear in § 1910.304(g)(3).

OSHA also found an error in the regulatory text of final § 1910.269(h), which contains requirements for portable ladders and platforms. In the preamble to the final rule, OSHA explained why the Agency did not apply final § 1926.955(b)(1) to portable ladders as follows:

> Paragraph (b)(1) of final § 1926.955 requires portable platforms to be capable of supporting without failure at least 2.5 times the maximum intended load in the configurations in which they are used. Paragraph (b)(1) in the proposed rule also applied this requirement to portable ladders. However, § 1926.1053(a)(1), which also applies, already specifies the strength of portable ladders. Having two standards with different strength requirements for portable ladders would be confusing. Consequently, OSHA revised § 1926.955(b)(1) in the final rule so that it covers only portable platforms. [79 FR 20405]

Section 1926.1053 does not apply to portable ladders used in work covered by § 1910.269, and the general industry requirements for portable ladders in subpart D of part 1910 do not contain comparable requirements for the strength of portable wood ladders (§ 1910.25) or metal ladders (§ 1910.26) and do not address portable fiberglass ladders at all. Consequently, the rationale behind OSHA's decision to drop portable ladders from final § 1926.955(b)(1) does not apply to the equivalent requirement in final § 1910.269(h)(2)(i). However, in adopting that provision in final § 1910.269, OSHA copied the language from final § 1926.955(b)(1), thus inadvertently dropping the strength requirement for portable ladders from the general industry provision. This document corrects that oversight and restores the language from the previous version of the standard.[2]

Corrections. This document corrects errors in the preamble of that final rule, as follows:

PREAMBLE

Page	Column	Lines	Correction
20316	2	18–21, from the top	Change the sentence beginning ''The final rule removes the requirement'' to read: ''The final rule revises the general industry standard on foot protection, 29 CFR 1910.136, to require employers to ensure that each affected employee uses protective footwear when the use of protective footwear will protect the affected employee from an electrical hazard, such as a static-discharge or electric-shock hazard, that remains after the employer takes other necessary protective measures.''
20317	3	21–24, from the top	Change the sentence beginning ''The final rule removes the requirement'' to read: ''The final rule revises the general industry standard on foot protection, 29 CFR 1910.136, to require employers to ensure that each affected employee uses protective footwear when the use of protective footwear will protect the affected employee from an electrical hazard, such as a static-discharge or electric-shock hazard, that remains after the employer takes other necessary protective measures.''
20319	1	13, from the top	Change ''$17.2'' to ''$17.3.''
20326	2	27, from the bottom	Change ''1971'' to ''1972.''
20327	2	7, from the bottom (footnote 13)	Change ''CPL 02–00–148'' to ''CPL 02–00–150.''
20329	2	11, from the bottom, not counting the footnote.	Change ''hose, gloves, and sleeves'' to ''hose, covers, gloves, and sleeves.''
20349	1	7–15, from the top	Replace the two sentences starting with ''Thus, assuming that these workers are not qualified'' with: ''Thus, assuming that these workers are not qualified employees, they generally need to receive only the training required by 1910.332 for general industry work and 1926.21(b) for construction work.''

[1] With respect to the example provided at 79 FR 20348–20349, it is possible that a worker operating, but not maintaining, a circuit breaker could be qualified under subpart S, but not under § 1910.269. In that case, the training requirements in § 1910.269(a)(2)(i) would apply instead of the requirements in § 1910.332. Because OSHA believes such cases are relatively rare, the Agency is clarifying the preamble to address the more likely case in which the worker is not qualified under subpart S and § 1910.269 does not apply.

[2] The previous version of § 1910.269(h)(2)(iv) required portable ladders to be capable of supporting without failure at least 2.5 times the maximum intended load in the configurations in which they are used.

PREAMBLE—Continued

Page	Column	Lines	Correction
20374	3	9, from the top	Change "this paragraph" to "paragraph (d)(2)."
20378	1	33–34, from the top	Change the sentence reading: "OSHA rejects ConEd's recommendation" to read: "OSHA does not share ConEd's concerns."
20378	2	20, from the bottom, not counting the footnote.	Change "will enable the entrant" to "will enable the attendant."
20379	3	1–3, from the bottom	Change footnote 96 to read: "OSHA revised and reissued this SHIB as "Calibrating and Testing Direct-Reading Portable Gas Monitors," SHIB 09–30–2013, which is available at *https://www.osha.gov/dts/shib/shib093013.html.*"
20401	3	10, from the bottom, not counting the footnote.	Change "certify" to "determine."
20405	2	29, from the top	Insert "of final § 1926.955" after "through (b)(4)."
20409	2	25, from the top	Change "that the IEEE standard does not contain" to "that IEEE standards available at the time do not contain."
20421	2	10–13, from the bottom, not counting the footnote.	Change the sentence beginning "For phase-to-ground exposures" to read: "For phase-to-ground exposures, the saturation factor will be increased slightly, resulting in larger minimum approach distances."
20427	2	6, from the bottom	Add the following sentence before the sentence beginning "Finally": "Table V–6 in the final rule specifies alternative minimum approach distances for work done at elevations not exceeding 900 meters (3,000 feet) for system voltages of 72.6 kilovolts and more."
20432	3	35, from the top	Change "opening" to "closing."
20432	3	37, from the top	Change "closing" to "opening."
20436	2	1, from the top	In the equation, highlight "$(C + a)V_{L-G}T$". (Note that this equation is in the second column, below Equation (1).)
20437	1	3, from the bottom of the footnotes.	In the second line of footnote 222, change "a" to "*a.*"
20439	3	First line over (and immediately before) Equation (3).	Change "transient overvoltage on the line" to "per-unit transient overvoltage on the line."
20440	1	11, from the top	Add "It" before "is well recognized." (Note that from this point to the end of that paragraph is quoted material.)
20443	2	3, from the bottom, not counting the footnotes.	Add "electrical component of the" before "minimum approach distance."
20444	N/A	N/A	Change the heading for the third column of the table in the middle of the page to read: "Modified Gallet formula."
20451	2	12, from the top	Add "maximum" before "use."
20462	2	1, from the bottom (footnote 282)	Add the following sentence at the end of the footnote: "The Linhard letter is available at: *https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25557.*"
20463	2	23, from the bottom (footnote 285).	Add the following text immediately preceding the period at the end of the footnote: "(that is, maintained so that equipment is in good operating condition)."
20466	3	12, from the top	Change "1,000" to "15,000" in both places.
20469	3	1–2, from the bottom (footnote 316).	Change the hyperlink in the footnote to: "*http://www.kinectrics.com/Solutions/Pages/Arc-Hazard-Services.aspx.*"
20471	N/A	N/A	Change the figure number from "Figure 1" to "Figure 10."
20472	2	30–37, from the top	In the sentence reading, "In addition, the NFPA 70E Annex D method produces an incident-energy level of 1254 cal/cm^2 for an exposure involving a three-phase arc in open air for a system of 800 kilovolts with a fault current of 20,000 amperes, a clearing time of 54.5 cycles, and a distance from the employee to the arc of 2,200 meters (86.6 inches)" change "1254 cal/cm^2" to "1,537 cal/cm^2" and change "2,200 meters" to "2,200 millimeters."
20476	3	10, from the bottom, not counting the footnote or Table 12.	Add "and input parameters" after "methods."
20477	N/A	16, from the top (in Note 5 to Table 12).	Change "IEEE 1584–2011" to "IEEE 1584b–2011."
20482	3	8, from the top	Change "intercept" to "interrupt."
20487	2	8, from the top	Move footnote 359 to the end of the preceding sentence, ending "afforded by rubber insulating gloves (Ex. 0134)," on line 4 (from the top).
20502	3	5, from the bottom	Change "electrical energy" to "electric energy."
20505	3	9, from the bottom, not counting the footnote.	Change "electrical energy" to "electric energy."
20518	1	17, from the bottom	Change "line-line tool" to "live-line tool."
20524	2	20, from the top	Change "puling" to "pulling."
20529	1	2 from the bottom, (footnote 435)	Insert "√3" between "equals" and "times."
20539	1	34, from the top	Change "electrical energy" to "electric energy."
20546	3	1–3, from the bottom (continuation of footnote 459).	Delete the last sentence of footnote 459.
20554	2	8–9, from the top	Add "(d)" after "paragraph" in line 8 and add "as corrected at 59 FR 33658–33664" after "59 FR 4362," inside the right bracket, in line 9.
20558	1	9–10, from the bottom (footnote 475).	Change the sentence beginning "Secondary insulation normally" to read: "Secondary insulation supplements primary insulation, for example, by insulating an employee's feet from a grounded surface."

PREAMBLE—Continued

Page	Column	Lines	Correction
20558	3	30, from the bottom, not counting the footnote.	Change ''electrical-safety footwear'' to ''footwear protecting against electrical hazards.''
20564	2	12—13, from the top (above Table 19).	Change ''establishments have fewer than 20 employees or fewer'' to ''establishments have fewer than 20 employees.''
20581	N/A	N/A	Add the following caption to the table at the bottom of the page: ''Table 27—Provision Category Percent for Accident Categories.''
20582	N/A	6, from the top line of the first note below Table 29.	Change the single dagger (†) to two daggers (††) in the note beginning ''In the FEA.''
20585	1	3–8, from the bottom (footnote 536).	Change the first sentence of the footnote to read: ''OSHA annualized one-time costs using the standard spreadsheet formula for calculating the payment for a loan based on constant payments and a constant interest rate. (In Excel, the function is PMT (rate, nper, pv, fv, type), where: Rate is the interest rate, nper is the number of years over which the cost is annualized (for example, the life of equipment), pv is the total one-time cost (also referred to as the 'present value'), and fv and type are optional and unused.)''
20587	3	12, from the bottom, not counting the footnote (and below Table 32).	Change ''20'' to ''$20.''
20587	3	9, from the bottom, not counting the footnote (and below Table 32).	Change ''55 to 73'' to ''$55 to $73.''
20588	3	6, from the top (above Table 33)	Change ''0.6 million'' to ''$0.6 million.''
20588	3	10, from the top (above Table 33).	Change ''0.1 million'' to ''$0.1 million.''
20589	2	7, from the bottom (footnote 545)	Change ''footnote 545'' to ''footnote 544.''
20590	N/A	Table 34	Replace Table 34 with replacement Table 34, which appears following the correction tables.
20590	3	1, from the bottom (footnote 548)	Change ''footnote 545'' to ''footnote 544.''
20612	3	9, from the bottom	Change ''0.086 percent'' to ''0.092 percent.''
20612	3	11, from the bottom	Change ''2.9 percent'' to 3.205 percent.''
20613	3	1, from the bottom (above Table 52).	Change ''0.040 percent'' to ''0.385 percent.''
20623	1	12–14, from the top	Change the hyperlink in reference 15 to: ''*http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Source-Book-Statistical-Tables-2010-All-Sectors.*''
20623	2	6, from the bottom	Change the hyperlink in reference 37 to: ''*http://www.bls.gov/oes/tables.htm.*''

N/A = not applicable.

Table 34 on page 20590 is corrected to read as follows:

BILLING CODE 4510–26–P

Table 34—Annualized One-Time Costs and Annual Costs for Additional Training for Employees Not Already Receiving Training in Accordance with Existing § 1910.269

Industry code	Industry name	Employees affected (%)	Turnover rate (%)	% Workers leaving before training	Average cost per affected employee	Compliance rate (%)	Annualized one-time compliance costs	Annual costs	Total, annualized and annual costs
NAICS 234910	Water, Sewer, and Pipeline Construction	5	16	8	$2,314	0/0/0/0	$26,730	$25,671	$52,400
NAICS 234920	Power and Communication Transmission Line Construction	5	16	8	2,314	0/0/0/0	741,783	772,533	1,514,316
NAICS 234930	Industrial Nonbuilding Structure Construction	0	NA	NA	NA	NA	0	0	0
NAICS 234990	All Other Heavy Construction	5	16	8	2,198	0/0/0/0	150,006	156,411	306,417
NAICS 235310	Electrical Contractors	5	11	6	2,387	0/0/0/0	466,573	339,587	806,160
NAICS 235910	Structural Steel Erection Contractors	0	NA	NA	NA	NA	0	0	0
NAICS 235950	Building Equipment and Other Machine Installation Contractors	0	NA	NA	NA	NA	0	0	0
NAICS 235990	All Other Special Trade Contractors	0	NA	NA	NA	NA	0	0	0
NAICS 221110	Electric Power Generation	0	NA	NA	NA	NA	0	0	0
NAICS 221120	Electric Power Transmission, Control, and Distribution	0	NA	NA	NA	NA	0	0	0
NAICS 2211	Major Publicly Owned Utilities	0	NA	NA	NA	NA	0	0	0
Various	Industrial Power Generators	0	NA	NA	NA	NA	0	0	0
SIC 0783	Ornamental Shrub and Tree Services	0	NA	NA	NA	NA	0	0	0
Total							$1,385,091	$1,294,201	$2,679,293

Notes: (1) Totals may not equal the sum of the components due to rounding.
(2) ''NA'' = Not Applicable.
(3) For most NAICSs, compliance rates are for small unionized establishments, small nonunionized establishments, large unionized establishments, and large nonunionized establishments, respectively. Major Publicly Owned Utilities (NAICS 2211) and Ornamental Shrub and Tree Services (SIC 0783) only have compliance rates for small and large establishments, and Industrial Power Generators only have a compliance rate for large establishments.
Sources: CONSAD [5], U.S. Census [43, 44, 45, 46].

BILLING CODE 4510–26–C

Lists of Subjects in 29 CFR Parts 1910 and 1926

Electric power, Fire prevention, Hazardous substances, Incorporation by reference, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this document.

This action is taken pursuant to sections 3704 *et seq.,* Public Law 107–217, 116 STAT. 1062, (40 U.S.C. 3704 *et seq.*); sections 4, 6, and 8, Public Law 91–596, 84 STAT. 1590 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–2012 (77 FR 3912 (Jan. 25, 2012)), and 29 CFR Part 1911.

Signed at Washington, DC, on September 8, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

The Occupational Safety and Health Administration amends Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—[AMENDED]

Subpart R—Special Industries

■ 1. The authority citation for subpart R of part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 2. Amend § 1910.269 as follows:

■ a. Revise paragraph (h)(2)(i);

■ b. In Table R–3:

■ i. Under the entry ''For phase-to-phase system voltages of more than 72.5 kV, nominal'', in the thirteenth row, revise the equation;

■ ii. In footnote 2, revise ''Table 6 through Table 13'' to read ''Table 14 through Table 21'';

■ c. In Tables R–6 and R–7, remove the bracketed expression ''[In meters or feet and inches]'';

■ d. Revise Appendix A–2 to § 1910.269;

■ e. In Appendix B to § 1910.269, section IV.D, remove the words ''Table 7 through Table 14'' wherever they appear and add in their place the words ''Table 14 though Table 21'';

■ f. Revise Table 6 in Appendix B to § 1910.269;

■ g. In Appendix C to § 1910.269, redesignate footnotes 14, 15, 16, 17, and 18 as footnotes 1, 2, 3, 4, and 5, respectively;

■ h. In Appendix D to § 1910.269, redesignate footnotes 19 and 20 as footnotes 1 and 2, respectively; and

■ i. In Appendix E to § 1910.269, redesignate footnotes 21, 22, 23, 24, 25, 26, 27, 28, and 29 as footnotes 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

The revisions read as follows:

§ 1910.269 Electric power generation, transmission, and distribution.

* * * * *

(h) * * *

(2) * * *

(i) In the configurations in which they are used, portable ladders and platforms shall be capable of supporting without failure at least 2.5 times the maximum intended load.

* * * * *

Table R–3—AC Live-Line Work Minimum Approach Distance

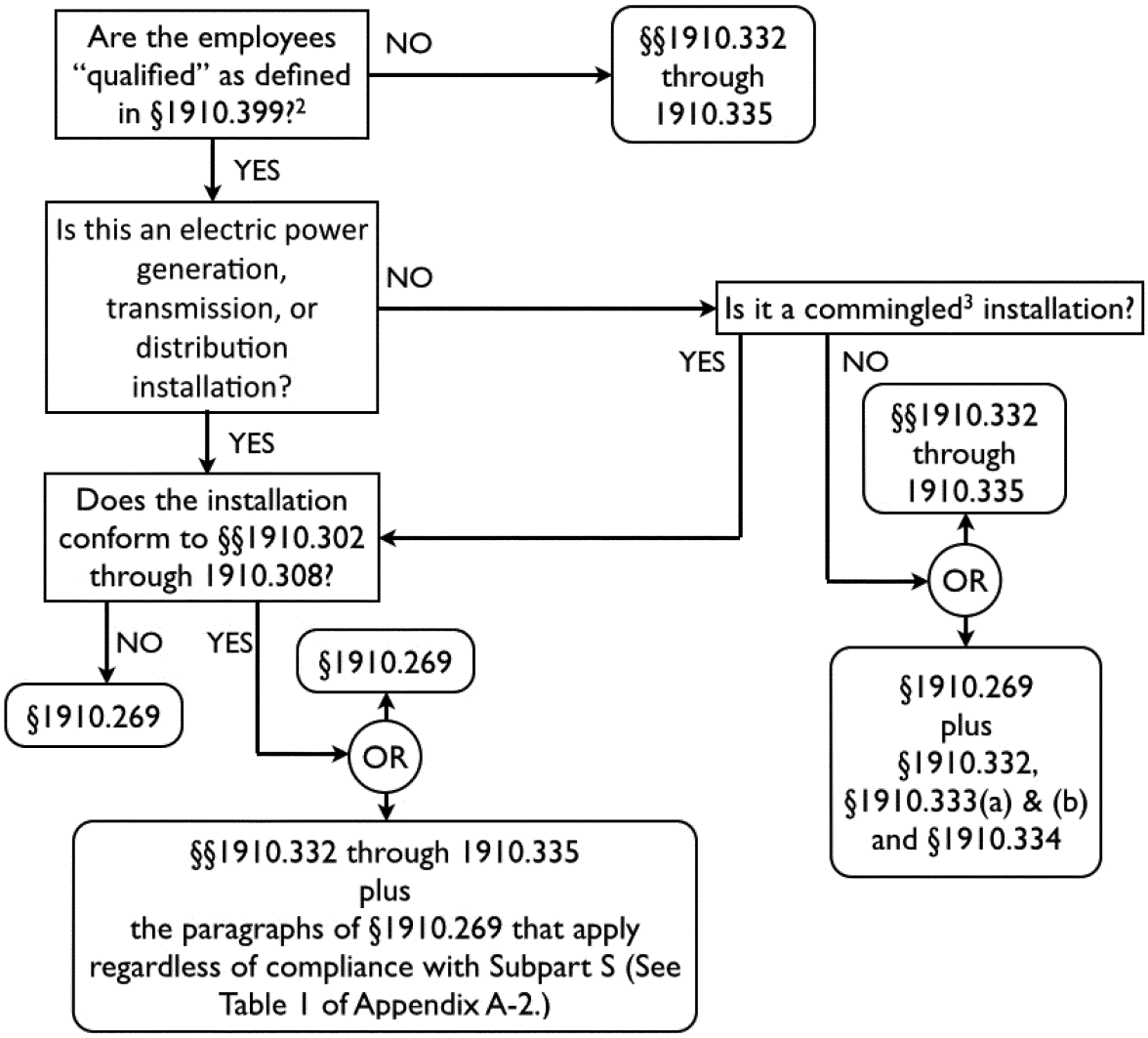
* * * * *

$$\text{MAD} = 0.3048(C + a)V_{L-G}TA + M$$

* * * * *

Appendix A–2 to § 1910.269—Application of § 1910.269 and Subpart S of this Part to Electrical Safety-Related Work Practices [1]

BILLING CODE 4510–26–P



[1] This flowchart applies only to the electrical safety-related work practice and training requirements in §1910.269 and §§1910.332 through 1910.335.

[2] See §§1910.269(a)(1)(ii)(B) and 1910.331(b) and (c)(1).

[3] This means commingled to the extent that the electric power generation, transmission, or distribution installation poses the greater hazard.

BILLING CODE 4510–26–C

TABLE 1—ELECTRICAL SAFETY REQUIREMENTS IN § 1910.269

Compliance with Subpart S will comply with these paragraphs of § 1910.269 [1]	Paragraphs that apply regardless of compliance with Subpart S [2]
(d), electric-shock hazards only	(a)(2), (a)(3) and (a)(4).
(h)(3)	(b)
(i)(2) and (i)(3)	(c)
(k)	(d), for other than electric-shock hazards.
(l)(1) through (l)(5), (l)(7), and (l)(10) through (l)(12)	(e)
(m)	(f)
(p)(4)	(g)
(s)(2)	(h)(1) and (h)(2).
(u)(1) and (u)(3) through (u)(5)	(i)(4)
(v)(3) through (v)(5)	(j)

TABLE 1—ELECTRICAL SAFETY REQUIREMENTS IN § 1910.269—Continued

Compliance with Subpart S will comply with these paragraphs of § 1910.269 [1]	Paragraphs that apply regardless of compliance with Subpart S [2]
(w)(1) and (w)(7)	(l)(6), (l)(8) and (l)(9). (n) (o) (p)(1) through (p)(3). (q) (r) (s)(1) (t) (u)(2) and (u)(6) (v)(1), (v)(2), and (v)(6) through (v)(12). (w)(2) through (w)(6), (w)(8), and (w)(9).

[1] If the electrical installation meets the requirements of §§ 1910.302 through 1910.308 of this part, then the electrical installation and any associated electrical safety-related work practices conforming to §§ 1910.332 through 1910.335 of this part are considered to comply with these provisions of § 1910.269 of this part.

[2] These provisions include electrical safety and other requirements that must be met regardless of compliance with subpart S of this part.

* * * * *

TABLE 6—MINIMUM APPROACH DISTANCES UNTIL DECEMBER 31, 2014

Voltage range phase to phase (kV)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
0.05 to 1.0	Avoid Contact		Avoid Contact	
1.1 to 15.0	0.64	2.10	0.66	2.20
15.1 to 36.0	0.72	2.30	0.77	2.60
36.1 to 46.0	0.77	2.60	0.85	2.80
46.1 to 72.5	0.90	3.00	1.05	3.50
72.6 to 121	0.95	3.20	1.29	4.30
138 to 145	1.09	3.60	1.50	4.90
161 to 169	1.22	4.00	1.71	5.70
230 to 242	1.59	5.30	2.27	7.50
345 to 362	2.59	8.50	3.80	12.50
500 to 550	3.42	11.30	5.50	18.10
765 to 800	4.53	14.90	7.91	26.00

Note: The clear live-line tool distance must equal or exceed the values for the indicated voltage ranges.

* * * * *

PART 1926—[AMENDED]

Subpart V—Electric Power Transmission and Distribution

■ 3. The authority citation for subpart V of part 1926 continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 1–2012 (77 FR 3912); and 29 CFR Part 1911.

§ 1926.960 [Amended]

■ 4. In § 1926.960, in Tables V–5 and V–6, remove the parenthetical expression ''(In Meters or Feet and Inches)'' in the table headings.

§ 1926.968 [Amended]

■ 5. Amend § 1926.968 as follows:

■ a. In the note to the definition of ''Hazardous atmosphere'' (5), remove ''§ 1926.1200'' and add ''§ 1926.59'' in its place; and

■ b. In paragraph 2 of the definition of ''Lines'', remove the word ''section'' and add the word ''subpart'' in its place.

Appendix B to Subpart V of Part 1926 [Amended]

■ 6. In Appendix B to Subpart V, in Table 2, remove the words ''2. Multiply by √3'' and add ''2. Multiply by √2'' in their place.

[FR Doc. 2014–22148 Filed 9–23–14; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2014–0266; FRL–9916–55–Region 9]

Designation of Areas for Air Quality Planning Purposes; State of Arizona; Pinal County and Gila County; Pb; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting a final rule that appeared in the **Federal Register** of September 3, 2014 (79 FR 52205). The rule redesignated the Hayden area, which encompasses portions of southern Gila and eastern Pinal counties, Arizona, from ''unclassifiable'' to ''nonattainment'' for the 2008 national ambient air quality standards

(''NAAQS'' or ''standards'') for lead (Pb). We are making several corrections to the table entitled ''Arizona—2008 Lead NAAQS.'' In the Gila County portion of the boundary description, we are adding township T4S, R14E. Although most of this township lies in Pinal County and is listed in that portion of the table, a small area in the northeast corner of T4S, R14E lies within Gila County. Also in the Gila County portion of the boundary description, we are removing the phrase, ''except those portions in the San Carlos Indian Reservation'' because there are no tribal lands within the Gila County portions of T4S, R16E and T5S, R16E. Finally, in the Pinal County portion of the boundary description, we are adding T4S, R15E. This township, which was part of the area that was initially designated as unclassifiable for the 2008 Pb NAAQS, was inadvertently omitted from the boundary description when the area was redesignated to nonattainment.

DATES: This rule is effective on October 3, 2014.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–20920 appearing on page 52205 in the **Federal Register** of Wednesday, September 3, 2014, the following correction is made:

§ 81.303 [Corrected]

■ 1. On page 52209, in § 81.303, the table entitled ''Arizona—2008 Lead NAAQS'' is corrected to read as follows:

ARIZONA—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Hayden, AZ:		
Gila County (part) The portions of Gila County that are bounded by T4S, R14E; T4S, R15E; T4S, R16E; T5S, R15E; T5S, R16E.	10–3–14	Nonattainment.
Pinal County (part) The portions of Pinal County that are bounded by: T4S, R14E; T4S, R15E; T4S, R16E (except those portions in the San Carlos Indian Reservation);T5S, R14E; T5S, R15E; T5S, R16E (except those portions in the San Carlos Indian Reservation); T6S, R14E; T6S, R15E; T6S, R16E (except those portions in the San Carlos Indian Reservation).	10–3–14	Nonattainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

Dated: September 15, 2014.

Alexis Strauss,

Acting Regional Administrator, Region 9.

[FR Doc. 2014–22738 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0593; FRL–9914–35]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluensulfone in or on cucurbit vegetables and fruiting vegetables. Makhteshim Agan of North American Inc. (MANA), doing business as (dba) ADAMA, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 24, 2014. Objections and requests for hearings must be received on or before November 24, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0593, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://*

www.epa.gov/ocspp and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0593 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 24, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0593, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 28, 2012 (77 FR 59578) (FRL–9364–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8019) by Makhteshim Agan of North America, Inc. (MANA), dba ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the nematicide fluensulfone, {5-Chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole}, in or on cucurbit vegetables at 1.0 parts per million (ppm) and fruiting vegetables at 0.6 ppm. That document referenced a summary of the petition prepared by MANA, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels of 1.0 and 0.6 ppm for cucurbits and fruiting vegetables to 0.50 and 0.50 ppm, respectively. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Fluensulfone has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not an eye or skin irritant but is a skin sensitizer. Acute oral toxicity studies were also conducted with the metabolites thiazole sulfonic acid (TSA), butene sulfonic acid (BSA), and methyl sulfone (MeS). The results indicated TSA and BSA were of low toxicity (Toxicity Category III), while MeS was of moderate toxicity (Toxicity Category II) by the oral route of exposure. The acute oral toxicity studies indicated that BSA and TSA were comparably less toxic than fluensulfone. Twenty-eight-day oral toxicity studies conducted with BSA and TSA were submitted and also indicated that both metabolites are of much lower toxicity than the parent compound. Based on the available data addressing toxicity of the BSA and TSA metabolites, the Agency has determined that they are not of toxicological concern.

Exposure to fluensulfone results in effects on the hematopoietic system (decreased platelets, increased white blood cells, hematocrit, and reticulocytes), kidneys, and lungs. Body weight and clinical chemistry changes were observed across multiple studies and species. Evidence of qualitative increased susceptibility of infants and children to the effects of fluensulfone was observed in the 2-generation reproduction study in rats, wherein pup death was observed at a dose that resulted in body weight effects in the dams. There was no evidence of either qualitative or quantitative susceptibility in developmental toxicity studies in rats or rabbits.

Dietary and inhalation studies in rats showed evidence of portal-of-entry effects in the forestomach, pharynx, epiglottis, and nasal cavity. The most sensitive endpoints for assessing human health risk are the increased pup-loss effects for acute dietary exposure; body weight, hematological and clinical chemistry changes for chronic dietary as well as short/intermediate term dermal exposures; and clotting time, decreased thymus weight, and portal-of-entry effects (histopathology of the epiglottis and nasal cavity) for inhalation exposures (short/intermediate term).

Decreased locomotor activity in females, and decreased spontaneous activity, decreased rearing, and impaired righting response in both sexes were observed in the acute

neurotoxicity study at the lowest dose tested. No other evidence for neurotoxicity was observed in the other studies in the toxicity database, including a subchronic neurotoxicity study. The doses and endpoints chosen for risk assessment are all protective of the effects seen in the acute neurotoxicity study. A developmental neurotoxicity study is not required.

Although the mouse carcinogenicity study showed an association with alveolar/bronchiolar adenomas and carcinomas in the female, EPA has determined that quantification of risk using the chronic reference dose (RfD) will account for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone and its metabolites. That conclusion is based on the following considerations:

1. The tumors occurred in only one sex in one species.
2. No carcinogenic response was seen in either sex in the rat.
3. The tumors in the mouse study were observed at a dose that is almost 13 times higher than the dose chosen for risk assessment.
4. Fluensulfone and its metabolites are not mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by fluensulfone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Fluensulfone: New Active Ingredient Human Health Risk Assessment of Proposed Uses on Cucurbit Vegetables and Fruiting Vegetables on pages 32–46 in docket ID number EPA–HQ–OPP–2012–0593.

B. Toxicological Points of Departure/Levels of Concern

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

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations, including infants and children and females 13–49 years of age).	NOAEL = 16.2/23 mg/kg/day (M/F). UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.16 mg/kg/day. aPAD = 0.16 mg/kg/day.	2-generation reproduction-rat Offspring LOAEL = 122.0/169.1 mg/kg/day based on an increase in pup loss between PND 1 and 4 in the F1 and F2 offspring with the majority of deaths occurring on day 2.
Chronic dietary (All populations)	NOAEL= 3.1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.03 mg/kg/day. cPAD = 0.03 mg/kg/day	Co-critical 90-day dog and chronic dog Chronic: LOAEL = 16 mg/kg/day based on decreased body weight, increased mean hemoglobin concentration distribution width, and increased relative and absolute reticulocyte counts in both sexes, decreased prothrombin time in males and increased platelets in females. Subchronic: NOAEL = 1.6 mg/kg/day LOAEL = 17.1 mg/kg/day based on decreased body weight in females and increased relative and absolute reticulocyte counts, decreased bilirubin, decreased albumin, decreased A/G ratio, increased TSH, and pigmented Kupffer cells in both sexes.
Cancer (Oral, dermal, inhalation).	EPA has determined that quantification of risk using the chronic RfD will adequately account for all chronic toxicity, including carcinogenicity.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluensulfone, EPA considered exposure under the petitioned-for tolerances in 40 CFR part 180. EPA assessed dietary exposures from fluensulfone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat In

America (NHANES/WWEIA) conducted from 2003–2008. As described in Units IV and V, tolerances for fluensulfone are in terms of the BSA metabolite. However, as previously noted, the BSA metabolite is not of toxicological concern. Therefore, as to residue levels in food, EPA assumed 100 percent crop treated (PCT); limit-of-quantitation residues of fluensulfone, as reflected in crop field trials (equivalent to a fluensulfone-based tolerance); and empirically derived processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) which used food consumption data from the USDA NHANES.WWEIA 2003–2008. As described in Units IV and V, tolerances for fluensulfone are in terms of the BSA metabolite. However, as previously noted, the BSA metabolite is not of toxicological concern. Therefore, as to residue levels in food, EPA assumed 100 PCT; limit-of-quantitation residues of fluensulfone, as reflected in crop field trials (equivalent to a fluensulfone-based tolerance); and empirically derived processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fluensulfone. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fluensulfone. Residues equivalent to a fluensulfone-based tolerance and 100 PCT were assumed for all food commodities.

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

Based on the Pesticide Root Zone Model Ground Water (PRZMGW), the estimated drinking water concentrations (EDWCs) of fluensulfone and its metabolites of toxic concern for acute exposures are estimated to be 11.80 parts per billion (ppb) for surface water and 77.6 ppb for ground water and for chronic exposures are estimated to be 0.173 ppb for surface water and 52.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 77.6 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 52.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluensulfone is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of quantitative or qualitative susceptibility in developmental toxicity studies in rats and rabbits. Offspring effects in those studies occurred in the presence of maternal toxicity and were not considered more severe than the parental effects. However, there was evidence of increased qualitative susceptibility of pups in the 2-generation reproduction study in rats. Maternal effects observed in that study were decreases in body weight and body weight gain; at the same dose, effects in offspring were decreased pup weights, decreased spleen weight, and increased pup death.

Although there is evidence of increased qualitative susceptibility in the 2-generation reproduction study in rats, there are no residual uncertainties with regard to pre- and/or post-natal toxicity following *in utero* exposure to rats or rabbits and pre- and/or post-natal exposures to rats. Considering the overall toxicity profile, the clear NOAEL for the pup effects observed in the 2-generation reproduction study, and that the doses and endpoints selected for risk assessment are equal to or less than the NOAEL from that study, the degree of concern for the susceptibility observed in the 2-generation reproduction study is low. The selected POD will be protective of these developmental effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the 10X FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluensulfone is complete.

ii. Decreased locomotor activity in females, and decreased spontaneous activity, decreased rearing, and impaired righting response in both sexes were observed in the acute neurotoxicity study at the lowest dose tested. No other evidence for neurotoxicity was observed in the other studies in the toxicity database, including a subchronic neurotoxicity study. The doses and endpoints chosen for risk assessment are all protective of the effects seen in the acute neurotoxicity study.

iii. There is no evidence that fluensulfone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies. However, there was evidence of increased qualitative susceptibility of young rats in the 2-generation

reproduction study. For the reasons discussed in Unit III.D.2., EPA concludes that the 10X FQPA SF is not necessary to adequately protect infants and children.

iv. There are no residual uncertainties identified in the exposure databases. The current dietary assessment is based on high-end assumptions such as maximum residue levels from field trials of the parent compound in food, 100 PCT, and modeled estimates of residues in drinking water. EPA made conservative (protective) assumptions in the groundwater and surface water modeling used to assess exposure to fluensulfone in drinking water. Furthermore, there are no proposed residential uses. These assessments will not underestimate the exposure and risks posed by fluensulfone.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluensulfone will occupy 7.4% of the aPAD for all infants, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluensulfone from food and water will utilize 9.5% of the cPAD for all infants, the population group receiving the greatest exposure. There are no residential uses for fluensulfone.

3. *Short- and intermediate-term risk.* Short-and intermediate-term risk are assessed based on short-term residential exposure plus chronic dietary exposure. A short- and intermediate-term adverse effect was identified; however, fluensulfone is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Because there is no short-term or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fluensulfone.

4. *Aggregate cancer risk for U.S. population.* Based on the data summarized in Unit III.C.1.iii., EPA has concluded that the cPAD is protective of potential cancer effects. Given the results of the chronic risk assessment, fluensulfone is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Suitable methods for tolerance enforcement have been developed and independently validated. For all matrices and analytes, the limit of quantitation (LOQ), defined as the lowest spiking level where acceptable precision and accuracy data were obtained, was determined to be 0.01 milligram/kilogram (mg/kg). The limit of detection (LOD) was defined to be 30% of the LOQ (i.e. 0.0003 mg/kg). The Food and Drug Administration (FDA) multi-residue methods are not suitable for detection and enforcement of fluensulfone residues (as the sulfonic acid metabolite BSA) in non-fatty matrices.

Adequate enforcement methodology (reverse-phase high performance liquid chromotography-mass spectrometry/mass spectrometry (HPLC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

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

The Codex has not established MRLs for fluensulfone.

C. Revisions to Petitioned-For Tolerances

The proposed tolerance levels, 1.0 and 0.6 ppm for cucurbits and fruiting vegetables, respectively, differ from those being established by EPA. Although both the petitioner and EPA have used the OECD calculation procedures to obtain tolerance levels, the residue definitions being used are different. The petitioner's proposed levels are based on residues of BSA and TSA, combined and expressed as parent fluensulfone whereas the EPA-calculated tolerances are based on residues of only the BSA metabolite, expressed as parent fluensulfone. Furthermore, the petitioner combined residue data from the representative commodities to obtain their proposed tolerances. In accordance with policy, EPA calculated separate tolerance levels for each representative commodity and then selected the maximum tolerance estimate within each group, resulting in tolerance levels of 0.80 ppm and 0.70 ppm for cucurbits and fruiting vegetables, respectively.

However, in order to mitigate estimated worker risks associated with chemigation operations, Makhteshim has reduced the proposed application rate from 3.5 lb. fluensulfone per acre to 2.5 lb. per acre. For purposes of establishing a tolerance that is reflective of the revised application rate, the residue data were re-evaluated. The resulting tolerance level for both cucurbit vegetables and fruiting vegetables is 0.50 ppm.

V. Conclusion

Therefore, tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on vegetables, cucurbit, group 9 at 0.50 ppm and vegetables, fruiting, group 8–10 at 0.50 ppm. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2014.

Jack Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.680 is added to to subpart C to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone.

Commodity	Parts per million
Vegetables, cucurbits, group 9 ...	0.50
Vegetables, fruiting, group 8–10	0.50

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

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

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

[FR Doc. 2014–22466 Filed 9–23–14; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 17

[WT Docket No. 10–88; RM 11349; FCC 14–117]

Amendments To Modernize and Clarify the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) streamlines and eliminates outdated provisions of the Commission's rules governing the construction, marking, and lighting of antenna structures.

DATES: Effective October 24, 2014 except for the amendments to 47 CFR 17.4, 17.48, and 17.49, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT: Michael Smith of the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, (202) 418–0584, *MichaelC.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *part 17 Report and Order,* RM 11349, WT Docket No. 10–88, FCC 14–117, adopted and released August 8, 2014. The full text of the *part 17 Report and Order* is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the *part 17 Report and Order* also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 10–88. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Background

1. The Communications Act of 1934, as amended (the Act) grants the Commission authority to require painting and/or lighting of radio towers that may constitute a hazard to air navigation. Part 17 of the Commission's rules prescribes certain procedures for antenna structure registration (ASR) and sets forth standards to determine whether a structure may impact air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA). In particular, the Commission requires antenna structure owners to register and exercise primary responsibility for painting and lighting of antenna structures meeting the registration criteria. To ensure the ongoing compliance of antenna structures with marking and lighting requirements, part 17 also prescribes rules governing the maintenance of the marking and lighting on antenna structures, including routine inspection obligations.

Under the current part 17 rules, any proposed or existing antenna structure that requires notice of proposed construction to the FAA must be registered with the Commission. As a result, the Commission exercises joint, and in some circumstances overlapping oversight with the FAA of certain antenna structures. All antenna structures that are subject to part 17 rules are therefore also subject to the FAA's part 77 rules concerning the safety of the navigable airspace. Under its rules, the FAA requires notification for the construction or alteration of any antenna structure that exceeds 60.96 meters (200 feet) in height above ground level, or where certain other conditions are met, including proximity to an airport runway. Antenna structure owners must file a form with the FAA, and that agency in turn determines whether the construction or alteration is subject to lighting or marking specifications prescribed in the current version of an FAA Advisory Circular entitled *Obstruction Marking, and Lighting.*

Obstruction Marking and Lighting. The FAA sends an acknowledgment to the antenna structure owner describing how the structure should be marked and lighted, which constitutes an FAA study and determination of no hazard to air navigation. This means that the FAA has determined that the structure will not pose a hazard to aircraft provided that the structure is marked and/or lighted consistent with its recommendations.

2. In order to register the structure with the Commission, the antenna structure owner must submit the FAA's study and a no hazard determination, along with FCC Form 854. The Commission then verifies with the FAA the accuracy of the marking and lighting specifications provided by the applicant. If the Commission accepts the application, it issues an ASR form (Form 854R), which typically incorporates the FAA's no hazard marking and/or lighting specifications and assigns the antenna an ASR number. Once an antenna structure is registered, its owner must ensure that the structure complies with all of the relevant FAA chapters specified on the registration, or the owner may be subject to Commission enforcement action. No changes to the specifications in the ASR are permitted without prior approval from both the FAA and the Commission; owners wishing to change an antenna structure's specifications must first seek FAA approval, and only then may they file a request with the Commission to amend the ASR. Prior to changing the marking or lighting on the structure, antenna structure owners must receive an amended ASR form from the Commission incorporating the change.

3. In 2010, the Commission initiated a proceeding to update and modernize its part 17 rules to improve compliance and enforcement objectives, and to eliminate outdated and burdensome requirements that may no longer serve safety objectives. In the *Notice of Proposed Rulemaking* (NPRM), the Commission proposed amendments to the part 17 rules, including harmonizing these rules with FAA rules where appropriate. Among other proposals, the Commission sought comment on potential changes to the part 17 rules governing ASR and marking and lighting specifications, as well as inspection and maintenance of lighting and painting requirements. These issues were raised in the 2004 Biennial Review, and in a subsequent Petition for Rulemaking filed by PCIA—The Wireless Infrastructure Association (PCIA) to modernize and clarify the part 17 rules.

II. Discussion

4. In the *part 17 Report and Order,* the Commission adopts numerous revisions to its part 17 rules to simplify procedures and clarify the obligations of antenna structure owners in order to ensure air safety. The steps the Commission takes to streamline its rules will improve efficiency and reduce regulatory burdens, which the Commission anticipates may enhance compliance and air safety. The Commission first streamlines several requirements regarding the ASR process to remove conflicting or ambiguous rules. Among these changes, the Commission harmonizes its rules with FAA recommendations on antenna structure lighting and marking specifications, construction notification requirements, and the accuracy of data that antenna structure owners must provide. The Commission updates its rules regarding the maintenance of antenna structure painting and lighting. Specifically, the Commission exempts owners that use robust, modern monitoring systems from the quarterly inspection requirement. The Commission also improves its lighting outage notification requirements, standardizes repair timelines, harmonizes its requirements to maintain painting with current FAA publications, and removes outdated provisions from its part 17 rules.

5. To help ensure that its rules continue to reflect current FAA guidelines and publications, the Commission further delegates rulemaking authority to the Wireless Telecommunications Bureau (WTB) to make nonsubstantive, editorial revisions to the Commission's part 17 rules to reflect future FAA rule changes and recommendations after providing an opportunity for notice and comment. The Commission anticipates that this limited delegation of authority will help to mitigate conflicts that may arise as a result of other rulemakings or new recommendations by the FAA, and will allow the Commission to more rapidly address situations where its rules may diverge from FAA requirements.

A. Antenna Structure Registration and Specifications

6. In the (NPRM), the Commission proposed several revisions to its rules governing the ASR process to update and modernize them while ensuring the safety of pilots and aircraft passengers. In particular, the (NPRM) proposed to clarify requirements and harmonize them with current FAA rules. The part 17 rules that the Commission revises overlap in significant respects with FAA rules, reflecting its shared responsibility to ensure that the infrastructure the Commission regulates does not pose a risk to public safety. Diverging requirements create unnecessary ambiguity for antenna structure owners attempting to comply with both sets of rules which ultimately harm the public interest. Accordingly, in the actions the Commission takes, it seeks to provide clarity to antenna structure owners and, where appropriate, defer to the FAA on matters of air safety.

1. Antenna Structure Marking and Lighting Specifications

a. Provisions Governing Specification of Marking and Lighting

7. *Background.* The part 17 rules provide criteria regarding which antenna structures require painting and lighting. Whenever painting or lighting is required, the rules provide that antenna structures must conform to the painting and lighting recommendations provided by the FAA in its determination of no hazard, as referenced in two FAA Advisory Circulars (from 1996 and 1995, respectively). The rules also provide that the Commission will generally conform its lighting and marking specifications to those set forth in these two FAA Advisory Circulars, but that it may specify different requirements for individual structures. In the (NPRM), the Commission proposed to clarify that the FAA's recommended specifications are generally mandatory, but that the Commission may specify additional or different requirements, and that no changes may be made to the lighting or marking specifications on an ASR without prior FAA and Commission approval. The Commission also proposed modifications to these rules to simply reference FAA marking and lighting requirements rather than specifying particular FAA publications.

8. *Discussion.* The Commission revises its rules to eliminate any reference to older FAA Advisory Circulars, and instead require structure owners to comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications. The Commission finds that this revision to its rules will serve the public interest because it streamlines and clarifies the requirements applicable to structure owners. The Commission agrees with commenters that reference in its rules, to outdated FAA Advisory Circulars could cause confusion, and that eliminating specific references to FAA publications will clarify the lighting and marking obligations of antenna structure owners should any FAA Advisory Circulars change in the future. Requiring structure owners to comply with the FAA's no hazard determination and associated study when establishing painting and lighting specifications for a structure ensures a level of consistency between the Commission's rules and the FAA's rules and policies. However, consistent with the Commission's proposal in the (NPRM), the Commission modifies 47 CFR 17.4 of its rules to clarify that the Commission retains the right, in its discretion, to impose additional or different lighting and marking requirements to ensure structures do not pose an air hazard. Further, the Commission clarifies that no changes may be made to the lighting or marking specifications on an ASR without prior approval from both the FAA and the Commission. No commenters opposed either of these proposals. The Commission finds that these clarifications are appropriate in order to limit the possibility of confusion among antenna structure owners and to fulfill its statutory obligation to ensure that antenna structures have appropriate marking and lighting so as not to pose a menace to air navigation.

9. The Commission declines to adopt the proposal from the Conservation Groups to expressly reference any FAA Advisory Circulars or other relevant policy documents that may address antenna structure owners' latitude to adopt lighting configurations that reduce adverse effects to birds and wildlife, consistent with aircraft navigation safety. Notwithstanding concerns regarding the effect of antenna structure lighting on wildlife, referencing particular circulars in the Commission's rules could lead to confusion, given the likelihood that the requirements or policies reflected in these publications will evolve over time. Furthermore, the FAA has not yet revised its Advisory Circulars to reflect the availability of new lighting configurations that do not employ steady-burning lights, and so citing to the current publications will not address the concerns of conservation advocates. Under the Commission's revised rules, antenna structure owners may still be able to change their lighting configurations to those that reduce impact on birds and wildlife, consistent with current or future FAA recommendations. The Commission notes that it previously encouraged antenna structure owners and conservation advocates to work together to reduce negative effects on wildlife, and the Commission's rules specifically require an Environmental Assessment (EA) for avian effects of antenna structures exceeding certain heights pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds.

b. Retroactive Application of New Specifications

10. *Background.* The Commission's rules provide an exemption to the lighting and marking requirements for previously authorized antenna structures, and provide that changes in the FAA circulars do not impose new restrictions upon existing structures. In the (NPRM), the Commission proposed to delete these exemptions as unnecessary in light of the proposal to remove references to specific circulars, as described above. The (NPRM) also sought comment on a proposal clarifying that lighting and marking requirements do not change unless the FAA recommends new specifications for a particular structure. The Commission asked whether, in the alternative, it should instead have the flexibility to apply any new standards retroactively in the event that the FAA changes its standards.

11. *Discussion.* The Commission revises its rules to clarify that it generally will not require existing antenna structures to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure. In addition, the Commission deletes the exemption to the lighting and marking requirements in its current rules for previously authorized structures, because the revisions the Commission adopts make those exemptions unnecessary. The Commission notes that this approach is consistent with the one taken by the FAA, the expert agency on air safety. Moreover, the Commission agrees with commenters that applying new marking and lighting guidelines retroactively to existing structures could be extremely burdensome, both in economic costs to owners that would be required to update existing equipment or purchase new equipment, and in Commission resources that would be necessary to handle the large influx of ASR filings. The Commission finds that, on balance, the costs associated with retroactive application of new lighting and marking specifications outweigh any limited corresponding benefit. The Commission will, however, require antenna structure owners to comply with any new specifications that the FAA recommends for particular structures, consistent with PCIA's proposal. This approach will ensure that particular safety needs are met without unduly burdening industry and agency resources.

12. Conservation Groups is the sole commenter to oppose this proposal. It urges the Commission to retroactively impose new specifications requiring the extinguishment of certain steady burning lights as a result of recommendations from the FAA 2012 Conspicuity Study. While the Commission understands the concerns of Conservation Groups regarding the effect of antenna structure lighting on

wildlife, the FAA has not yet updated its Advisory Circulars to reflect the outcome of the study. The Commission will monitor any future determination that the FAA makes on whether to retroactively apply changes to the Advisory Circular's marking and lighting specifications resulting from the 2012 Conspicuity Study. Moreover, as previously discussed, the Commission will continue to encourage antenna structure owners to mitigate any adverse impact to wildlife and will consider any such impact through its EA review process.

2. Accuracy of Height and Location Data

13. *Background.* Under the existing rules, alteration of an existing antenna structure requires the owner to obtain a new registration prior to alteration. However, the rules do not define what constitutes an alteration requiring registration. In the (NPRM), the Commission proposed to add new language specifying that any change in height of one foot or greater, or any change in coordinates of one second or greater, requires prior approval from both the FAA and the Commission. The Commission also sought comment on whether to require the height and location data to be accurate to within one foot and one second of latitude and longitude, respectively, and whether to require that a specific survey methodology (e.g., GPS) be used when conducting measurements.

14. *Discussion.* The Commission amends the rules to require its prior approval for any change or correction of one foot or greater in height, or one second or greater in location, as compared to the height or location data provided on the antenna structure's ASR form. As NTCA notes, requiring supplemental notice for such changes in height or location codifies existing industry practice, and the Commission concludes this requirement will reinforce air safety. While some commenters propose different height or location standards, as noted above, changes in height of one foot or greater, or in location of one second or greater, requires a new aeronautical study and determination of no hazard by the FAA. The Commission defers to the FAA's expertise on these matters in finding that these requirements are sufficient to help ensure air safety. On balance, the Commission concludes that harmonizing its standards for when changes in height or location require supplemental notice with the FAA's requirement for when a new study is required is in the public interest, as it provides greater clarity to structure owners without harming air safety.

15. The Commission also declines to impose a requirement that antenna structure owners use specific survey methods when conducting site measurements or that height measurements must be accurate within one foot and coordinates accurate within one second of latitude or longitude. Instead, the Commission will continue to defer to the FAA, and will require antenna structure owners to provide height and location measurements matching those provided to the FAA in their applications. Commenters overwhelmingly oppose both the Commission applying its own accuracy standards, and requiring a particular survey method. The Commission concludes that adopting accuracy standards or survey methods that differ from those required by the FAA may be unduly burdensome and could cause confusion, which in turn could discourage compliance and ultimately harm air safety. While requiring its own accuracy standards, or mandating the use of particular survey methods (e.g., GPS) could improve the accuracy of information that the Commission keeps on file, it is the Commission's goal to harmonize its approach with the FAA's where doing so will not harm air safety. From the record, the Commission is convinced that the standards set by the FAA, as the expert agency on air safety, are sufficient here. Further, generally requiring compliance with existing FAA guidelines rather than codifying the FAA's current standard will avoid confusion and allow the Commission's rules to keep pace with FAA policies as they evolve over time.

3. Notification of Construction or Dismantlement

16. *Background.* The part 17 rules currently require the owner of an antenna structure to notify the Commission within 24 hours of construction or dismantlement, and to notify the Commission immediately of changes in height or ownership. FAA rules generally require owners to file supplemental notice within five days of the time that a construction or alteration of a structure reaches its greatest height, a proposed construction or alteration is abandoned, or a construction or alteration is dismantled or destroyed. In its petition for rulemaking, PCIA proposed that the Commission harmonize its notification requirements with FAA rules, modifying the notification windows to five days. In the (NPRM), the Commission tentatively rejected these proposed changes, noting that commenters had not cited relevant FAA requirements nor explained why these would be appropriate for the Commission's purposes.

17. *Discussion.* The Commission modifies its rules regarding supplemental notification of construction, changes, or dismantlement to require that the owner of an antenna structure shall notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are changes in structure height or ownership. The Commission notes that commenters unanimously support these timing requirements, and in so doing the Commission harmonizes its requirements with the FAA's rules. Although in the (NPRM), the Commission emphasized that the accuracy and timeliness of information submitted to the Commission is important, on balance the Commission agrees with commenters that compliance with substantially similar requirements that have different filing timelines can be burdensome and confusing. Given that the FAA, as the expert agency on matters of air safety, has determined that allowing a delay of five days between completion of construction, dismantlement, or changes in height is acceptable, the Commission concludes that harmonizing its timing rules with the FAA's requirements eases regulatory burdens without compromising safety.

4. Voluntary Antenna Structure Registration

18. *Background.* Under the Commission's rules, only antenna structures meeting specified height or location criteria must be registered, although the rules do not preclude voluntary registration of antenna structures not meeting those criteria. In the (NPRM), the Commission sought comment on whether the part 17 rules should be enforced against antenna structures that are voluntarily registered. The Commission also asked whether it should prohibit owners from voluntarily registering structures and require owners to remove voluntarily registered structures from the database. As the Commission noted, such action could reduce confusion concerning the regulatory status of these structures. However, the (NPRM) also explained that many owners register antenna structures voluntarily in order to file an Environmental Assessment and obtain a Finding of No Significant Impact under the Commission's environmental rules, or to satisfy other needs.

19. *Discussion.* The Commission will continue to allow owners to voluntarily register antenna structures, but the

Commission changes the registration form to require owners to designate when a particular registration is done voluntarily. All but one commenter advocates continuing to allow voluntary registration of antenna structures. The Commission agrees with commenters that argue that prohibiting voluntary registration would be burdensome for antenna structure owners that may need to register their structures to comply with the Commission's environmental rules to meet regulatory requirements, or for other reasons. The Commission finds that, by modifying the registration form in a minor way to require an antenna structure owner to designate whether a registration is voluntary, the Commission strikes the right balance between administrative efficiency and burdens on antenna structure owners. Further, while the Commission will require owners to designate whether a registration is voluntary for all future registrations, the Commission declines to require antenna structures previously registered to file a new registration with such a designation. The Commission agrees with commenters that contend that forcing owners of previously registered antenna structures to determine which structures were registered voluntarily could be an extremely difficult task given the number of changes in structure ownership, airport locations, and FAA flight paths that have occurred over the years. Thus, for new registrations in the database, it will be clear whether the part 17 rules apply. Although existing registrations will not be marked as voluntary, the Commission finds that the burden of requiring all existing registrations to be updated would outweigh the informational benefit of doing so.

20. The Commission also concludes that it would not serve the public interest to apply part 17 lighting and marking requirements to voluntarily registered antenna structures. Commenters broadly oppose applying the part 17 rules to these antenna structures, and as indicated above, the Commission finds that requiring owners to designate whether a structure is registered voluntarily will resolve any ambiguity or confusion concerning whether such requirements apply. The Commission will permit owners of voluntarily registered structures to withdraw their registrations, but, as the Commission determines that continuing to allow such registrations is in the public interest, the Commission will not require these registrations to be removed from the database or amended to indicate that they were voluntarily filed.

5. Posting of Antenna Structure Registration

21. *Background.* The Commission's rules require that an ASR number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. PCIA, in its petition for rulemaking, argued that it is not always possible to post this number so that it is both readily visible and near the base of the structure, and instead recommended that the Commission expressly permit posting at a compound fence or gate. In the (NPRM), the Commission proposed to modify its rules to require owners to display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near the base of the antenna structure. The Commission also tentatively concluded that if two or more such locations exist (e.g., two access roads from different directions), the rules should require posting the registration number at each location.

22. *Discussion.* The Commission amends its rules to require that owners display the ASR number so that it is visible to a member of the general public who reaches the closest publicly accessible location near the antenna structure base. In general, commenters support the proposal in the (NPRM) to clarify the obligations of antenna structure owners regarding where and how to post the ASR number, although some commenters encourage further guidance and clarity in the rules. To address concerns raised by some commenters on the obligations of antenna structure owners where an antenna structure is within an enclosed perimeter, the Commission emphasizes that posting at the closest publicly available access point may, for example, be on a perimeter fence or access gate.

23. In general, the Commission will not require antenna structure owners to post the ASR number at both an access point and the base of the structure. The Commission agrees with the commenters that contend that posting the ASR number at both the base and an access point in cases in which there is only one antenna structure is unnecessary. However, in certain circumstances the informational benefit to the public of posting multiple signs outweighs the burden on antenna structure owners. Where more than one publicly accessible access point exists, the Commission modifies its rules to require posting at each access point location. Likewise, where a single perimeter fence surrounds multiple antenna structures, the Commission will require that owners post the registration both at any access points, and at the base of the structure. With regard to those commenters that argue that the rules should not require multiple ASR numbers to be posted at a facility, the Commission finds that the burden on antenna structure owners of posting multiple ASR numbers is outweighed by the benefits to the public and to air safety of conspicuously displaying this information. As discussed in the (NPRM), it is important that FAA and Commission personnel, as well as members of the public, can quickly and easily identify a particular structure in order to report a lighting outage or other air safety hazard.

6. Provision of Antenna Structure Registration to Tenants

24. *Background.* The part 17 rules require that antenna structure owners immediately provide copies of the ASR form to each tenant licensee and permittee. In the (NPRM), the Commission proposed to amend the rules to allow owners, as an alternative to providing a paper copy of the form, to provide tenants with the ASR number and a link to the Commission's ASR Online System Web site, via paper mail or email.

25. *Discussion.* The Commission modifies its rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R, which all commenters support. PCIA argues that the requirement to provide a paper copy of the ASR form serves no practical purpose, given that the general public can obtain a copy using the Commission's ASR Online System with just the ASR number. The Commission finds that it is crucial that tenants have complete and timely notice of the contents of Form 854R, and, in keeping with its process reform goal of updating its rules, the Commission finds that allowing a simple, modern alternative to provide this notice is warranted.

B. Maintenance of Marking and Lighting

26. As discussed below, the Commission revises its rules to address certain requirements that concern the maintenance of the marking and lighting on antenna structures, including inspection and maintenance of lighting, records of extinguishment or improper functioning of lights, and maintenance of painting. In particular, the Commission amends its rules to exempt antenna structure owners with network operations center (NOC)-based monitoring systems from quarterly inspection requirements. The

Commission also requires antenna structure owners to provide the FAA with updates of the status of lighting outages so that the FAA can issue accurate Notices to Airmen (NOTAMs) throughout the period that the antenna structure remains unlit. The Commission also adopts a single standard for the repair of antenna structure lighting and automatic indicators or automatic control or alarm systems, and clarify the amount of time that antenna structure owners are required to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights. Finally, the Commission adopts the FAA's ''In Service Aviation Orange Tolerance Chart'' as the benchmark for determining whether a structure needs to be cleaned or repainted.

1. Inspection of Structure Lights and Associated Control Equipment

27. *Background.* In the (NPRM), the Commission sought comment on whether to amend its rules governing antenna structure lighting monitoring and inspection obligations, or whether to eliminate these requirements altogether. These rules require the owner of an antenna structure to observe the antenna structure's lights to make sure they are functioning properly at least once every 24 hours either visually or by observing an automatic properly-maintained indicator designed to register any failure of these lights or, in the alternative, to provide an automatic alarm system designed to detect lighting failures and notify the owner of the failure. Owners must also inspect, at least quarterly, all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to ensure that they are functioning properly.

28. The (NPRM) sought comment on whether to eliminate the inspection requirement entirely, noting that the rule may create confusion about the scope of an antenna structure owner's regulatory obligations and lead an owner to incorrectly conclude that if it performs the required inspections, it may not be subject to enforcement action if its lights fail to function. Alternatively, the Commission sought comment on whether to exempt or modify inspection obligations for antenna structures using advanced NOC-based self-monitoring technologies. The Commission has implemented a waiver process in cases where advanced monitoring systems are in place, and has granted a number of partial waivers, permitting the petitioning antenna structure owners to conduct annual rather than quarterly inspections. Under this process, an antenna structure owner petitioning for relief must demonstrate that the monitoring system it utilizes employs self-diagnostic functions—such as alarm notification, 24-hour polling, and manual contact—and a NOC staffed with trained personnel capable of responding to alarms 24 hours per day, 365 days per year, as well as a backup Operations Center that, in the event of a catastrophic failure at the primary NOC, has specific procedures for transferring the monitoring duties of the system. Once WTB, under delegated authority, has had an opportunity to evaluate a request and determine that a particular monitoring system is sufficiently robust as to justify grant of a waiver, other antenna structure owners utilizing the same monitoring system may petition for relief on an expedited basis. Where an antenna structure owner seeks to utilize a new monitoring system that has not previously been approved, it may petition the Commission for relief, and waivers are generally granted where the petitioner can demonstrate that their system employs the same functionalities as ones previously granted approval. There is a pending request by American Tower Corporation (ATC) seeking a waiver of inspection requirements altogether based on its use of an advanced monitoring system.

29. *Discussion.* The Commission revises its rules to exempt qualifying NOC-based monitoring systems from quarterly inspection obligations. Based on the record, the Commission concludes that it would serve the public interest to eliminate the quarterly inspection obligation for those antenna structures using sufficiently robust monitoring systems. These systems employ self-diagnostic functions (such as alarm notification, 24-hour polling, and manual contact), an operations center staffed with trained personnel capable of responding to alarms 24 hours per day, 365 days per year, and a backup Operations Center that can monitor systems in the event of catastrophic failure. As the Commission has previously determined, these systems are sufficiently robust so as to make quarterly inspections unnecessary to ensure that the control devices, indicators, and alarm systems on the antenna structures are operating properly. Further, completely eliminating the inspection requirement for qualifying systems with these features will lessen the burden on antenna structure owners without hindering aircraft navigation. The Commission observes that quarterly or even annual inspection obligations require a tremendous expenditure of resources for structures employing these systems, both in terms of dollars and person-hours spent, with no apparent corresponding benefit to aircraft safety. Further, eliminating the burden of inspection requirements for antenna structure owners that use advanced technologies may encourage other owners to adopt state-of-the-art systems.

30. The Commission therefore concludes that, on balance, the public interest would be served by adopting a procedure to exempt qualifying antenna structure owners from quarterly inspection requirements. In doing so, the Commission emphasizes that the Commission's top priority is to ensure that the lighting required under the ASR remains on or, if required lights become extinguished, that the structure owner promptly requests a NOTAM. The Commission reminds antenna structure owners that if these requirements are not met, they may be subject to enforcement action, regardless of how robust their monitoring systems may be.

31. As discussed above, this exemption affects three specific groups of antenna structure owners: (1) those that were previously granted waivers for their antenna structures monitored by approved systems; (2) those that employ approved systems but have not yet sought approval from the Commission; and (3) those that employ new systems for which no antenna structure owner has been granted waiver relief by the Commission. The Commission discusses the application of its decision with respect to each of these groups in turn.

32. Antenna structure owners that were previously granted a waiver for their antenna structures monitored by qualifying systems are exempt from all inspection obligations, as long as they continue to meet the advanced monitoring obligations to which they have already certified. Other antenna structure owners that have not yet sought a waiver but use an advanced monitoring system that has previously been approved by the Commission may also certify that they are eligible for an exemption from the inspection obligations with respect to any antenna structure utilizing a NOC-based system. Specifically, the Commission will modify its ASR system, as Verizon suggests, to allow structure owners to demonstrate that they are eligible for an exemption. Structure owners must provide a certification and supporting documentation demonstrating that they use an advanced monitoring system that has been previously approved by the

Commission, and that their antenna structures are monitored under the same process described in the order granting a waiver for that system. In addition, to qualify for the exemption the antenna structure owners must certify that they maintain a facility to receive notifications of failures from the advanced monitoring system, enabling the owners to carry out their responsibilities under part 17 of the Commission's rules. Finally, antenna structure owners that employ new systems that have not yet been certified by the Commission may continue to petition WTB. Such requests will be evaluated under the standards that have already been established.

33. The Commission declines to eliminate inspection obligations in their entirety. Although some commenters support the elimination of all inspection obligations, the Commission finds that there are important public safety benefits associated with periodic inspection of the control devices, indicators, and alarm systems associated with the lighting for antenna structures that do not employ advanced monitoring systems. The Commission concludes that the quarterly inspection requirement provides a necessary layer of required diligence to protect against lighting failures going unnoticed in cases where antenna structure owners are maintaining structures with older monitoring systems. In the absence of an advanced system that continually monitors lighting and system malfunctions, the Commission finds that quarterly inspections are essential to public safety because they help to ensure the reliable detection of lighting malfunctions. The Commission therefore declines to delete 47 CFR 17.47 in its entirety.

34. The Commission further declines to require registered structures to install monitoring systems as proposed by AFCCE. The Commission finds that such a requirement would be unnecessary because the new exemption will provide adequate incentives for antenna structure owners to adopt technologically advanced systems, and because the use of quarterly inspections should suffice to ensure that the public safety will be adequately protected for those owners that do not employ these advanced systems. The Commission also declines to adopt a third-party certification process for waiver requests. The Commission does not anticipate that the number of new system requests would support the development of a third-party certification process, and the Commission therefore finds that it would serve the public interest to continue with its already established waiver/exemption process. Thus WTB, under delegated authority, will continue to evaluate petitions for exemption of any new NOC-based systems using the same process it used in granting previous waiver requests.

2. Notification of Extinguishment or Improper Functioning of Lights

35. *Background.* 47 CFR 17.48(a) requires that antenna structure owners promptly report outages of top steady burning lights or flashing antenna structure lights to the FAA. Upon receipt of the outage notification, the FAA will issue a NOTAM, which notifies aircraft of the outage. However, the FAA cancels all such notices within 15 days. Currently, the Commission's rules do not require antenna structure owners to provide any notification to the FAA regarding the status of repairs other than the initial outage report and the resumption of normal operation. Thus, if the repairs to an antenna structure's lights require more than 15 days, the FAA may not have any record of the outage from that 15th day to the resumption of normal operation. The (NPRM) sought comment on proposed modifications to the process by which lighting outages are reported to the FAA. Specifically, the Commission proposed requiring antenna structure owners to contact the FAA to extend the lighting outage date after 15 days, together with an updated estimate of the return-to-service date. In addition, the reporting requirement of 47 CFR 17.48(a) requires that the FAA be notified by telephone or telegraph. The Commission tentatively concluded that this rule should be updated to require notification by means acceptable to the FAA, which currently is by a nationwide toll-free telephone number for reporting lighting outages.

36. *Discussion.* The Commission revises its rules to require antenna structure owners to provide the FAA with regular updates on the status of their repairs of lighting outages so that the FAA can maintain notifications to aircraft throughout the entire period of time the antenna structure remains unlit. Consistent with the current FAA requirements, if a lighting outage cannot be repaired within the FAA's original NOTAM period, the Commission requires the antenna structure owner to notify the FAA of that fact. In addition, the antenna structure owner must provide any needed updates to its estimated return-to-service date to the FAA. Moreover, an antenna structure owner must continue to provide these updates to the FAA every NOTAM period until its lights are repaired. The Commission finds it necessary to ensure that a NOTAM is reissued every NOTAM period so long as any outage continues, and that a current estimate of the return-to-service date is included in each notification, to clarify the scope of the malfunction and help focus the repair process toward a fixed repair date. The Commission finds that the limited additional burden on antenna structure owners is insignificant compared to the need to have regularly updated and accurate NOTAMs, as pilots rely on the NOTAMs to help ensure air safety.

37. With regard to the reporting requirement of 47 CFR 17.48(a), which provides that the FAA shall be notified by telephone or telegraph, the Commission eliminates the requirement for using a specific means of notification (which currently contains the outdated reference to telegraph) and require instead notification by means acceptable to the FAA. The FAA currently requires notification by a nationwide toll-free telephone number for reporting lighting outages. This change serves the public interest because it harmonizes the Commission's reporting requirement with the FAA's reporting requirements and it clarifies the rule by eliminating a previously specified option that is no longer viable.

3. Lighting Malfunction Repair Timelines

38. *Background.* The Commission requested comment on whether its rules should include specific timeframes for replacing or repairing extinguished lights notwithstanding the issuance of a NOTAM, and if so, what those timeframes should be. 47 CFR 17.48(b) requires the repair of an extinguished or improperly functioning steady burning side intermediate light as soon as possible. In contrast, the general standard for repairing and restoring lights, automatic indicators, and control or alarm systems in 47 CFR 17.56(a) requires repairs to be made as soon as practicable. The Commission tentatively concluded that these provisions should be deleted to avoid confusion with regard to repair timelines, as well as whether diligent efforts to correct lighting malfunctions obviate the need for a NOTAM. However, the Commission noted that the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, and that the Commission's rules would contain no requirements relating to maintenance of these lights in the absence of 47 CFR 17.48(b). The Commission therefore sought comment on whether it should implement a time limitation for lighting system repairs,

and if so, how such a requirement should be implemented.

39. *Discussion.* The Commission revises its rules by adopting a single standard for the repair of antenna structure lighting, automatic indicators, automatic control systems, and alarm systems. Specifically, the Commission revises its rules to provide that all of the repairs addressed in 47 CFR 17.48(b) and 17.56(a) (i.e., antenna structure lighting repairs, as well as repairs to automatic indicators or automatic control or alarm systems) be made as soon as practicable. This change addresses the inconsistency between these two rules, given that 47 CFR 17.48(b) requires that antenna structure lighting repairs be made as soon as possible, while 47 CFR 17.56(a) requires that repairs to automatic indicators or automatic control or alarm systems be made as soon as practicable. Commenters generally support this revision to the Commission's rules, and the Commission finds that this change serves the public interest because a standard that requires antenna structure owners to make such repairs as soon as practicable will provide them with greater flexibility to fulfill their obligation to complete repairs to lighting system malfunctions in a timely fashion. Antenna structure owners that cannot demonstrate that their efforts to make such repairs are sufficient to meet that standard may face forfeiture liability. In determining whether an antenna structure owner has met the as soon as practicable standard in an enforcement proceeding, the Commission may consider whether the owner has exercised due diligence and has made a good faith effort to repair the outage. Further, antenna structure owners may be subject to enforcement action if they are unable to provide a reasonable explanation of their efforts to make these repairs as soon as practicable.

40. The Commission declines to impose specific timeframes for replacing or repairing extinguished lights. The Commission finds that antenna structure lighting repair does not lend itself to specific repair timelines due in part to the widely varied circumstances and complications that can make certain repairs too difficult or dangerous if a fixed schedule is required. Many of these variables are often beyond the control of the antenna structure owner, because such factors as delivery of replacement equipment, difficulty of repair, and limited structure access due to the location or weather conditions can make the timing of certain repairs difficult to predict. Most commenters do not support the imposition of specific repair timelines, preferring instead rules that provide antenna structure owners the flexibility to make their repairs in a reasonable period of time. The Commission finds that declining to adopt fixed repair timelines best meets its goals of ensuring timely repairs to lighting malfunctions and consistent enforcement of its rules, without imposing unreasonable burdens on antenna structure owners. In the absence of specific timeframes, the Commission finds that it serves the public interest to require an antenna structure owner to replace or repair extinguished lights as soon as practicable, as discussed above. The Commission's revised rules provide a general, consistent standard that will help ensure that those tasked with timely repairs may undertake them safely and efficiently under widely differing circumstances while still preserving aviation safety.

41. The Commission declines to delete 47 CFR 17.48(b) and 17.56(a), which would eliminate the requirements providing for the repair of antenna structure lighting, as well as automatic indicators or automatic control or alarm systems. The Commission finds that it serves the public interest to retain these rules while revising them to ensure that the Commission provides antenna structure owners with clear guidance and a consistent standard to ensure timely repairs to antenna structure lighting malfunctions. Moreover, because the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, which are required in many FAA lighting styles, in absence of these rules, the Commission has no requirements applicable to antenna structure owners in connection with their obligations to repair and maintain these lights.

42. The Commission decline to require a second lighting system, for antenna structures in very remote locations, which is consistent with its requirements in other locations. The Commission finds that adopting a special rule for remote locations to require a second lighting system for structures in those areas would impose additional costs on antenna structure owners that the Commission finds to be, on balance, unnecessary, given the effectiveness of other rules requiring timely lighting repair. The Commission finds that its rules requiring antenna structure owners to complete repairs of lighting malfunctions on their antenna structures in a timely manner helps to ensure aviation safety and obviates the need for secondary systems.

4. Recordkeeping Requirements

43. *Background.* 47 CFR 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights, but does not specify the time period for which such records must be maintained. In the (NPRM), the Commission tentatively concluded to amend this provision by adding a requirement to maintain such records for two years and an obligation to provide the records to the Commission upon request. The Commission also sought comment on whether it should eliminate the recordkeeping requirement entirely.

44. *Discussion.* The Commission revises its rules to require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years, and to provide such records to the Commission upon request. The Commission finds that limiting the retention time period to two years serves the public interest because it will lessen the burden on antenna structure owners without hindering the Commission's ability to monitor an antenna structure owner's compliance record. Although one commenter prefers a one-year retention period, all other commenters that address this revision to the rules support it, as antenna structure owners will no longer have to retain the records indefinitely, thereby saving valuable resources. The Commission finds that the two year retention period and the obligation to submit such records to the Commission upon request provide a practical balance between the Commission's need to preserve a record of compliance and costs to industry of retaining and submitting these records.

5. Maintenance of Painting

45. *Background.* 47 CFR 17.50 of the rules specifies that antenna structures requiring painting under part 17 shall be cleaned or repainted as often as necessary to maintain good visibility. In the (NPRM), the Commission sought comment on options for clarifying the rule, as the rule itself provides an ambiguous standard for measuring good visibility. Specifically, the Commission requested comment on whether to amend 47 CFR 17.50 to specifically provide for use of the FAA's In-Service Aviation Orange Tolerance Chart to determine whether a structure needs to be cleaned or repainted. If so amended, the Commission further sought comment on whether a determination as to whether a structure needs to be repainted or cleaned should be assessed

by comparing it to the FAA's In-Service Aviation Orange Tolerance Chart at the base of the antenna structure and/or at a distance of one quarter mile. The FAA's Advisory Circular on Obstruction Marking and Lighting indicates that the color should be sampled on the upper half of the structure, since weathering is greater there.

46. *Discussion.* The Commission revises its rules to adopt the FAA's In-Service Aviation Orange Tolerance Chart as the benchmark for determining whether a structure needs to be cleaned or repainted. In adopting this revision to its rules, the Commission notes that most commenters support the adoption of the FAA's In-Service Aviation Orange Tolerance Chart, and antenna structure owners will now have a standard measurement tool to aid them in deciding when it is necessary to clean or repaint their structures to maintain good visibility pursuant to 47 CFR 17.50 of the Commission's rules. Antenna structure owners must use the chart in a manner consistent with FAA guidelines, which currently provide that the color should be sampled on the upper half of the structure. The Commission agrees with the FAA that the top half of the structure, and not the base of the structure as some commenters have suggested, should be the reference point to which the color chart is compared. The Commission notes that visibility of the top half of the structure is the most important for safe air navigation and that the color of the top half of the structure is likely to fade faster than other parts of the structure due to weather conditions.

47. The Commission decline to prescribe a particular distance from which the chart is to be compared with the top half of the structure. Commenters advocate making this comparison from a number of specific locations, including at the base, at the top half of the structure, or at a distance of one-quarter mile from the structure. Although placing the chart directly over the surface of a portion of the top half of the structure would provide the best results, the Commission recognizes that measurement directly over the surface may not always be practical due to weather or access limitations.

48. The Commission declines to compel painting of antenna structures every ten years. The Commission finds that structure owners are best able to determine how to safely and efficiently comply with the antenna structure maintenance requirements of its rules, and it is unnecessary to prescribe a fixed, ten-year painting mandate for this purpose. A rigid repainting requirement would not materially benefit antenna structure conspicuity and aviation safety beyond the requirement to clean and repaint as necessary to maintain good visibility. The Commission finds that the use of the FAA's In-Service Aviation Orange Tolerance Chart, in conjunction with the Commission's current cleaning and repainting standards, is the best way to promote aircraft safety, provide clear guidance to antenna structure owners, and ensure consistent enforcement.

C. Other Process Reform Matters

1. Clarifying Definitions

49. *Background.* An antenna structure is defined in the rules as including the radiating and/or receive system, supporting structures and any appurtenances mounted thereon. The rules also define an antenna structure owner as the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. In the 2004 Biennial Review proceeding, PCIA and other commenters claimed that these definitions and associated compliance obligations of infrastructure providers and licensed carriers were ambiguous, and urged the Commission to revise the definitions to eliminate such ambiguities. In the (NPRM), the Commission proposed to clarify the definition of antenna structure owner to be the owner of the underlying structure that supports or is intended to support antennas and other appurtenances and not a tenant. The Commission also proposed amending the rules to clarify when a structure becomes and ceases to be an antenna structure, noting that the Communications Act requires an owner to maintain painting and lighting until the antenna structure is dismantled. In particular, the Commission proposed to clarify that a structure becomes an antenna structure under the part 17 rules from the time construction begins, regardless of whether the structure is immediately used for its intended purpose, and continues to be an antenna structure until such time as it is dismantled, regardless of whether it continues to be used to transmit or receive radio energy.

50. *Discussion.* Consistent with the proposal in the (NPRM), the Commission revises its definition of antenna structure owner to include the owner of the underlying structure that supports antennas, and its definition of antenna structure to likewise include these underlying structures. The Commission notes that all commenters support these changes, and the revisions clarify that the part 17 rules apply to the actual owner of the structure and not a tenant. The Commission also notes that some structures are themselves the radiating antenna used to transmit radio energy, such as towers that broadcast AM radio frequencies. To clarify that its new definitions are not meant to exclude such structures, the Commission adopts a modification to the definitions proposed in the (NPRM) so as to specifically include them.

51. In addition, the Commission clarifies that a structure is considered an antenna structure from the start of construction through dismantlement, regardless of when it begins and ceases to transmit radio energy. Commenters generally support this clarification, and the Commission agrees that the scope of the rule does not include the construction of a building on which an antenna may be situated, but refers to the construction of the antenna structure itself. The Commission also emphasizes that an antenna structure owner's obligations do not cease until the structure is dismantled. The record supports clarifying who bears responsibility for compliance with the rules, and when a structure is within the purview of the part 17 rules, and the Commission finds that doing so will help promote air safety and serve the public interest.

52. Some commenters express concern that this proposal could be read to encompass Distributed Antenna Systems (DAS), and urge that the Commission make clear that such systems are exempt from the part 17 review. DAS, as well as small cells and other new wireless technologies, use large numbers of smaller antennas, deployed at lower heights and supported by compact radio equipment to provide broadband services. The benefit of these technologies is that they can be deployed on utility poles, street lamps, water towers, rooftops, or inside buildings to fill in coverage gaps. The Commission declines to expressly exempt such systems from its modification to the part 17 definitions. The Commission does not anticipate that the part 17 rules will ordinarily affect such systems because registration is generally only required for structures of sufficient height to affect air safety, and such heights are significantly greater than that of most DAS antennas.

2. Streamlining and Removing Unnecessary Rules

53. *Background.* The part 17 rules currently set forth which antenna structures require notification to the FAA, and specify certain exemptions from this notification requirement. These rules essentially restate the applicable FAA rules. In the (NPRM),

the Commission proposed to delete these sections and insert cross-references to relevant FAA rules. The Commission also proposed to delete a requirement that applicants proposing new or modified facilities located on land under U.S. Government jurisdiction include a statement indicating that facilities will be so located, and that applicants shall comply with another section of the Commission's rules that was removed in 1977. The (NPRM) tentatively concluded that this section was intended to promote compliance with procedures that no longer exist, and as a result is now unnecessary. In addition, the Commission proposed to delete rules that set forth specific lighting and light maintenance requirements as unnecessary and duplicative, since these requirements are specified in the FAA no hazard determination and study for each structure.

54. *Discussion.* While the majority of commenters support amending the Commission's rules to delete the criteria for when notification to the FAA is required, and the specified exemptions from this notification requirement, the Commission declines to adopt this proposal from the (NPRM). PCIA supports cross-referencing in general, but only for the FAA's physical obstruction rules, due to concerns that the FAA may expand the scope of its notification requirements. The FAA has previously considered whether to broaden its notification requirements to include construction of new antenna support structures in certain frequency bands. In particular, the FAA remains concerned about the possible threat of FM broadcast service transmissions to aircraft navigation and communication facilities. The Commission notes that the FAA has not issued a final decision on its proposal to expand its rules to require notice for antenna structures operating on the FM broadcast frequencies. The Commission will continue to work with the FAA and the National Telecommunications and Information Administration (NTIA) to address concerns about the effect of FM broadcast transmissions on air safety and communications systems.

55. Nevertheless, the Commission declines to cross-reference FAA rules that may expand the scope of its rules in the future. Instead, the Commission adopts modifications to part 17 to clarify that antenna structures must be registered only when notice to the FAA is required due to physical obstruction (as for structures of sufficient height, or proximity to airports). The Commission retains the notification criteria in 47 CFR 17.7, but updates these to reflect the FAA's current notification criteria and exemptions. The Commission agrees with commenters that these changes will provide clarity and prevent future FAA rulemakings from expanding the scope of its rules without providing parties the opportunity for public comment. As noted above, the Commission delegates authority to WTB to update the part 17 rules to comport with future FAA rule changes regarding what tower constructions or alterations require FAA notification after an opportunity for notice and comment. This delegated authority will help ensure that the Commission's rules can be quickly updated to remain in harmony with the FAA's notification requirement, while providing interested parties an opportunity to comment on any changes before they take effect.

56. The Commission does, however, delete from its rules the notice requirement for applicants proposing new or modified facilities on federal land in its entirety, a proposal supported by all commenters addressing this issue. The procedures that this rule references were abolished in 1977 at the request of the agencies affected, and the Commission concludes that there is no reason to retain this notification requirement. Finally, the Commission deletes the rules regarding exhibiting and maintaining lights as unnecessary and potentially confusing given that these requirements are already contained in each antenna structure's no hazard determination. Commenters generally support these deletions, which will provide clarity by removing requirements that could conflict with the rule changes adopted above.

3. Ministerial Rule Changes

57. The Commission make the following ministerial edits to conform with the other rule amendments adopted in this Order: the Commission adds a heading to the definition of antenna farm area and changes antenna towers to antenna structures in 47 CFR 17.2(b); deletes an outdated provision in 47 CFR 17.4(a)(2) requiring certain registrations by July 1, 1998; and adds a cross-reference to 47 CFR 17.4(f) in 47 CFR 17.4(e).

III. Procedural Matters

A. Paperwork Reduction Act

58. This document contains revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in the proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 44 U.S.C. *see 44 U.S.C. 3506(c)(4),* the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. The Commission has assessed the effects of eliminating and updating particular provisions of part 17 governing the construction, marking, and lighting of antenna structures. Specifically, the Commission updates the means by which antenna structure owners are required to provide tenant licensees a copy of the antenna structure registration, how registration numbers are displayed on or around the antenna structure and, for improper functioning antenna structure lights, how the FAA is notified and for how long the records are retained. The Commission also updates requirements regarding when the FCC should be notified of certain events, what changes in structure height or location require a new Antenna Structure Registration, require a notation when structures are registered voluntarily, and provide a standardized means for registrants to certify that they qualify for the exemption from quarterly inspection requirements. The Commission finds that these updates improve efficiency, reduce regulatory burdens, and enhance compliance with antenna structure painting and lighting requirements, while continuing to ensure aircraft safety. In addition, the Commission has described impacts that might affect small business, which includes most businesses with fewer than 25 employees.

B. Final Regulatory Flexibility Analysis

60. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM). The Commission sought written public comment on the proposals in the (NPRM), including comment on the IRFA. Because the Report and Order amends the Commission's rules, this Final Regulatory Flexibility Analysis (FRFA) is included to conform with the RFA.

i. Need for, and Objectives of, the Report and Order

61. Section 303(q) of the Communications Act vests in the Commission the authority to require

painting and/or lighting of radio towers that may constitute a hazard to air navigation. Part 17 of the Commission's rules sets forth procedures for identifying those antenna structures that might affect air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA), and for registering such structures with the Commission. The Commission requires owners of antenna structures to register with the Commission those structures that meet the registration criteria and to exercise primary responsibility for the prescribed painting and lighting. The rule changes seek to achieve the best framework to continue to fulfill the Commission's statutory responsibility to require antenna structure owners, registrants and Commission licensees to do whatever is necessary to prevent antenna structures from being hazards or menaces to air navigation.

62. Streamlining and eliminating outdated provisions of the Commission's part 17 rules governing the construction, marking, and lighting of antenna structures improves efficiency, reduces regulatory burdens, and improves compliance with tower painting and lighting requirements, while continuing to ensure the safety of pilots and aircraft passengers nationwide. This action marks another step in the Commission's process reform efforts, and will allow the Commission to modernize its rules while adhering to its statutory responsibility to prevent antenna structures from being hazards to air navigation.

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

63. One commenter directly responded to the IRFA, raising concerns that the IRFA did not identify rules that might duplicate, overlap, or conflict with the rules proposed in the (NPRM). Specifically, the comments by Hammet & Edison addressed the Commission's proposal to defer to the FAA's criteria for when notice of construction or alteration is required. At the time of the (NPRM), a then-pending FAA rulemaking was considering whether to require notice for structures that emit specific radio frequencies, given the FAA's concerns over the impact of these frequencies on pilot communication. Hammet & Edison request that the Commission reconsider the (NPRM) in light of these concerns.

64. In response to concerns by Hammet & Edison and other commenters about the potential for the scope of the Commission's part 17 rules to expand as a result of an FAA rulemaking, the Report and Order declines to adopt the proposal from the (NPRM) to defer to the FAA on these criteria. The FAA did not adopt the expanded scope proposed originally, however a decision on that issue remains pending. Instead, the Report and Order adopts modifications to the relevant rules in part 17 to reflect the current FAA notification criteria and exemptions. This accommodation will alleviate concerns raised by commenters about FAA rule changes expanding the scope of the part 17 rules, and are adequately addressed in this FRFA.

65. In addition, a number of commenters raised concerns about the impact on small businesses of the Commission's lighting and marking requirements. This FRFA explains below how the revised rules adopted in the Report and Order will affect antenna structure owners, particularly owners that are small businesses.

iii. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

66. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

a. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

67. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

68. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term small governmental jurisdiction is defined generally as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,506 entities may qualify as small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

69. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission

estimates that the majority of wireless firms can be considered small.

70. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and wireless cable, transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as designating an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA's or the Commission's rules.

71. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

72. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 11,163 firms that operated that year. Of those, 10,791 had fewer than 1000 employees, and 372 firms had 1000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

73. *Private Land Mobile Radio.* Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories that operate and maintain switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. However, the Commission believes that the most appropriate classification for PLMR is Wireless Communications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action.

74. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

75. Other relevant information about PLMRs is as follows. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

76. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of the Commission's rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to

conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed actions.

77. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

78. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a small business as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A very small business is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

79. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines small entity for MAS licensees as an entity that has average gross revenues of less than $15 million in the three previous calendar years. Very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 EA market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service.

80. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the Wireless Telecommunications Carriers (except satellite) definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 100 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action.

81. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than $35.5 million in annual receipts as a small business. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in the station's own studio, from an affiliated network, or from an external source.

82. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of $35.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (NCE) stations to be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission assumes that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low power television (LPTV) stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

83. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

84. In addition, an element of the definition of small business is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the

entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and estimates of small businesses to which they apply may be over-inclusive to this extent.

85. *Radio Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has $35.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of $35.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission assumes that all of these entities qualify as small businesses. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses may therefore be over-inclusive.

86. *FM translator stations and low power FM stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $35.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

87. *Cable Television Systems.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

88. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a small cable company is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. In addition, under the Commission's rules, a small system is a cable system serving 15,000 or fewer subscribers. Industry data indicate that of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

89. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

90. *Satellite Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

91. The category of Satellite Telecommunications comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under $10 million, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by this action.

92. The second category, i.e., All Other Telecommunications, comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

93. *Non-Licensee Tower Owners.* Although at one time, most

communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. Thus, non-licensee tower owners may be affected by the provisions of this Report and Order.

94. As of June 28, 2013, there are approximately 113,612 registration records in a 'Constructed' status and 13,572 registration records in a 'Granted, Not Constructed' status in the ASR database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which it can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed rules. Moreover, the SBA has not developed a size standard for small businesses in the category Tower Owners. Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all individuals owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners, number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for All Other Telecommunications. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the regulatory measures proposed in this Report and Order. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

b. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

95. The Report and Order adopts several reporting, recordkeeping, and other compliance requirements which could affect small entities. First, the Report and Order amends the Commission's rules to require that owners display the Antenna Structure Registration (ASR) number so that it is visible to a member of the general public who reaches the closest publicly accessible location near the antenna structure base. Where more than one publicly accessible access point exists, the Commission modifies its rules to require posting at each access point location. Likewise, where a single perimeter fence surrounds multiple antenna structures, the Commission will require that owners post the registration both at any access points, and at the base of the structure. These requirements are necessary to ensure that the FAA and Commission personnel, as well as members of the public, can quickly and easily identify a particular structure in order to report a lighting outage or other air safety hazard in a timely fashion. The Commission also modifies its rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R. This update of the Commission's rules will reduce the compliance burden on all antenna structure owners, including small entities.

96. Further, the Commission revises its rules to require antenna structure owners to provide the FAA with regular updates on the status of their repairs of lighting outages so that the FAA can maintain notifications to aircraft throughout the entire period of time the antenna structure remains unlit. These updates will also include updates to its estimated return-to-service date to the FAA. The Commission concludes that on balance, this limited burden on antenna structure owners, which may include small entities, is insignificant compared to the need to have accurate antenna structure lighting outage information, as pilots rely on this information to ensure air safety. The Commission also eliminates the requirement for using a specific means of notification (which currently contains the outdated reference to telegraph) and requires instead notification by means acceptable to the FAA. This change clarifies the rule by eliminating a previously specified option that is no longer viable, which in turn will lessen the burden on antenna structure owners, including small entities.

97. Finally, the Commission revises its rules to require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years, and to provide such records to the Commission upon request. Limiting the retention time period to two years lessens the burden on antenna structure owners, which may include small entities, without hindering the Commission's ability to monitor an antenna structure owner's compliance record.

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

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

99. The rule changes herein are intended both to promote aircraft navigation safety and also to reduce regulatory burdens on small entities by clarifying the relationship between the Commission's rules and procedures and those of the FAA and ensuring continued consistency in those rules and procedures. The Commission asked commenters to suggest alternatives that may further reduce the impact on small entities while achieving the above intended goals. The Commission specifically sought comment on whether to further reduce regulatory burdens on small entities by amending 47 CFR 17.17(b) (redesignated as 47 CFR 17.24) to provide that a revised FAA Circular does not impose new obligations on already-approved antenna structures. The Commission sought comment on whether such deregulatory action would unduly limit the Commission's flexibility and whether it would afford appropriate deference to the FAA's expertise and how possible alternatives could further lessen the burden on small businesses while achieving these goals.

100. For each of the rule changes, the Commission sought discussion, and where relevant, alternative proposals, on the effect that each new requirement, or alternative rules, might have on small entities. For each rule change, the Commission sought discussion about the burden that the rule change would impose on small entities and how the Commission could impose such rule

changes while minimizing the burdens on small entities. For each rule change, the Commission asked whether there were any alternatives that the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities.

101. As a result, the rule modifications the Commission implements in this Report and Order will reduce redundancy, conflicts and ambiguity in antenna marking and lighting regulations. In pursuit of that end, the Commission has: (1) deleted any reference to older FAA Advisory Circulars, instead requiring structure owners to generally comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications; (2) eliminated the stated exemptions to the lighting and marking criteria for previously authorized structures and clarified that existing antenna structures will generally not be required to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure; (3) amended the rules to provide that any change in height of one foot or greater, or any change in coordinates of one second or greater requires prior approval; (4) lengthened the notification and dismantlement requirements to provide that the owner of an antenna structure shall notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are any changes in structure height or ownership; (5) continued to allow owners to voluntarily register antenna structures and required owners to designate when a particular registration is done voluntarily; (6) modified the rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R; (7) exempted qualifying NOC-based monitoring systems from quarterly inspection obligations, thereby eliminating the quarterly inspection obligation for those towers using sufficiently robust monitoring systems; (8) limited the time period to two years for requiring antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights and providing such records to the Commission upon request; and (9) harmonized its tower cleaning and repainting standards with the FAA's and declined to- require tower repainting every ten years. While not specifically targeted at small firms, these numerous measures are intended to lessen the regulatory burden on all tower owners and operators.

d. Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

102. The IRFA in the (NPRM) of this proceeding omitted reference to the FAA in section F of the IRFA even though the (NPRM) addressed Commission rules that in some cases duplicated, overlapped, or were inconsistent with rules of the FAA. Notwithstanding the omission of Section F, the (NPRM) and the IRFA explained how the Commission's rules overlap and are inconsistent with the FAA's rules. Accordingly, the (NPRM) proposed amendments to the part 17 rules to update and modernize them, including harmonizing them with FAA rules where appropriate. The IRFA noted the overlapping and conflicting rules vis-à-vis the FAA's and Commission's shared responsibility to safeguard air traffic and promote tower safety and visibility. Specifically, the IRFA proposed to eliminate Commission rules that were restatements of FAA rules and to cross reference relevant FAA rules in order to eliminate confusion. The IRFA also proposed changes that were intended to clarify the relationship between the Commission's rules and procedures and those of the FAA to ensure continued consistency in those rules and procedures. The Commission further proposed to require use of the FAA's criteria for tower visibility, including determining when an antenna structure needs to be cleaned and repainted.

103. In the *Report and Order,* the Commission takes the following actions to harmonize Commission rules with overlapping FAA rules by: (1) eliminating any reference to older FAA Advisory Circulars in the Commission's rules, and instead requiring structure owners to generally comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications; (2) deciding that it generally will not require existing antenna structures to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure; (4) determining that it will continue to defer to the FAA and require antenna structure owners to provide height and location measurements matching those provided to the FAA in their applications; (5) modifying notification and dismantlement requirements to make them consistent with the FAA's rules by requiring the owner of an antenna structure to notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are any changes in structure height or ownership; (6) revising Commission rules to require antenna structure owners to provide continuously active NOTAM notice to the FAA of lighting outages; (7) requiring that an antenna structure owner notify the FAA that it needs to extend the lighting outage date, as well as provide a return to service date, if a lighting outage cannot be repaired within the FAA's original NOTAM period; (8) changing the requirement that the FAA must be notified of a lighting outage by telephone or telegraph and requiring instead that such notification be made by a means acceptable to the FAA; and (9) adopting the FAA's In-Service Aviation Orange Tolerance Chart as the benchmark for determining whether a structure needs to be cleaned or repainted.

104. The Commission sought extensive public comment on these issues in the (NPRM), and in the attached IRFA. After an exhaustive review of the record and a careful weighing of the costs and benefits, the Commission adopted the proposed regulatory changes to eliminate duplicative, overlapping, or conflicting regulations, thereby achieving improved regulatory harmonization with the FAA.

e. Report to Congress

105. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.

f. Report to Small Business Administration

106. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Congressional Review Act

107. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

108. *Accordingly, it is ordered,* pursuant to sections 4(i), 4(j), 11 and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 161, 303(q), that this Report and Order is hereby adopted.

109. *It is further ordered* that parts 0, 1, and 17 of the Commission's rules, 47 CFR. 0.331, 1.61, 17.1, 17.2, 17.4, 17.6, 17.7, 17.14, 17.17, 17.21, 17.22, 17.23, 17.24, 17.45, 17.47, 17.48, 17.49, 17.50, 17.51, 17.56, 17.57, and 17.58 *are amended* as specified in, and such rule amendments shall be effective October 24, 2014, except for those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

110. *It is further ordered* that the American Tower Corporation Request for Modification of Existing Waiver of 47 CFR 17.47(b) *is dismissed* without prejudice.

111. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office.

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

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Administrative practice and procedures, Telecommunications.

47 CFR Part 17

Aviation safety, Communications equipment, Construction, marking, and lighting of antenna strucutres, Reporting and recordkeeping requirements.

Federal Communications Commisison.

Marlene H. Dortch,

Secretary.

Final rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, and 17 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.331 is amended by revising paragraph (d) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved. Orders conforming any of the applicable rules in part 17 of this chapter to rules formally adopted by the Federal Aviation Administration also need not be referred to the Commission if they do not involve novel questions of fact, law, or policy. In addition, revisions to the airport terminal use list in § 90.35(c)(61) of this chapter and revisions to the Government Radiolocation list in § 90.371(b) of this chapter need not be referred to the Commission. Adoption of certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter made together with the Chief of the Office of Engineering and Technology, as specified in § 20.19(k) of this chapter, also need not be referred to the Commission. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

(1) Designate radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine channels as VTS frequencies for these areas; or

(2) Designate regions for shared commercial and non-commercial vessel use of VHF marine frequencies.

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available for intership port operations communications in defined port areas.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, and 1451.

■ 4. Section 1.61 is amended by revising paragraph (a)(5) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

* * * * *

(a) * * *

(5) Upon receipt of FCC Form 854, and attached FAA final determination of ''no hazard,'' the Bureau may prescribe antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation. Unless otherwise specified by the Bureau, the antenna structure must conform to the FAA's painting and lighting recommendations set forth in the FAA's determination of ''no hazard'' and the associated FAA study number. The Bureau returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

* * * * *

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 5. The authority citation for part 17 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 6. Section 17.1 is amended by revising paragraph (b) to read as follows:

§ 17.1 Basis and purpose.

* * * * *

(b) The purpose of this part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners.

■ 7. Section 17.2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure means a structure that is constructed or used to transmit radio energy, or that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled.

(b) *Antenna farm area.* A geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna structures with a common impact on aviation may be grouped.

(c) *Antenna structure owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure that is constructed or used to transmit radio energy, or the underlying antenna structure that supports or is intended to support antennas and other appurtenances. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

* * * * *

■ 8. Section 17.4 is amended by revising paragraphs (a), (b), (e), (f), (g), and adding paragraphs (i), (j), and (k) to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction must register the structure with the Commission. (See § 17.7 for FAA notification requirements.) This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from the requirement that it register with the Commission. (See § 17.7(e) for exemptions to FAA notification requirements.)

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of ''antenna structure,'' the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner of an antenna structure described in paragraph (a) of this section must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of ''no hazard.'' In order to be considered valid by the Commission, the FAA determination of ''no hazard'' must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will be the highest point of the structure including any obstruction lighting or lightning arrester. If an antenna structure is not required to be registered under paragraph (a) of this section and it is voluntarily registered with the Commission after the effective date of this rule, the registrant must note on FCC Form 854 that the registration is voluntary. Voluntarily registered antenna structures are not subject to the lighting and marking requirements contained in this part.

* * * * *

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (f) of this section, and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue to the registrant FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The antenna structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure Web site: *http://wireless.fcc.gov/antenna/.* This notification may be done electronically or via paper mail.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the Antenna Structure Registration Number must be posted so that it is visible at the publicly accessible area nearest each such point of access. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen where posted.

* * * * *

(i) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (see § 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(j) Any change or correction in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of a registered antenna structure requires prior approval from the FAA and modification of the existing registration with the Commission.

(k) Any change in the marking and lighting that varies from the specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

■ 9. Section 17.6 is amended by revising the section heading and paragraph (c) to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the

first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with § 17.4(f), and for posting the registration number as required by § 17.4(g).

■ 10. Section 17.7 is amended by revising the introductory text and paragraphs (b) and (d), adding paragraph (e), and designating the note at the end of the section as ''Note to § 17.7.''

The revisions and addition read as follows:

§ 17.7 Antenna structures requiring notification to the FAA.

A notification to the FAA is required, except as set forth in paragraph (e) of this section, for any of the following construction or alteration:

* * * * *

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 6.10 kilometers (20,000 feet) from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 3.05 kilometers (10,000 feet) from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 1.52 kilometers (5,000 feet) from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

* * * * *

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the United States Department of Defense.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) A notification to the FAA is not required for any of the following construction or alteration:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any antenna structure of 6.10 meters (20 feet) or less in height, except one that would increase the height of another antenna structure.

* * * * *

§ 17.14 [Removed and Reserved]

■ 11. Remove and reserve § 17.14.

§ 17.17 [Remove and Reserved]

■ 12. Remove and reserve § 17.17.

■ 13. Section 17.21 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 17.21 Painting and lighting, when required.

* * * * *

(a) Their height exceeds any obstruction standard requiring notification to the FAA (see § 17.4(a) and § 17.7).

* * * * *

(c) An antenna installation is of such a nature that its painting and lighting specifications in accordance with the FAA airspace recommendation are confusing, or endanger rather than assist airmen, or are otherwise inadequate. In these cases, the Commission will specify the type of painting and lighting or other marking to be used for the particular structure.

§ 17.22 [Removed and Reserved]

■ 14. Remove and reserve § 17.22.

■ 15. Section 17.23 is revised to read as follows:

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commission, each new or altered antenna structure must conform to the FAA's painting and lighting specifications set forth in the FAA's final determination of ''no hazard'' and the associated FAA study for that particular structure. For purposes of this part, any specifications, standards, and general requirements set forth by the FAA in the structure's determination of ''no hazard'' and the associated FAA study are mandatory. Additionally, each antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure's registration, or in accordance with any other specifications provided by the Commission.

■ 16. The undesignated center heading ''Aviation Red Obstruction Lighting [Reserved]'' below § 17.23 is removed.

■ 17. Section 17.24 is added to read as follows:

§ 17.24 Existing structures.

No change to painting or lighting criteria or relocation of airports shall at any time impose a new restriction upon any then existing or authorized antenna structure or structures, unless the FAA issues a new determination of ''no hazard'' and associated FAA study for the particular structure.

§ 17.45 [Removed and Reserved]

■ 18. Remove and reserve § 17.45.

■ 19. Section 17.47 is amended by adding paragraph (c) to read as follows:

§ 17.47 Inspection of antenna structure lights and associated control equipment.

* * * * *

(c) Is exempt from paragraph (b) of this section for any antenna structure monitored by a system that the Wireless Telecommunications Bureau has determined includes self-diagnostic features sufficient to render quarterly inspections unnecessary, upon certification of use of such system to the Bureau.

■ 20. Section 17.48 is amended by revising paragraphs (a) and (b) to read as follows:

§ 17.48 Notification of extinguishment or improper functioning of lights.

* * * * *

(a) Shall report immediately to the FAA, by means acceptable to the FAA, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. If the lights cannot be repaired within the FAA's Notices to Airmen (NOTAM) period, the owner shall notify the FAA to extend the outage date and report a return-to-service date. The owner shall

repeat this process until the lights are repaired. Such reports shall set forth the condition of the light or lights, the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report. Further notification to the FAA by means acceptable to the FAA shall be given immediately upon resumption of normal operation of the light or lights.

(b) An extinguishment or improper functioning of a steady burning side intermediate light or lights, shall be corrected as soon as practicable, but notification to the FAA of such extinguishment or improper functioning is not required.

■ 21. Section 17.49 is amended by revising the introductory text to read as follows:

§ 17.49 Recording of antenna structure light inspections in the owner record.

The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light. This record shall be retained for a period of two years and provided to the FCC or its agents upon request. The record shall include the following information for each such event:

* * * * *

■ 22. Section 17.50 is revised to read as follows:

§ 17.50 Cleaning and repainting.

Antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. Evaluation of the current paint status shall be made by using the FAA's In-Service Aviation Orange Tolerance Chart. This chart is based upon the color requirements contained in the National Bureau of Standards Report NBSIR 75–663, Color Requirements for the Marking of Obstructions.

§ 17.51 [Removed and Reserved]

■ 23. Remove and reserved § 17.51.

■ 24. Section 17.56 is revised to read as follows:

§ 17.56 Maintenance of lighting equipment.

Replacing or repairing of lights, automatic indicators or automatic control or alarm systems shall be accomplished as soon as practicable.

■ 25. Section 17.57 is revised to read as follows:

§ 17.57 Report of radio transmitting antenna construction, alteration, and/or removal.

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 5 days of completion of construction (FCC Form 854–R) and/or dismantlement (FCC Form 854). The owner must also notify the Commission within 5 days of any change in structure height or change in ownership information (FCC Form 854).

§ 17.58 [Removed and Reserved]

■ 26. Remove and reserved § 17.58.

[FR Doc. 2014–22772 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13–49; FCC 14–30]

Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in the regulations in the ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band.'' The information collection requirements were approved on August 27, 2014 by OMB.

DATES: The amendments to 47 CFR 15.407(j), published at 79 FR 24569, May 1, 2014, is effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information contact Nancy Brooks on (202) 418–2454 or email *Nancy.Brooks@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that on August 27, 2014, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 15.407(j). The Commission publishes this document to announce the effective date of this rule section. See, Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band, ET Docket No. 13–49; FCC 14–30, 79 FR 24569, May 1, 2014.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on August 27, 2014, for the information collection requirement contained in 47 CFR 15.407(j). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–1199 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060–1199.

OMB Approval Date: 8/27/2014.

OMB Expiration Date: 8/31/2017.

Title: Section 15.407(j), U–NII Operator Filing Requirement.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 17 Respondents; 17 Responses.

Estimated Time per Response: 32 hours.

Frequency of Response: On occasion one time reporting, recordkeeping and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302a, 303(e), 303(f), 303(g), and 303(r).

*Total Annual Bur*den: 544 hours.

Total Annual Costs: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: N/A.

Needs and Uses: On March 31, 2014, the Commission adopted a First Report and Order, *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) in the 5 GHz Band,* ET Docket No. 13–49, FCC 14–30. Section 15.407(j) of the rules established filing requirements for U–NII operators that deploy a collection of more than one thousand outdoor access points with the 5.15–5.25 GHz band, parties must submit a letter to the Commission acknowledging that, should harmful interference to licensed services in this band occur, they will be required to take corrective action. Corrective actions may include reducing power, turning off devices, changing frequency bands, and/

or further reducing power radiated in the vertical direction. This material shall be submitted to Laboratory Division, Office of Engineering and Technology, Federal Communications Commission, 7435 Oakland Mills Road, Columbia, MD 21046 Attn: U–NII Coordination, or via Web site at *https://www.fcc.gov/labhelp* with the subject line: ''U–NII–1 Filing''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–22610 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13–49; FCC 14–30]

Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On May 1, 2014, the Commission released a Report and Order, ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band.'' This document contains corrections to the final regulations that appeared in the **Federal Register** on May 1, 2014 (79 FR 24569).

DATES: Effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Aole Wilkins, Office of Engineering and Technology, (202) 418–2406 or email *Aole.Wilkins@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relates to ''Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band'' under § 15.407(a)(2) and (h)(2) of the rules.

Need for Correction

As published, the amendatory instructions in the final regulations contain errors that are misleading and need immediate correction.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Accordingly, 47 CFR part 15 is corrected by making the following correcting amendments:

PART 15—RADIO FREQUENCY DEVICES

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

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

■ 2. Section 15.407 is amended by revising the first sentence of paragraph (a)(2) and by revising paragraph (h)(2) to read as follows:

§ 15.407 General technical requirements.

(a) * * *

(2) For the 5.25–5.35 GHz and 5.47–5.725 GHz bands, the maximum conducted output power over the frequency bands of operation shall not exceed the lesser of 250 mW or 11 dBm + 10 log B, where B is the 26 dB emission bandwidth in megahertz. * * *

* * * * *

(h) * * *

(2) Radar Detection Function of Dynamic Frequency Selection (DFS). U–NII devices operating with any part of its 26 dB emission bandwidth in the 5.25–5.35 GHz and 5.47–5.725 GHz bands shall employ a DFS radar detection mechanism to detect the presence of radar systems and to avoid co-channel operation with radar systems. Operators shall only use equipment with a DFS mechanism that is turned on when operating in these bands. The device must sense for radar signals at 100 percent of its emission bandwidth. The minimum DFS detection threshold for devices with a maximum e.i.r.p. of 200 mW to 1 W is −64 dBm. For devices that operate with less than 200 mW e.i.r.p. and a power spectral density of less than 10 dBm in a 1 MHz band, the minimum detection threshold is −62 dBm. The detection threshold is the received power averaged over 1 microsecond referenced to a 0 dBi antenna. For the initial channel setting, the manufacturers shall be permitted to provide for either random channel selection or manual channel selection.

(i) Operational Modes. The DFS requirement applies to the following operational modes:

(A) The requirement for channel availability check time applies in the master operational mode.

(B) The requirement for channel move time applies in both the master and slave operational modes.

(ii) Channel Availability Check Time. A U–NII device shall check if there is a radar system already operating on the channel before it can initiate a transmission on a channel and when it has to move to a new channel. The U–NII device may start using the channel if no radar signal with a power level greater than the interference threshold values listed in paragraph (h)(2) of this section, is detected within 60 seconds.

(iii) Channel Move Time. After a radar's presence is detected, all transmissions shall cease on the operating channel within 10 seconds. Transmissions during this period shall consist of normal traffic for a maximum of 200 ms after detection of the radar signal. In addition, intermittent management and control signals can be sent during the remaining time to facilitate vacating the operating channel.

(iv) Non-occupancy Period. A channel that has been flagged as containing a radar system, either by a channel availability check or in-service monitoring, is subject to a non-occupancy period of at least 30 minutes. The non-occupancy period starts at the time when the radar system is detected.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–22677 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2013–0205; Notice No. 14–5]

Clarification on Fireworks Policy Regarding Display Aerial Shells With Attachments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: This document clarifies PHMSA's policy regarding applications for classification approval of Display Aerial Shells with Attachments, provided they conform to the acceptable criteria described in this guidance, and otherwise comply with APA Standard 87–1 requirements. Although the APA Standard 87–1 provides requirements for Display Aerial Shells, it does not specifically address Display Aerial Shells with Attachments.

DATES: September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512,

PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this document, PHMSA's Office of Hazardous Materials Safety (OHMS) is issuing this policy regarding its classification approval of Display Aerial Shells with Attachments, which describes acceptable criteria for these types of fireworks. PHMSA previously evaluated and approved these devices; however, PHMSA has not previously published guidance regarding the approval of these types of fireworks. This clarification will help fireworks manufacturers and their U.S. designated agents who file applications on their behalf to provide accurate applications to PHMSA for approval, which will minimize the delay in processing these applications while sustaining the current level of safety.

II. Background

PHMSA's OHMS, Approvals and Permits Division, receives approval applications for various types of fireworks, including Division 1.3G Display Aerial Shells with Attachments. Division 1.3G fireworks applications may be approved in accordance with subpart C of part 173 of the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180). Division 1.3G fireworks applicants have the option for obtaining an EX classification approval without prior testing by a DOT-approved explosive test laboratory, provided that the firework device is manufactured in accordance with the APA Standard 87–1 and passes a thermal stability test as required by § 173.64(a)(1) and (2). The APA Standard 87–1 currently does not specifically address Display Aerial Shells with Attachments; however, it does provide the requirements for display shells.

Display Aerial Shells with Attachments that conform to the acceptable criteria described in this guidance and all applicable requirements in the APA Standard 87–1 (i.e., chemical compositions and shell diameter sizes), may be submitted to PHMSA for approval.

III. Guidelines for Display Aerial Shells With Attachments

PHMSA considers Display Aerial Shells with Attachments to be cylindrical or spherical cartridges containing pyrotechnic compositions with attached external components. An attachment is a component that contains pyrotechnic composition that is attached to the outside of a Display Aerial Shell, and may be ignited by its own independent fuse. Display Aerial Shells with Attachments range from 2 inches (50mm) to 10 inches (250mm) in exterior diameter and are classed as UN0335, Fireworks, Division 1.3G.

To be accepted for review and consideration, PHMSA expects Display Aerial Shells with Attachments to be designed so that they (1) remain attached to the display aerial shell, (2) do not leak pyrotechnic composition during transportation, and (3) are constructed of sturdy materials, such as (but not limited to) plastic, Kraft paper, or cardboard (this does not apply to tails). Designs must meet the requirements of 40 CFR 173.56(b) or 173.64, the requirements in the APA Standard 87–1, and must pass a thermal stability test as required by § 173.64(a)(2).

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2014–22706 Filed 9–23–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–2013–0205; Notice No. 14–4]

Clarification on Fireworks Policy Regarding Display Mines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Clarification.

SUMMARY: This document clarifies PHMSA's policy regarding applications for classification approval of Display Mines provided they conform to the acceptable criteria described in this guidance, and otherwise comply with the APA Standard 87–1 requirements.

DATES: September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this document, PHMSA's Office of Hazardous Materials Safety (OHMS) is issuing this policy regarding its classification approval of Display Mines, which describes acceptable criteria for these types of fireworks. PHMSA previously evaluated and approved these devices; however, PHMSA has not previously published guidance regarding the approval of these types of fireworks. This clarification will help fireworks manufacturers and their U.S. designated agents that file applications on their behalf, to provide accurate applications to PHMSA for approval, which will minimize the delay in processing these applications, while sustaining the current level of safety.

II. Background

PHMSA's OHMS, Approvals and Permits Division, receives approval applications for various types of fireworks, including Division 1.3G Display Mines. Division 1.3G fireworks applications may be approved in accordance with subpart C of part 173 of the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180). Division 1.3G fireworks applicants have the option for obtaining an EX classification approval without prior testing by a DOT-approved explosive test laboratory, provided that the firework device is manufactured in accordance with the APA Standard 87–1 and passes a thermal stability test as required by § 173.64(a)(1) and (2). The APA Standard 87–1 currently does not specifically address Display Mines; however, it does provide the requirements for display shells.

Display Mines that conform to the acceptable criteria described in this guidance, and all applicable requirements in the APA Standard 87–1, (e.g., chemical compositions and shell diameter sizes), may be submitted to PHMSA for approval classification.

III. Guidelines for Display Mines

PHMSA considers a Display Mine to be a cylindrical or spherical cartridge that contains a propelling charge and does not contain a primary burst charge or a main delay fuse. Internal effects (e.g. crossettes or small display shells) are permitted to contain a burst charge and an internal delay fuse. The internal effects are launched from a tube by the propelling charge. Display Mines range from 2 inches (50mm) to 10 inches (250mm) in exterior diameter and are classed as UN0335, Fireworks, Division 1.3G.

To be accepted for review and consideration, PHMSA expects Display Mines to be designed so that they (1) will not leak pyrotechnic composition during transportation in accordance with § 173.54(c); and (2) are constructed of sturdy materials, such as (but not

limited to) plastic, Kraft paper, or cardboard. Designs must meet the requirements of 49 CFR 173.56(b) or 173.64, the APA Standard 87–1 and must pass a thermal stability test as required by § 173.64(a)(2).

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2014–22705 Filed 9–23–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2014–0099]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2013, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 24, 2014.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5308.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notices of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notice

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. Sec. 601 et seq.). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' to include regulations that 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.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no 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 as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September, 2013.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR Parts 572 to 999, which is due for revision on October 1, 2014, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.95.

■ 2. Appendix A to Part 593 is revised to read as follows: Appendix A to Part 593—List of Vehicles Determined to be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(2), which establishes that the vehicle has safety features that

comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make, then by model, then by model year.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1995–1999'' means ''1995 through 1999'').

(d) The initials ''MC'' used in the Make column mean ''Motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''right-hand-drive.''

(i) For vehicle models that have been determined to be eligible for importation based on a petition submitted under Sec. 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists, and no specific body style(s) are listed, only the body style(s) of that vehicle model that were U.S.-certified by the original manufacturer are eligible for importation. For example, if the original manufacturer manufactured both sedan and wagon body styles for the described model, but only certified the sedan for the U.S. market, the wagon body style would not be eligible for importation under that determination.

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;
	(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;
	(c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214;
	(d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401;
	(e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401;
	(f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2009 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;
	(g) All passenger cars manufactured on or after September 1, 2009 and before September 1, 2010 that, as originally manufactured, comply with FMVSS Nos. 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;
	(h) All passenger cars manufactured on or after September 1, 2010 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 118, 138, 201, 202a, 206, 208, 213, 214, and 225;
	(i) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2017 that, as originally manufactured, comply with FMVSS Nos. 138, 201, 206, 208, 213, 214, and 225.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991;
	(b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208;
	(c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216;
	(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;
	(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225;
	(f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;
	(g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2009, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;
	(h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2009 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;
	(i) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;
	(j) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2012 and before September 1, 2017, that, as originally manufactured, comply with FMVSS Nos. 201, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 222, and 225;
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
AHLM	SPT 16–25 trailer		2012			55
Alfa Romeo	164		1989	196		
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	Spider		1992	503		
Alpina	B10 Series		1989–1996			54
Alpina	B11	Sedan	1989–1994			48
Alpina	B12	Coupe	1989–1996			43
Alpina	B12 5.0	Sedan	1989–1994			41
Alpina	B5 series (manufactured before 9/1/06).		2005–2007			53
Al-Spaw	EMA Mobile Stage Trailer		2009			42
Aston Martin	Vanquish		2002–2004	430		
Aston Martin	Vantage		2006–2007	530		
Audi	80		1989	223		
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01).		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB6		1994–1999	523		
Bimota (MC)	SB8		1999–2000	397		
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1992–1994	550		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1989		23	
BMW	320i		1990–1991	283		
BMW	325i	4-door	1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1989		30	
BMW	325iS, 325iSA		1989		31	
BMW	325iX		1990	205		
BMW	325iX, 325iXA		1989		33	
BMW	5 Series		2000	345		
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	5 Series (manufactured prior to 9/1/2006).		2005–2007	555		
BMW	520iA		1989	9		
BMW	525i		1989	5		
BMW	635CSi, 635CSiA		1989		27	
BMW	7 Series		1992	232		
BMW	7 Series		1990–1991	299		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	735i, 735iA		1989		28	
BMW	760i		2004	559		
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
BMW	850i		1990	10		
BMW	All other passenger car models except those in the M1 and Z1 series.		1989		78	
BMW	M3		1989		35	
BMW	M3 (manufactured prior to 9/1/06)		2006	520		
BMW	X5 (manufactured 1/1/03–12/31/04)		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z4		2010	553		
BMW	Z8		2002	406		
BMW	Z8		2000–2001	350		
BMW (MC)	C1		2000–2003			40
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1989–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		
BMW (MC)	K1200 GT		2003	556		
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1989–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100 S		2002	557		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1989–1995	295		
BMW (MC)	S1000RR		2011–2012	563		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00).		2000	448		
Cadillac	Seville		1991	375		
Cagiva (MC)	Gran Canyon 900		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette	Coupe	1999	419		
Chevrolet	Corvette		2007	544		
Chevrolet	Suburban		2005	541		
Chevrolet	Suburban		1989–1991	242		
Chevrolet	Tahoe		2000	504		
Chevrolet	Tahoe		2001	501		
Chevrolet	Trailblazer (manufactured prior to 9/1/07 for sale in the Kuwaiti market).		2007	514		
Chevy	Impala		1996	561		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market)		1989	216		
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Diamler	G Class	463 Chassis	1991			51
Dodge	Durango		2007	534		
Dodge	Ram		1994–1995	135		
Dodge	Ram 1500 Laramie Crew Cab		2009	535		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	888		1993	500		
Ducati (MC)	900		2001	452		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	MH900E		2001–2002	524		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	328 (all models)		1989		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360		2001	376		
Ferrari	360	Spider & Coupe	2003	410		
Ferrari	360 (manufactured after 9/31/02)		2002	433		
Ferrari	360 (manufactured before 9/1/02)		2002	402		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Series		2004	446		
Ferrari	456		1995	256		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550		2001	377		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	575		2002–2003	415		
Ferrari	575		2004–2005	507		
Ferrari	599 (manufactured prior to 9/1/06)		2006	518		
Ferrari	612 Scaglietti		2005	545		
Ferrari	Enzo		2003–2004	436		
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06)		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	Mondial (all models)		1989		74	
Ferrari	Testarossa		1989		39	
Ford	Bronco (manufactured in Venezuela)		1995–1996	265		
Ford	Escape (manufactured prior to 9/1/2006).		2007	551		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela)		1991–1998	268		
Ford	F150		2000	425		
Ford	F–150 Crew Cab (manufactured for sale in the Mexican market).		2004	548		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
Gemala	Saranaupaya 1600 Double Axle trailer		2001			58
GMC	Suburban		1992–1994	134		
Harley Davidson (MC).	FL Series		2010	528		
Harley Davidson (MC).	FX, FL, XL & VR Series		2004	422		
Harley Davidson (MC).	FX, FL, XL & VR Series		2008	517		
Harley Davidson (MC).	FX, FL, XL & VR Series		2009	522		
Harley Davidson (MC).	FX, FL, XL & VR Series		2011–2014	567		
Harley Davidson (MC).	FX, FL, XL Series		1998	253		
Harley Davidson (MC).	FX, FL, XL Series		1999	281		
Harley Davidson (MC).	FX, FL, XL Series		2000	321		
Harley Davidson (MC).	FX, FL, XL Series		2001	362		
Harley Davidson (MC).	FX, FL, XL Series		2002	372		
Harley Davidson (MC).	FX, FL, XL Series		2003	393		
Harley Davidson (MC).	FX, FL, XL Series		2005	472		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Harley Davidson (MC).	FX, FL, XL Series		2006	491		
Harley Davidson (MC).	FX, FL, XL Series		1989–1997	202		
Harley Davidson (MC).	FX, FL, XL, & VR Series		2007	506		
Harley Davidson (MC).	FXSTC Soft Tail Custom		2007	499		
Harley Davidson (MC).	VRSCA		2002	374		
Harley Davidson (MC).	VRSCA		2003	394		
Harley Davidson (MC).	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE Trailer		2002–2003			29
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (RHD)	Sedan & wagon	1994–1997	451		
Honda	Civic DX	Hatchback	1989	128		
Honda	CRV		2002	447		
Honda	CR–V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CBR 250		1989–1994			22
Honda (MC)	NT700V (Deauville)		2006–2013			57
Honda (MC)	RVF 400		1994–2000	358		
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Ifor Williams	LM85G trailer		2005			49
Jaguar	Sovereign		1993	78		
Jaguar	S-Type		2000–2002	411		
Jaguar	XJ8		2002	536		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1994–1996	195		
Jaguar	XJS, XJ6		1989–1990	336		
Jaguar	XK–8		1998	330		
Jaguar	XKR		2005	560		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (LHD)		1997–2001	515		
Jeep	Cherokee (RHD)		1997–1998	516		
Jeep	Cherokee (Venezuelan market)		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market).		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty		2005	505		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Wrangler		1992	562		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Jeep	Wrangler (manufactured for sale in the Mexican market).		2003	547		
Jeep	Wrangler (RHD)		2000–2003			50

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	Ninja ZX–6R		2002			44
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZR750		2000–2003	537		
Kawasaki (MC)	ZX400		1989–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1989–1999	312		
Kawasaki (MC)	ZX600		1989–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer		2000–2005	477		
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo	Coupe	1997			26
Lamborghini	Diablo (except 1997 Coupe)		1996–1997	416		
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04).		2004	458		
Lamborghini	Gallardo (manufactured 1/1/06–8/31/06).		2006	508		
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90	VIN & Body Limited	1994–1995	512		
Land Rover	Defender 90 (manufactured before 9/1/97) and VIN "SALDV224*VA" or "SALDV324*VA".		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Land Rover	Range Rover		2004	509		
Land Rover	Range Rover		2006	538		
Lexus	GS300		1998	460		
Lexus	GS300		1993–1996	293		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
M&V	Type NS4G31 trailer		2008–2010			46
Magni (MC)	Australia, Sfida		1996–1999	264		
Mazda	MPV		2000	413		
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1989–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes-Benz	190 D	201.126	1989		54	
Mercedes-Benz	190 D (2.2)	201.122	1989		54	
Mercedes-Benz	190 E	201.028	1989		54	
Mercedes-Benz	190 E	201.028	1990	22		
Mercedes-Benz	190 E	201.036	1990	104		
Mercedes-Benz	190 E	201.024	1991	45		
Mercedes-Benz	190 E	201.028	1992	71		
Mercedes-Benz	190 E	201.018	1992	126		
Mercedes-Benz	190 E		1993	454		
Mercedes-Benz	190 E (2.3)	201.024	1989		54	
Mercedes-Benz	190 E (2.6)	201.029	1989		54	
Mercedes-Benz	190 E (2.6) 16	201.034	1989		54	
Mercedes-Benz	200 E	124.021	1989	11		
Mercedes-Benz	200 E	124.012	1991	109		
Mercedes-Benz	200 E	124.019	1993	75		
Mercedes-Benz	200 TE	124.081	1989	3		
Mercedes-Benz	220 E		1993	168		
Mercedes-Benz	220 TE	Station Wagon	1993–1996	167		
Mercedes-Benz	230 CE	124.043	1991	84		
Mercedes-Benz	230 CE	123.043	1992	203		
Mercedes-Benz	230 E	124.023	1989	20		
Mercedes-Benz	230 E	124.023	1990	19		
Mercedes-Benz	230 E	124.023	1991	74		
Mercedes-Benz	230 E	124.023	1993	127		
Mercedes-Benz	230 TE	124.083	1989	2		
Mercedes-Benz	250 D		1992	172		
Mercedes-Benz	250 E		1990–1993	245		
Mercedes-Benz	260 E	124.026	1989		55	
Mercedes-Benz	260 E	124.026	1992	105		
Mercedes-Benz	260 SE	126.020	1989	28		
Mercedes-Benz	280 E		1993	166		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Mercedes-Benz	300 CE	124.050	1989		55	
Mercedes-Benz	300 CE	124.051	1990	64		
Mercedes-Benz	300 CE	124.051	1991	83		
Mercedes-Benz	300 CE	124.050	1992	117		
Mercedes-Benz	300 CE	124.061	1993	94		
Mercedes-Benz	300 D Turbo	124.193	1989		55	
Mercedes-Benz	300 DT	124.133	1989		55	
Mercedes-Benz	300 E	124.030	1989		55	
Mercedes-Benz	300 E	124.031	1992	114		
Mercedes-Benz	300 E 4-Matic		1990–1993	192		
Mercedes-Benz	300 SD	126.120	1989		53	
Mercedes-Benz	300 SE	126.024	1989		53	
Mercedes-Benz	300 SE	126.024	1990	68		
Mercedes-Benz	300 SEL	126.025	1989		53	
Mercedes-Benz	300 SEL	126.025	1990	21		
Mercedes-Benz	300 SL	107.041	1989	7		
Mercedes-Benz	300 SL	129.006	1992	54		
Mercedes-Benz	300 TE	124.090	1989		55	
Mercedes-Benz	300 TE	124.090	1990	40		
Mercedes-Benz	300 TE		1992	193		
Mercedes-Benz	320 CE		1993	310		
Mercedes-Benz	320 SL		1992–1993	142		
Mercedes-Benz	350 CLS		2004			45
Mercedes-Benz	380 SE	126.043	1989		53	
Mercedes-Benz	380 SE	126.032	1989		53	
Mercedes-Benz	380 SEL	126.033	1989		53	
Mercedes-Benz	380 SL	107.045	1989		44	
Mercedes-Benz	380 SLC	107.025	1989		44	
Mercedes-Benz	400 SE		1992–1994	296		
Mercedes-Benz	420 E		1993	169		
Mercedes-Benz	420 SE	126.034	1989		53	
Mercedes-Benz	420 SE		1990–1991	230		
Mercedes-Benz	420 SEC		1990	209		
Mercedes-Benz	420 SEL	126.035	1989		53	
Mercedes-Benz	420 SEL	126.035	1990	48		
Mercedes-Benz	450 SLC	107.024	1989		44	
Mercedes-Benz	500 E	124.036	1991	56		
Mercedes-Benz	500 SE		1990	154		
Mercedes-Benz	500 SE	140.050	1991	26		
Mercedes-Benz	500 SEC	126.044	1989		53	
Mercedes-Benz	500 SEC	126.044	1990	66		
Mercedes-Benz	500 SEL	126.037	1989		53	
Mercedes-Benz	500 SEL		1990	153		
Mercedes-Benz	500 SEL	126.037	1991	63		
Mercedes-Benz	500 SL	107.046	1989		44	
Mercedes-Benz	500 SL	129.066	1989	23		
Mercedes-Benz	500 SL	126.066	1991	33		
Mercedes-Benz	500 SL	129.006	1992	60		
Mercedes-Benz	560 SEC	126.045	1989		53	
Mercedes-Benz	560 SEC	126.045	1990	141		
Mercedes-Benz	560 SEC		1991	333		
Mercedes-Benz	560 SEL	126.039	1989		53	
Mercedes-Benz	560 SEL	126.039	1990	89		
Mercedes-Benz	560 SEL	140	1991	469		
Mercedes-Benz	560 SL	107.048	1989		44	
Mercedes-Benz	600 SEC	Coupe	1993	185		
Mercedes-Benz	600 SEL	140.057	1993–1998	271		
Mercedes-Benz	600 SL	129.076	1992	121		
Mercedes-Benz	All other passenger car models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance".		1989		77	
Mercedes-Benz	C 320	203	2001–2002	441		
Mercedes-Benz	C Class		1994–1999	331		
Mercedes-Benz	C Class	203	2000–2001	456		
Mercedes-Benz	C Class (manufactured prior to 9/1/2006).	W203	2003–2006	521		
Mercedes-Benz	CL 500		1998	277		
Mercedes-Benz	CL 500		1999–2001	370		
Mercedes-Benz	CL 600		1999–2001	370		
Mercedes-Benz	CLK 320		1998	357		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Mercedes-Benz	CLK Class		1999–2001	380		
Mercedes-Benz	CLK Class	209	2002–2005	478		
Mercedes-Benz	CLS Class (manufactured prior to 9/1/06).		2006	532		
Mercedes-Benz	E 200		1994	207		
Mercedes-Benz	E 200		1995–1998	278		
Mercedes-Benz	E 220		1994–1996	168		
Mercedes-Benz	E 250		1994–1995	245		
Mercedes-Benz	E 280		1994–1996	166		
Mercedes-Benz	E 320		1994–1998	240		
Mercedes-Benz	E 320	Station Wagon	1994–1999	318		
Mercedes-Benz	E 320	211	2002–2003	418		
Mercedes-Benz	E 420		1994–1996	169		
Mercedes-Benz	E 500		1994	163		
Mercedes-Benz	E 500		1995–1997	304		
Mercedes-Benz	E Class	W210	1996–2002	401		
Mercedes-Benz	E Class	211	2003–2004	429		
Mercedes-Benz	E Series		1991–1995	354		
Mercedes-Benz	G Class LWB	463 Chassis	2006–2007	527		
Mercedes-Benz	G-Class	463 Chassis, LWB	2005	549		
Mercedes-Benz	G-Wagon	463	1996			11
Mercedes-Benz	G-Wagon	463	1997			15
Mercedes-Benz	G-Wagon	463	1998			16
Mercedes-Benz	G-Wagon	463	1999–2000			18
Mercedes-Benz	G-Wagon 300 GE LWB	463.228	1993			3
Mercedes-Benz	G-Wagon 300 GE LWB	463.228	1994			5
Mercedes-Benz	G-Wagon 300 GE LWB	463.228	1990–1992			5
Mercedes-Benz	G-Wagon 320 LWB	463	1995			6
Mercedes-Benz	G-Wagon 5 DR LWB	463	2001			21
Mercedes-Benz	G-Wagon LWB	463 5 DR	2002	392		
Mercedes-Benz	G-Wagon LWB V–8	463	1992–1996			13
Mercedes-Benz	G-Wagon SWB	463 Cabriolet & 3DR	2004			28
Mercedes-Benz	G-Wagon SWB	463	2005			31
Mercedes-Benz	G-Wagon SWB	463	1990–1996			14
Mercedes-Benz	G-Wagon SWB	463 Cabriolet & 3DR	2001–2003			25
Mercedes-Benz	G-Wagon SWB (manufactured before 9/1/06).	463 Cabriolet & 3DR	2006			35
Mercedes-Benz	Maybach		2004	486		
Mercedes-Benz	S 280	140.028	1994	85		
Mercedes-Benz	S 320		1994–1998	236		
Mercedes-Benz	S 420		1994–1997	267		
Mercedes-Benz	S 500		1994–1997	235		
Mercedes-Benz	S 500		2000–2001	371		
Mercedes-Benz	S 600	Coupe	1994	185		
Mercedes-Benz	S 600		1995–1999	297		
Mercedes-Benz	S 600		2000–2001	371		
Mercedes-Benz	S 600L		1994	214		
Mercedes-Benz	S Class		1993	395		
Mercedes-Benz	S Class		2012	565		
Mercedes-Benz	S Class	140	1991–1994	423		
Mercedes-Benz	S Class		1995–1998	342		
Mercedes-Benz	S Class		1998–1999	325		
Mercedes-Benz	S Class	W220	1999–2002	387		
Mercedes-Benz	S Class	220	2002–2004	442		
Mercedes-Benz	S Class		2007–2010	566		
Mercedes-Benz	S Class (manufactured prior to 9/1/2006).		2005–2006	525		
Mercedes-Benz	SE Class		1992–1994	343		
Mercedes-Benz	SEL Class	140	1992–1994	343		
Mercedes-Benz	SL Class		1993–1996	329		
Mercedes-Benz	SL Class	W129	1997–2000	386		
Mercedes-Benz	SL Class	R230	2001–2002			19
Mercedes-Benz	SL Class (European market)	230	2003–2005	470		
Mercedes-Benz	SLK		1997–1998	257		
Mercedes-Benz	SLK		2000–2001	381		
Mercedes-Benz	SLK Class (manufactured between 8/31/04 and 8/31/06).	171 Chassis	2005–2006	511		
Mercedes-Benz	SLR (manufactured prior to 9/1/2006)		2005–2006	558		
Mercedes-Benz (truck).	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Mitsubishi	Galant Super Salon		1989	13		
Mitsubishi	Outlander		2011	564		
Moto Guzzi (MC)	California		2000–2001	495		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	GTS & GTR (RHD), a.k.a. "Skyline," manufactured 1/96–6/98.	R33	1996–1998			32
Nissan	Maxima		1989	138		
Nissan	Pathfinder		2002	412		
Nissan	Pathfinder		1989–1995	316		
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911	Coupe	1989		56	
Porsche	911	Cabriolet	1989		56	
Porsche	911		1991	526		
Porsche	911	997	2009	542		
Porsche	911		1997–2000	346		
Porsche	911 (996) Carrera		2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Carrera		1989		56	
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Carrera (manufactured prior to 9/1/06).	Cabriolet	2005–2006	513		
Porsche	911 Carrera (manufactured prior to 9/1/06).		2005–2006	531		
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Targa		1989		56	
Porsche	911 Turbo		1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	924	Coupe	1989		59	
Porsche	924 S		1989		59	
Porsche	924 Turbo	Coupe	1989		59	
Porsche	928	Coupe	1989		60	
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	928 GT		1989		60	
Porsche	928 S	Coupe	1989		60	
Porsche	928 S4		1989		60	
Porsche	928 S4		1990	210		
Porsche	944	Coupe	1989		61	
Porsche	944 S	Coupe	1989		61	
Porsche	944 S	Cabriolet	1990	97		
Porsche	944 S2 (2-door)	Hatchback	1990	152		
Porsche	944 Turbo	Coupe	1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959.		1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02)		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Carrera Series	964	1992	546		
Porsche	Cayenne		2003–2004	464		
Porsche	Cayenne (manufactured prior to 9/1/06).		2006	519		
Porsche	Cayenne S		2009	543		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Porsche	GT3 RS		2012	552		
Rice	Beaufort Double		1991	529		
Rolls Royce	Bentley		1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo R		1995	243		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Make	Model type(s)	Body	Model years(s)	VSP	VSA	VCP
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Phantom		2004	455		
Saab	9.3		2003	426		
Saab	900 S		1989	270		
Saab	900 SE		1995	213		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1996–1997	219		
Saab	9000		1994	334		
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005			30
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2002–2004			27
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2006			34
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2007			39
Subaru	Forester		2006–2007	510		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX1300R, a.k.a. "Hayabusa"		1999–2006	484		
Suzuki (MC)	GSX1300R, a.k.a. "Hayabusa"		2007–2011	533		
Suzuki (MC)	GSX–R 1100		1989–1997	227		
Suzuki (MC)	GSX–R 750		1989–1998	275		
Suzuki (MC)	GSX–R 750		1999–2003	417		
Thule	3008BL boat trailer		2011			52
Toyota	4-Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1989	39		
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1990–1996	218		
Toyota	Land Cruiser (manufactured prior to 9/1/2006).	IFS 100 series	1999–2006	539		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Triumph (MC)	Thunderbird		1995–1999	311		
Vespa (MC)	ET2, ET4		2001–2002	378		
Vespa (MC)	LX and PX		2004–2005	496		
Volkswagen	Bora		1999	540		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		2005	502		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		
Volkswagen	Passat	4-door Sedan	1992	148		
Volkswagen	Passat	Wagon & Sedan	2004	488		
Volkswagen	Transporter		1989	284		
Volkswagen	Transporter		1990	251		
Volkswagen	Transporter		1991	554		
Volvo	740 GL		1992	137		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960	Sedan & Wagon	1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Westfalia	14ft Double Axle Cargo trailer		1994 & 1997			56
Yamaha (MC)	Drag Star 1100		1999–2007	497		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR 1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	Virago		1990–1998	301		

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Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2014–0052; Notice 3]

RIN 2127–AL51

Schedule of Fees

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year 2015 relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). These fees will also apply beyond Fiscal Year 2015 until further notice. These fees are needed to maintain the registered importer (RI) program. We are increasing the fees for the registration of a new RI from $805 to $844 and the annual fee for renewing an existing registration from $676 to $726. The fee to reimburse Customs for conformance bond processing costs will increase from $9.09 to $9.34 per bond. The fee for the review, processing, handling, and disbursement of cash deposits that are submitted in lieu of a conformance bond will increase from $495 to $499. We are increasing the fees for the importation of a vehicle covered by an import eligibility decision made on an individual model and model year basis. For vehicles determined eligible based on their substantial similarity to a U.S. certified vehicle, the fee will increase from $101 to $138. For vehicles determined eligible based on their capability of being modified to comply with all applicable FMVSS, the fee will also increase from $101 to $138. The fee for the inspection of a vehicle will remain $827. The fee for processing a conformity package will decrease from $12 to $10. If the vehicle has been entered electronically with Customs through the Automated Broker Interface (ABI) and the RI has an email address, the fee for processing the conformity package will continue to be $6, provided the fee is paid by credit card. If NHTSA finds that the information in the entry or the conformity package is incorrect, the processing fee will increase from $57 to $59, representing a $2 increase in the fee that is currently charged when there are one or more errors in the ABI entry or omissions in the statement of conformity.

DATES: The amendments established by this final rule will become effective on October 1, 2014. Petitions for reconsideration must be received by NHTSA not later than November 10, 2014.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received not later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. chapter 301. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202–366–5291). For legal issues, you may call Nicholas Englund, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on July 31, 2014 (79 FR 44363).

The National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, and recodified at 49 U.S.C. 30141–30147 (''the Act''), provides for fees to cover the costs of the importer registration program, the cost of making import eligibility decisions, and the cost of processing the bonds furnished to Customs. Certain fees became effective on January 31, 1990, and have been in effect, with modifications, since then. On June 24, 1996, we published a document in the **Federal Register** at 61 FR 32411 that discussed the rulemaking history of 49 CFR part 594 and the fees authorized by the Act. The reader is referred to that document for background information relating to this rulemaking action.

We are required to review and make appropriate adjustments at least every two years in the fees established for the administration of the RI program. *See* 49 U.S.C. 30141(e). The fees applicable in any fiscal year (FY) are to be established before the beginning of such year. *Ibid.* We last amended the fee schedule in 2012. *See* final rule published on August 22, 2012 at 77 FR 50637. Those fees apply to Fiscal Years 2013 and 2014. The fees adopted in this final rule are based on time expenditures and costs associated with the tasks for which the fees are assessed.

The fees proposed in this document reflect the one percent increase in General Schedule salary rates that were effective January 1, 2014 and the slight increases in indirect costs attributed to the agency's overhead costs since the fees were last adjusted.

Comments

There were no comments in response to the notice of proposed rulemaking.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fees established ''to pay for the costs of carrying out the registration program for importers. . . .'' This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. 49 CFR 592.5(f).

To comply with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The initial component of the Registration Program Fee is the fee attributable to

processing and acting upon registration applications. We will increase this fee from $330 to $333 for new applications. We have also determined that the fee for the review of the annual statement submitted by existing RIs who wish to renew their registrations will be increased from $201 to $215. These fee adjustments reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, and the small increases in indirect costs attributed to the agency's overhead costs in the two years since the fees were last adjusted, the increase in direct costs relating to the one percent raise in salaries of employees on the General Schedule that became effective on January 1, 2014, and the increase in contractor costs to the agency.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately $511 for each RI. When this $511 is added to the $333 representing the registration application component, the cost to an applicant for RI status comes to $844, which is the fee we are adopting. This represents an increase of $39 over the existing fee. When the $511 is added to the $215 representing the annual statement component, the total cost to an RI for renewing its registration comes to $726, which represents an increase of $50.

Section 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a *pro rata* allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and ''a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.'' For the purpose of establishing the fees that are currently in existence, indirect costs are $21.66 per man-hour. We are increasing this figure by $4.07, to $25.73. This increase is based on the difference between enacted budgetary costs within the Department of Transportation for the last two fiscal years, which were higher than the estimates used when the fee schedule was last amended, and takes into account other projected increases over the next two fiscal years.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions

Section 30141(a)(3)(B) also requires registered importers to pay other fees the Secretary of Transportation establishes to cover the costs of ''making the decisions under this subchapter.'' This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S.-certified motor vehicle, the decision is whether the safety features of the vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator's own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated *pro rata* share of the costs in making all the eligibility decisions in a fiscal year. The agency's direct and indirect costs must be taken into account in the computation of these costs.

Since we last amended the fee schedule, the overall number of vehicle imports by RIs has increased, while the number of petitions has remained approximately the same. The total number of vehicles that RIs imported between 2009 and 2013 was 117,512 or approximately 23,502 vehicles each year. Over the same period, the number of vehicles imported under an import eligibility petition that was submitted by an RI (as opposed to an import eligibility decision initiated by the agency) increased to 1,987 or approximately 397 vehicles each year. Over the past five years, RIs submitted 83 petitions to NHTSA, averaging 17 per year and the agency has devoted more staff time reviewing and processing import eligibility petitions since we last revised the fees.

Based on these trends, the *pro rata* share of petition costs assessed against the importer of each vehicle covered by the eligibility decision will increase. We project that for FY 2015 and 2016, the agency's costs for processing these 17 petitions will be $60,095. The petitioners will pay $5,300 of that amount in the processing fees that accompany the filing of their petitions, leaving the remaining $54,795 to be recovered from the importers of the approximately 397 vehicles projected to be imported under petition-based import eligibility decisions. Dividing $54,795 by 397 yields a pro rata fee of $138 for each vehicle imported under an eligibility decision that results from the granting of a petition. We are therefore increasing the pro rata share of petition costs that are to be assessed against the importer of each vehicle from $101 to $138, which represents an increase of $37. The same $138 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S.-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

We are not increasing the current fee of $175 that covers the initial processing of a ''substantially similar'' petition. Likewise, we are also maintaining the existing fee of $800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterpart. In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will remain $827 for vehicles that are the subject of either type of petition.

The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by import eligibility numbers VSA–80 through 83, for which no eligibility decision fee is assessed), the fee remains $125. NHTSA determined that the costs associated with previous eligibility determinations on the agency's own initiative would be fully recovered by October 1, 2014. We will apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2014.

Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds

Section 30141(a)(3) also requires a registered importer to pay any other fees the Secretary of Transportation

establishes ''to pay for the costs of . . . processing bonds provided to the Secretary of the Treasury . . .'' upon the importation of a nonconforming vehicle to ensure that the vehicle would be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

The Department of Homeland Security (Customs) exercises the functions associated with the processing of these bonds. To carry out the statute, we make a reasonable determination of the costs that Department incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

When the fee schedule was last amended, we projected General Schedule salary raises to be effective in January 2013 and 2014. Based on the increase in hourly costs attributable to the approximately one percent raises in salaries of employees on the General Schedule that became effective on January 1, 2014, we are increasing the processing fee by $0.25, from $9.09 per bond to $9.34. This increase reflects the fact that GS–9 salaries have been increased since we last amended the fee schedule in 2012. The $9.34 fee will more closely reflect the direct and indirect costs that are actually associated with processing the bonds.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as ''cash deposits'') in an amount equal to the amount of the bond. 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the agency to consume a considerable amount of staff time and material resources. NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of $459 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. *See* the Final Rule published on July 11, 2008 at 73 FR 39890.

The agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. We are increasing the fee from $495 to $499, which represents an increase of $4. The factors that the agency has taken into account in proposing the fee include time expended by agency personnel, the slight increase in overhead and contractor costs, and the increase in projected salary costs based on the General Schedule increase on January 1, 2014.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay $12 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We have found that these costs have decreased from $12 to an average of $10 per vehicle. Although our overhead and contractor costs increased and the salary and benefit costs are slightly greater based on the General Schedule salary increase, the number of certificates of conformity submitted for agency review has increased. This has decreased the agency's cost attributed to the review of each certificate of conformity. Based on these costs, we are decreasing the fee charged for vehicles for which a paper entry and fee payment is made, from $12 to $10, a difference of $2 per vehicle. However, if an RI enters a vehicle through the Automated Broker Interface (ABI) system, has an email address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to $6. We are maintaining the fee of $6 per vehicle if all the information in the ABI entry is correct.

Errors in ABI entries not only eliminate any time savings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information to the conformity data that is ultimately submitted. Our experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve the conflicts in the data. We have calculated this staff and supervisory time, as well as the telephone charges, to amount to approximately $59 for each erroneous ABI entry. Adding this to the $6 fee for the review of conformity packages on automated entries yields a total of $65, representing a $2 increase in the fee that is currently charged when there are one or more errors in the ABI entry or in the statement of conformity.

Statutory Basis for the Final Rule and Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to ''review and make appropriate adjustments at least every 2 years in the amounts of the fees'' relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to ''establish the fees for each fiscal year before the beginning of that year.'' This final rule implements the statutory provisions.

According to the Administrative Procedure Act (APA) a final rule generally cannot become effective until thirty days after the date on which the rule was issued. The APA contains an exemption that allows a rule to become effective prior to thirty days after the rule is issued if the agency finds that there is good cause for an earlier effective date and the good cause finding is published with the final rule.

Because 49 U.S.C. 30141(e) requires the agency to establish the new fee schedule before the beginning of the next fiscal year, we believe that there is good cause for this final rule to become effective prior to thirty days after the date of publication of today's final rule. Allowing today's final rule to become effective prior to a date thirty dates after this rule is published will allow the new fee schedule to be in place at the beginning of the new fiscal year as required by the statute.

In the NPRM, we proposed to make this rule effective October 1, 2014, and did not receive any comments on this issue. Accordingly, the effective date of this final rule is October 1, 2014.

Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886 or 13563. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be no substantial impacts upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the rules being adopted will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendments will primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to pay the fees proposed by this action. In most instances, these fees would not be changed or would be only modestly increased (and in some instances decreased) from the fees now being paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that 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.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that the rule does 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 as specified in Executive Order 13132. Moreover, NHTSA is required by statute to impose fees for the administration of the RI program and to review and make necessary adjustments in those fees at least every two years. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this final rule for purposes of the National Environmental Policy Act. The final rule would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether the amendments adopted in this final rule will have any retroactive effect. NHTSA concludes that those amendments will not have any retroactive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part that the regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health,

safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. In its NPRM, NHTSA requested public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking. No comments were received. NHTSA concludes that the registered importer fees that are established by this final rule relate to program costs incurred by the agency in administering the vehicle importation program. Consistent with the statutory authority for the collection of these fees, they are set at a level that is appropriate for the agency to recover no more than its actual costs in administering the program. Because it establishes no standards for imported products, this rulemaking has no impact on the ability of American businesses to export and compete internationally. The desirability of achieving international regulatory cooperation therefore has no bearing on this rulemaking.

G. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA. As noted above, this final rule is not significant under E.O. 12866. NHTSA also believes that this final rule has no effect on the supply, distribution, or use of energy.

H. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule will not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 594 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,'' approved through April 30, 2017. This final rule will not affect the burden hours associated with Clearance No. 2127–0002 because we are only adjusting the fees associated with participating in the registered importer program. The new fees that we are adopting will not impose new collection of information requirements or otherwise affect the scope of the program.

J. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when it decides not to use available and applicable voluntary consensus standards.

In this final rule, we are adjusting the fees associated with the registered importer program. We are making no substantive changes to the program nor did we adopt any technical standards. For these reasons, Section 12(d) of the NTTAA does not apply.

L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

M. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 594 is amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 is revised to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 594.6 by:
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (b);
■ c. Revising the first sentence of paragraph (d);
■ d. Revising the second sentence of paragraph (h); and
■ e. Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2014, must pay an annual fee of $844, as calculated below, based upon the direct and indirect costs attributable to:

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2014, is $333. The sum of $333, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2014, is set forth in paragraph (i) of this section. * * *

* * * * *

(h) * * * This cost is $25.73 per man-hour for the period beginning October 1, 2014.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2014, is $511. When added to the costs of registration of $333, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $844. The annual renewal registration fee for the period beginning October 1, 2014, is $726.

■ 3. Amend § 594.7 by revising the first sentence of paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2014, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175. * * *

* * * * *

■ 4. Amend § 594.8 by revising the first sentences of paragraphs (b) and (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $138. * * *

(c) If a determination has been made on or after October 1, 2014, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

■ 5. Amend § 594.9 by revising paragraphs (c) and (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2014, for which a certificate of conformity is furnished, is $9.34.

* * * * *

(e) The fee for each vehicle imported on and after October 1, 2014, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is $499.

■ 6. Amend § 594.10 by revising the first sentence of paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2014 is $10. * * *

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95.

Dated: September 17, 2014.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2014–22619 Filed 9–23–14; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 79, No. 185

Wednesday, September 24, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1282

RIN 2590–AA65

2015–2017 Enterprise Housing Goals

Correction

In proposed rule document 2014–21118 appearing on pages 54482 through 54516 in the issue of Thursday, September 11, 2014, make the following corrections:

1. On page 54494, in table 2, in column number 2 ''Goals'', the first entry corresponding with year ''2013'' should read ''265,000''.

2. On page 54494, in table 3, in column number 2 ''Goals'', the first entry corresponding with year ''2013'' should read ''70,000''.

[FR Doc. C1–2014–21118 Filed 9–23–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2014–0001]

RIN 1014–AA22

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS); Helideck and Aviation Fuel Safety for Fixed Offshore Facilities

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The BSEE is seeking comments on improving safety for operations related to helicopters and helidecks on fixed offshore facilities. Specifically, BSEE invites comments on whether to incorporate in its regulations certain industry and/or international standards for design, construction, and maintenance of offshore helidecks, as well as standards for aviation fuel quality, storage and handling. The BSEE also invites comments on whether it should incorporate existing standards, with modifications, and/or develop and propose new government regulatory standards for safety of helidecks and aviation fuel systems. As an alternative to incorporating or developing such standards, BSEE invites comments on whether to require submission of aviation-related safety plans for helidecks and offshore aviation fuel systems on Outer Continental Shelf (OCS) facilities. The BSEE also seeks information on past accidents or other incidents involving helidecks, helicopters, or aviation fuel on or near fixed OCS facilities.

DATES: Submit comments by November 24, 2014. The BSEE may not fully consider comments received after this date.

ADDRESSES: You may submit comments on this notice by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA22 as an identifier in your comments. In addition, please refer to ''Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Helideck and Aviation Fuel Safety for Fixed Offshore Facilities, 1014–AA22,'' in your comments and include your name and return address. The BSEE may post all submitted comments, in their entirety, at *www.regulations.gov. See Public Availability of Comments.*

—Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BSEE–2014–0001, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.

—Mail or hand-carry comments to the Department of the Interior (DOI); Bureau of Safety and Environmental Enforcement; Attention: Regulations and Standards Branch; Office of Offshore Regulatory Programs; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Ralph Colleli, Regulations and Standards Branch, 703–787–1831, email address: *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

In accordance with the Outer Continental Shelf Lands Act (OCSLA), BSEE and the U.S. Coast Guard (USCG) share regulatory authority over offshore facilities engaged in oil and gas operations—including exploration, development, and production activities—on the OCS. Among other purposes, BSEE's regulations for offshore operations seek to prevent injury or loss of life and damage to property, natural resources, and the environment. As one means of achieving these goals, BSEE incorporates by reference in its regulations many industry standards applicable to offshore oil and gas operations.

Although the Federal Aviation Administration (FAA) has broad authority regarding helicopter-related safety issues and onshore and offshore flight safety, BSEE has the lead responsibility for safety of helidecks and aviation fuel storage and handling on fixed offshore facilities, while the USCG has the lead responsibility for helidecks and aviation fuel handling on floating offshore facilities. Currently, BSEE's regulations incorporate and require compliance with certain industry standards that address some safety issues related to helidecks and the presence of helicopters and aviation fuel on fixed offshore facilities. However, BSEE's existing regulations do not comprehensively address helideck or aviation fuel safety issues.

Recent reports by the U.S Centers for Disease Control and Prevention (CDC) and the Helicopter Safety Advisory Conference confirm that helicopter accidents and helicopter-related incidents on or near offshore facilities are a significant concern. Similarly, incident reports submitted by offshore operators to the Minerals Management Service (MMS)—BSEE's predecessor agency—or to BSEE over the past 15 years indicate that incidents involving helicopter operations on or near offshore facilities have resulted in several fatalities, significant injuries and substantial property damage.

The BSEE has reviewed existing industry and international standards for helideck and aviation fuel safety and believes that certain standards, if incorporated into BSEE's regulations for fixed offshore facilities, could improve safety and reduce risks of injury and

damage to property without imposing undue burdens on the offshore oil and gas industry. However, we are also considering possible alternatives to incorporating, and requiring compliance with, relevant existing standards. For example, BSEE could incorporate only parts of existing standards, or incorporate certain standards with specific modifications, or even develop and adopt government standards, if appropriate. In addition, in lieu of requiring compliance with specific standards, we are considering whether to require that fixed offshore facility owners or operators develop aviation-related safety plans that demonstrate how each facility would ensure safety and minimize risks associated with helidecks and aviation fuel systems.

Before incorporating any existing standards or otherwise revising our regulations, we seek additional information about helicopter, helideck, and aviation fuel-related incidents related to fixed offshore facilities. In addition, we invite public comments on other issues related to offshore helideck and aviation fuel safety, including:

—Any technical differences between fixed and floating facility helidecks; and
—The potential costs of requiring compliance with various industry and international standards, including the potential costs of retrofitting existing helidecks and aviation fuel systems on fixed OCS facilities.

BSEE's Functions and Authority

The BSEE promotes safety, protects the environment, and conserves offshore oil and gas resources through vigorous regulatory oversight and enforcement. The BSEE derives its regulatory authority primarily from the OCSLA, as amended, 43 U.S.C. 1331–1356a, which establishes Federal control over the OCS and authorizes the Secretary of the Interior (the Secretary) to regulate oil and natural gas exploration, development, and production operations on the OCS. In Secretarial Order 3299 (May 19, 2010), the Secretary assigned BSEE the responsibility for offshore safety and environmental enforcement, including the authority to:

—Issue permits for activities,
—Inspect, investigate, summon witnesses, and order production of evidence,
—Levy penalties,
—Cancel or suspend activities,
—Oversee safety, response and removal preparedness, and
—Ensure conservation of offshore oil and natural gas resources (*see* 76 FR 64432, Oct. 18, 2011).

To carry out its responsibilities, BSEE regulates exploration, development, and production of oil and natural gas on the OCS to enhance safety and environmental protection in a way that reflects advancements in technology and new information. In addition to developing and implementing such regulatory requirements, BSEE collaborates with standards development organizations and the international community to develop and revise safety and environmental standards, which BSEE may incorporate into its regulatory program. The BSEE also conducts on-site inspections to ensure compliance with regulations, lease terms, and approved plans. Detailed information concerning BSEE's regulations and guidance for the offshore industry may be found on BSEE's Web site at: *http://www.bsee.gov/Regulations-and-Guidance/index.*

Public Participation and Availability of Comments

The BSEE encourages you to participate in this advance notice of proposed rulemaking (ANPR) by submitting written comments as provided in the **ADDRESSES** and **DATES** sections of this notice. However, before including your address, phone number, email address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Procedures for Incorporation by Reference and Availability of Incorporated Documents for Public Viewing

In accordance with the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, and OMB Circular A–119, Federal agencies are directed to use standards developed by voluntary consensus standards bodies—domestic or international—in lieu of adopting government-unique standards, except where inconsistent with law or impracticable. In addition, Federal agencies may choose to use standards developed by entities other than voluntary consensus standards bodies in their regulations.

The BSEE frequently uses standards (*e.g.,* codes, specifications, recommended practices (RP), bulletins, and reports) developed through a consensus process, facilitated by standards development organizations and with input from the oil and gas industry, as a means of establishing requirements for activities on the OCS. The BSEE may incorporate these standards into its regulations without republishing the standards in their entirety in the Code of Federal Regulations, a practice known as incorporation by reference. The legal effect of incorporation by reference is that the incorporated provisions become regulatory requirements. This incorporated material, like any other properly issued regulation, has the force and effect of law, and BSEE holds operators, lessees and other regulated parties accountable for complying with the incorporated documents. We currently incorporate by reference over 100 consensus standards in BSEE's regulations governing offshore oil and gas operations (*see* 30 CFR 250.198).

Federal regulations at 1 CFR part 51 govern how BSEE and other Federal agencies incorporate various documents by reference. Agencies may incorporate a document by reference by publishing the document's title, edition, date, author, publisher, identification number, and other specified information in the **Federal Register**. The Director of the Federal Register must approve each publication incorporated by reference in a final rule. Incorporation by reference of a document or publication is limited to the specific edition approved by the Director of the Federal Register.

Background Information for Helideck and Aviation Fuel Safety on Fixed OCS Facilities

1. Responsibility for Offshore Helideck and Helicopter-Related Safety

In a Memorandum of Agreement (MOA) dated September 30, 2004 (No. OCS–01), MMS and USCG identified, and agreed on how to share, certain responsibilities for regulation of OCS facilities. Under that MOA, MMS and USCG agreed that MMS (now BSEE) has the lead responsibility for aircraft (*i.e.,* helicopter) landing and refueling systems (*i.e.,* helidecks, fuel handling and storage) on fixed offshore facilities and that USCG has the lead for the same systems on mobile offshore drilling units (MODUs) and other floating offshore facilities.[1] Subsequent MOAs (Nos. OCS–04, OCS–05, OCS–08) between USCG and MMS/BSEE have reiterated this sharing of responsibility for helidecks and aviation fuel handling

[1] Various terms are commonly used to describe the landing area for helicopters on offshore facilities, including ''offshore heliport,'' ''helicopter landing deck,'' and ''helideck.'' For simplicity and consistency, this ANPR uses the term ''helideck.''

and storage.[2] Similarly, the FAA, which regulates onshore helipads and onshore and offshore helicopter flight safety, has recognized that helidecks on fixed offshore facilities are under the purview of DOI and that ''shipboard and relocatable'' helidecks are under the purview of USCG (*see U.S. Aeronautical Information Publication (AIP),* 22nd Ed., Amendment 3, July 24, 2014, at p. 1.7–95).[3]

a. *USCG regulations.* For U.S.-flagged MODUs, USCG has specific regulations for construction and size, fire protection, and location and markings for helidecks and for aviation fuel storage facilities and equipment (*see* 46 CFR 108.231—108.241, 108.486–108.489, 108.653, 109.575—109.577). Under 33 CFR 143.207 and 146.205, those regulations or equivalent requirements also apply to foreign-flagged MODUs.[4] The only USCG regulation expressly addressing helidecks on OCS facilities other than MODUs is 33 CFR 143.110(b), which requires a protective device (*e.g.,* a guardrail) around the perimeter of a helideck sufficient to prevent a person from falling.

b. *BSEE regulations.* Under 30 CFR part 250, BSEE currently regulates over 2,500 fixed OCS facilities—mostly located in the Gulf of Mexico (GOM) Region—the great majority of which have helidecks for transporting personnel and supplies offshore. [5] With the following exceptions, however, BSEE's regulations do not expressly address helicopter, helideck, or aviation fuel safety issues.

Section 250.154(a)(2) requires all OCS facilities with helidecks to display identification signs that include the weight capacity of the helidecks and that are visible from the air. Section 250.490(f)(7) requires facilities operating in hydrogen sulfide (H2S) areas to submit contingency plans to BSEE that describe circumstances under which it is appropriate to evacuate personnel by helicopter during H2S emergencies; while section 250.490(j)(13)(viii) requires facilities to limit H2S-related evacuation flights to the circumstances described in their contingency plans and to provide respirator equipment to helicopter crews and passengers in such emergencies.

The BSEE's regulations also incorporate and require compliance with several industry standards that address helideck and aviation fuel safety issues. [6] For example, 30 CFR 250.114 requires installation of electrical systems on all OCS facilities in compliance with American Petroleum Institute (API) RP 14F (Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities, Fifth Edition) or API RP 14FZ (Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities, First Edition). Those standards (which differ slightly according to the location of the platforms) include criteria:

—For installation of perimeter lights, aircraft warning lights, and general lighting of helidecks, and

—For locating antennas on platforms in areas that will not obstruct helidecks.

In addition, 30 CFR 250.901(a)(14) requires that plans for design, analysis, fabrication, installation, use, maintenance, inspection, and assessment of all OCS platforms comply with API RP 14J (Design and Hazards Analysis for Offshore Production Facilities, Second Edition), as appropriate.[7] In effect, API RP 14J states that facility operators should consider the location of helicopter fuel, helicopters, and helidecks on production facilities when designing gas venting and flaring equipment and platform communications systems. In addition, Appendix A.2 of API RP 14J provides a sample checklist of questions that operators may consider in developing facility-specific hazards analyses for their production facilities, including several questions regarding the design, layout, and materials for helidecks and the location of helicopter fueling systems.

While sections 250.901 and 250.114 do not directly impose helideck or aviation fuel storage requirements on facility operators, they allow BSEE to consider whether plans for offshore production platforms are consistent with API RP 14J and whether the installation of electrical systems on all facilities is consistent with API RP 14F/14FZ.

In addition, BSEE's regulations require that each offshore facility be covered by a Safety and Environmental Management System (SEMS) program that addresses, among other things, safety and environmental hazards related to design, construction, operation and maintenance of the facility (*see* 30 CFR part 250, Subpart S). Because helideck and aviation fuel systems are features of most fixed offshore facilities, the SEMS programs for those facilities would also extend to those systems. Similarly, the SEMS rules require that contractors performing work for such facilities have written safe work practices, which may include appropriate sections of the facilities' SEMS programs (*see* 30 CFR 250.1914).

Moreover, section 250.107 requires OCS operators to: Perform all operations in a safe and workmanlike manner; maintain all equipment and work areas in a safe condition; and immediately control, remove or otherwise correct any health, safety or fire hazard. Under this authority, BSEE has issued notices of Incidents of Noncompliance (INCs) for unsafe conditions involving helidecks or related equipment or areas. From 1998 to mid-2013, MMS/BSEE issued over 400 INCs under section 250.107(a) to fixed OCS facilities for unsafe conditions involving helidecks.[8] Similarly, MMS/BSEE has issued over 100 INCs for noncompliance with the helideck facility identification requirements of section 250.154(a)(2).

2. Safety Incidents Related to Helidecks and Offshore Helicopter-Related Operations

Despite the existing BSEE and USCG regulatory provisions, safety of helicopter-related systems and operations on and near offshore facilities remains a concern. In April 2013, the CDC reported that, based on industry data, the leading cause of death for offshore oil and gas extraction workers between 2003 and 2010 was transportation to and from work sites.[9] Specifically, CDC's analysis indicates that of 128 fatalities involving offshore

[2] The MMS/BSEE–USCG MOAs are available at *www.bsee.gov/BSEE-Newsroom/Publications-Library/Interagency-Agreements.*

[3] This FAA publication is available at *http://www.faa.gov/air_traffic/publications/atpubs/aip/aip_w_amds_1-3_dtd_7-24-14.pdf.*

[4] Under 33 CFR 143.207 and 146.205, foreign-flagged MODUs engaged in OCS activities must comply with 46 CFR part 108 and part 109, respectively, or with equivalent standards of the relevant foreign nation, or with applicable standards of the International Maritime Organization.

[5] As provided by 30 CFR 250.132(a)(2), OCS lessees and operators must provide helicopter landing sites and refueling facilities for any helicopters used by BSEE to regulate offshore operations.

[6] In addition, BSEE issued a national Notice to Lessees (No. 2011 N–08) in October 2011 advising OCS lessees and operators on how to mark helidecks for temporary closures, consistent with Helicopter Safety Advisory Conference Recommended Practices 2008–01 and 92–5.

[7] Similarly, 30 CFR 250.800(b)(1) requires production safety systems on new floating production facilities to comply with API RP 14J.

[8] Examples of unsafe or unworkmanlike helideck conditions cited in INCs include: Missing, corroded, or damaged helideck skirting; loose or damaged helideck surfaces; corroded helideck supports; loose equipment or other obstructions on helidecks; and loose or damaged handrails, guardrails, stairways or ladders. In addition, BSEE has issued several INCs under 30 CFR 250.107(a) for aviation fuel handling equipment.

[9] The CDC report is available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6216a2.htm?s_cid=mm6216a2_w.*

oil and gas operations, 49 persons died in 17 incidents involving helicopters. The CDC reported that the most common factors in those incidents were mechanical failure and bad weather (although there were no bad weather crashes from late 2009 through 2012). It is not clear from this report whether any of the incidents occurred on or near fixed offshore facilities.[10] However, the CDC report was based in part on an analysis of National Transportation Safety Board data on GOM helicopter crashes related to the oil and gas industry from 1983 through 2009 indicating that:

—19 crashes, resulting in six fatalities, involved helicopters striking objects on offshore platforms, and

—Eight crashes, resulting in one fatality, involved failure to remove tie-downs before takeoff from offshore platforms.[11]

Similarly, in May 2014, the Helicopter Safety Advisory Conference (HSAC)—an organization that represents petroleum companies, drilling and oil service companies, and helicopter operators and manufacturers and that focuses on identifying and sharing information about offshore helicopter safety in the GOM—reported that there were 21 offshore helicopter accidents in the GOM between 2009 and 2013, resulting in 11 fatalities and 15 injuries. The HSAC also reported that, between 1999 and 2013, 17 offshore helicopter accidents involved helideck or other obstacle strikes, and six accidents involved aviation fuel management problems (although HSAC's report does not indicate how many helicopter incidents involved fixed offshore facilities and how many involved MODUs or floating offshore facilities).[12]

The HSAC has also stated that, over the years, its member organizations have reported engine-related events resulting from aviation fuel contamination, although it is not clear from HSAC's statements whether the reported fuel management and contamination problems occurred onshore or offshore (*see* HSAC RP 2004–02 (Jet Fuel Quality Procedures), May 2012, at p.1).

The BSEE's own incident data also indicate that there are ongoing safety concerns with helidecks and helicopter-related operations on OCS facilities. Under section 250.188, the BSEE receives reports from OCS operators and lessees regarding certain incidents—including fatalities, significant injuries, property damage exceeding $25,000, and fires and explosions—that occur anywhere on their lease areas. Between 1998 and mid-2014, BSEE received almost 100 incident reports involving helicopters, helidecks, or aviation fuel on or near fixed OCS facilities in the GOM and Pacific regions. Many of these reports involved helicopters crashing or ditching in the water before or after landing on OCS facilities for reasons (*e.g.,* mechanical failures, bad weather, or pilot error) that may be unrelated to circumstances onboard the OCS facilities. A few of the engine failure incidents may have been related to contaminated fuel, although it is not clear from the incident reports whether the fuel in those incidents was provided onshore or offshore. In addition, a significant number of the incidents reported to BSEE involved helicopters striking parts of a platform or other materials on or close to a helideck. The remaining incidents included wind-related damage to helicopters that had already landed on a helideck, injuries to persons exiting or boarding helicopters on platforms, and other injuries on helidecks or resulting from helicopter operations. The BSEE is also aware of concerns that some helicopter accidents or near-misses may have been related to the engine's ingestion of methane gas vented by a fixed OCS facility, although the exact causes of some events have not yet been confirmed.

The CDC, HSAC and BSEE reports do not indicate, however, whether any of the OCS facilities involved in helicopter-related incidents were or were not meeting voluntary industry standards for helidecks and aviation fuel safety at the time.

3. Domestic Standards and Guidance for Helidecks and Helicopter-Related Operations on Offshore Platforms

Several industry and other organizations have developed voluntary standards or guidance expressly addressing safety issues related to helicopters, helidecks, and aviation fuel on offshore facilities.

a. API RP

API RP 2L (Planning, Designing, and Constructing Heliports for Fixed Offshore Platforms), 4th Ed. (1999, reaffirmed 2006), is a widely accepted voluntary consensus standard for design and construction of new helidecks on fixed offshore platforms. Among other safety issues, API RP 2L addresses:

—Helideck structural materials and flight deck surfaces, Helideck design loads,

—Location and size of helidecks,

—Design of approach/departure and obstacle-free zones,

—Location of helideck access and egress stairways and ladders,

—Helideck fire protection,

—Helideck safety equipment, including tie-down points and ropes,

—Helideck lighting and markings,

—Wind direction indicators, and

—Positioning of aviation fueling stations on fixed platforms.

The API is in the process of updating and substantially revising API RP 2L. It is our understanding that API expects to publish revisions to API RP 2L in three stages. The first stage (tentatively referred to as API 2L–1) is undergoing review in the API standard setting process and may be published later in 2014. We understand that API 2L–1 is intended to address planning, design and construction of new helidecks on fixed offshore platforms. The second phase of the revisions to API RP 2L (tentatively called API 2L–2) is expected to address assessment, maintenance and management of existing (legacy) helidecks constructed prior to the publication of API RP 2L in 1996. The third phase of the revisions (tentatively API 2L–3) is expected to address operations and management of all new and existing helidecks.

The BSEE has participated in relevant API committees and working groups responsible for drafting the first phase of the revisions to API RP 2L and will continue to closely monitor development of that document as well as the second and third phases of the revisions.

b. HSAC RPs

The HSAC has published several RPs applicable to offshore helicopter and helideck operations and aviation fuel quality. The HSAC—although not a consensus standard-setting organization—developed these RPs and guidelines in cooperation with API, the Offshore Operators Committee, and various other industry and technical organizations interested in offshore and aviation safety.[13]

Specifically, HSAC RP 2004–1 (Offshore Helideck Inspections) complements existing API RP 2L by recommending practices and providing

[10] The CDC report also does not indicate how many incidents involved fixed offshore facilities and how many involved MODUs or other floating offshore facilities. Nor does that report indicate how many of the incidents were caused by factors that potentially could be addressed by BSEE regulations under OCSLA.

[11] *See* ''Helicopter Crashes Related to Oil and Gas Operations in the Gulf of Mexico,'' Journal of Aviation, Space and Env. Med., Sept. 2011 (S. Baker, *et al.*), at pp. 885–888.

[12] HSAC's annual statistical reports on offshore helicopter incidents for 1999 through 2013 are available at *http://hsac.org/Statistics.aspx.*

[13] All of the HSAC recommended practices are available for free online at HSAC's Web site, *www.hsac.org.*

a checklist for inspecting helidecks, identifying potentially hazardous conditions (structural and temporary), and notifying helicopter operators of potential hazards. Similarly, HSAC RP 2004–07 (Helideck Hazards) encourages training for helicopter pilots to identify and report potential helideck obstructions and other hazards so facility owners can take corrective action.

In addition, HSAC RP 2008–01 (GOM Helideck Markings) is intended to provide some consistency for markings on fixed platform helidecks in the GOM, based in part on API RP 2L and in part on international standards such as Annex 14 to the Convention on International Civil Aviation (CICA) adopted by the International Civil Aviation Organization (ICAO) and the United Kingdom's (UK) Civil Aviation Authority Publication (CAP) 437 (Standards for Offshore Helicopter Landing Areas), Feb. 2013. In particular, HSAC RP 2008–01 provides detailed guidance for issues such as:

—Final approach and take-off area identification,
—Obstacle-free sector identification,
—Installation identification,
—Access points,
—Maximum allowable weight,
—Helicopter size limits, and
—Prohibited landing areas.

Although helicopter operators are typically responsible for ensuring the quality of their own fuel under agreements with offshore facility operators, HSAC RP 2004–02 (Jet Fuel Quality Control Procedures), revised May 2012, offers guidance on storage, distribution and sampling of jet fuel, and on inspection of fueling systems for offshore helicopter flights. For example, HSAC RP 2004–02 recommends that:

—Fuel system owners and operators develop written quality control procedures, coordinate inspection of all fuel systems, and correct any defects and report the defects to the helicopter operators,
—Helicopter operator or aviation advisory personnel inspect all refueling systems at least once a year,
—All fuel delivery systems have a filter/separator equipped with a water defense system actuated by high water content,
—All fuel storage containers be allowed to settle for at least an hour prior to use or sampling and that all required fuel samples be taken prior to the first refueling of the day, and
—Portable offshore fuel transport tanks be tested and documented in accordance with Department of Transportation regulations (49 CFR parts 173 and 180).

Other HSAC RPs address additional safety issues related to offshore helicopter and helideck operations. For example:

—RP 88–1 (Passenger Management on Offshore Helideck Facilities), revised May 2010, recommends that helicopters be shut down prior to loading/unloading passengers, that designated passenger waiting areas be clear of the helideck and helideck access points, and that passengers be briefed before loading/unloading.
—RP 89–1 (Crane-Helicopter Operational Procedures), revised May 2010, recommends that platform cranes be shut down and cradled (if feasible) or pointed away from the helideck when helicopters are approaching or taking off, and that if a crane remains in use, the helicopter pilot and crane operator be in direct communication and that red warning lights on the crane be activated.
—RP 92–2 (Perforating Operations: Helideck/Heliport Operational Hazard Warning(s)/Procedure(s)), revised May 2010, recommends that helicopter operators or bases be notified prior to offshore perforation operations, in order to avoid premature detonation of explosives by helicopter radio transmissions, and that helidecks be temporarily marked as closed whenever explosives may be affected by radio transmissions.
—RP 92–3 (Hydrogen Sulfide Gas Helideck/Heliport Operational Hazard Warning(s)/Procedure(s)), revised May 2010, provides that oil field operators should activate a red rotating beacon if hydrogen sulfide is detected and notify nearby helicopters and bases, and that if a red beacon is observed or unusually strong odors are detected when flying near a helideck, pilots should put on protective air packs, exit upwind, and notify the facility of the suspected hazard.
—RP 92–4 (Gas Venting, Helideck/Heliport Operational Hazard Warning(s)/Procedure(s)), revised May 2010, recommends that pilots plan their approaches and takeoffs to avoid areas downwind of or over gas vents, that oilfield supervisors notify helicopter operators of planned gas venting operations, and that large, high-volume gas vents be equipped with red rotating beacons.
—RP 92–5 (Helideck/Heliport Operational Warning(s)/Procedure(s)), Closed Helidecks or Heliports) states that a white X (or an orange or yellow X if the deck is painted white) from corner to corner of a helideck is the universal indicator that the landing area is closed and that helicopter operations are prohibited.
—RP 93–2 (Offshore Helidecks/Landing Communications), revised May 2010, states that before landing on offshore facilities, pilots should make radio contact, if practicable, with the facility owners or operators and that, if radio contact is not practicable, pilots should contact the facilities' owners or operators by telephone before departing for the facilities.
—RP 93–3 (Multiple Helicopter Operations on Offshore Helidecks), revised May 2010, recommends that, before multiple helicopter operations, specific restrictions and procedures be developed to ensure that
  —Full clearance of at least one-third rotor diameter from all obstacles in the vicinity of the helideck is provided,
  —Factors such as helicopter weight and performance, wind, temperature and deck conditions are considered,
  —Helicopters are parked at least three feet from the helideck edge, and
  —Parked helicopters are shut down and all main rotor blades are properly tied down.
—RP 94–1 (Helicopter Rapid Refueling (HRR)), revised May 2010, states that
  —decisions to conduct HRR require attention to weather, quality control, static electricity, spills and fire potential,
  —passengers should be de-boarded prior to beginning HRR unless the pilot deems it necessary for passengers to remain seated during HRR, and
  —only designated, properly trained personnel may operate HRR equipment.
—RP 2004–05 (Night Offshore Helicopter Flights), May 2004, provides that helidecks should be at least one rotor diameter in size and capable of accommodating loaded helicopters of the weight and size for night flights, and that lighting should be adequate to illuminate obstructions, windsocks, and the helideck perimeter (consistent with API RP 2L).
—RP 2005–1 (Helicopter Tiedown Practices), June 2005, recommends that
  —Offshore helicopters be equipped with helideck tiedowns capable of securing the helicopter at four points,
  —Tiedowns be inspected daily and replaced when excessively worn or deteriorated,
  —Helicopters be tied down when severe weather exists or is forecast, and

—A parked helicopter be tied down when a medium or larger helicopter is landing or taking off.

c. FAA Manual

While the FAA recognizes BSEE's purview over fixed offshore helidecks, the FAA also publishes information for potential use by pilots in performing their duties safely even in situations where other agencies may have regulatory responsibility. In particular, the FAA's *Aeronautical Information Manual: Official Guide to Basic Flight Information and ATC Procedures* (AIM), Feb. 2012 (revised April 2014), provides information on offshore helicopter operations, including recommended practices expressly based on HSAC's RPs for the GOM.[14] Specifically, Section 10–2–1 of the *AIM* provides guidance on offshore operations directly based on the HSAC RPs previously described.

All of the documents described previously are potential candidates for incorporation by reference, in whole or in part, in BSEE's regulations for fixed offshore facilities. However, some portions of some of the HSAC standards apply to issues (*e.g.,* flight operations, pilot flight training, and helicopter design) that may be better addressed by the FAA or other agencies that regulate aircraft flight safety than by BSEE. In addition, as explained above, some of the standards (*e.g.,* API RP 2L and HSAC RP 2008–1) are currently undergoing revision and may no longer, in some respects, reflect the best and safest technology or practices now in use.[15] Accordingly, as discussed later in this notice, we are seeking comments on which of the above standards or portions thereof, if any, we should incorporate in BSEE's regulations.

4. International Standards and Guidance for Helidecks and Helicopter-Related Operations on Offshore Platforms

In addition to the API and HSAC standards described previously, several international organizations have issued guidance documents that contain recommendations for helicopter, helideck, and aviation fuel safety on offshore facilities. For example, the International Association of Oil and Gas Producers (OGP) *Aircraft Management Guidelines* (Rept. No. 390, July 2008, updated August 2013), includes guidance on issues such as:

—Fuel quality control (sec. 7.4),
—Portable offshore fuel tanks (sec. 7.6),
—Airbase/helideck fire protection and equipment (sec. 11.7),
—Heliport and helideck design, size, obstructions, and offshore operational hazard considerations (sec. 11.9),
—Helideck personnel qualifications (App. A5D),
—Offshore weather reporting, forecasting, and planning (App. A6), and
—Cold weather helideck precautions (App. A13.9.2.4).[16]

The OGP guidelines are, in turn, largely based on international codes and agreements, other guidance documents and industry best practices. In particular, OGP relies heavily on volumes I (Aerodromes) and II (Heliports) of Annex 14 to the CICA as adopted by the ICAO.[17] The OGP also relies on the United Kingdom's CAP 437 for guidance on issues such as:

—Helideck design and physical characteristics,
—Helideck rescue and firefighting equipment,
—Helideck management and operations, and
—Aviation fuel systems and procedures.[18]

Other international standards or codes also address offshore helicopter-related safety.[19] For example, the USCG regulations for helidecks and aviation fuel systems on MODUs, found in 46 CFR parts 108 and 109, are intended to be consistent with the International Maritime Organization (IMO) code requirements for helicopter facilities on MODUs that were under development at the time the USCG regulations were adopted (*see* 43 FR 56788, December 4, 1978). The original 1979 IMO Code for Construction and Equipment of MODUs (MODU Code) was replaced by the 1989 IMO MODU Code, which in turn was substantially revised by the 2009 MODU Code.[20] The 2009 MODU Code's updated provisions for helidecks and helicopter facilities on newly constructed MODUs were prompted by similar changes made by ICAO to the CICA with regard to helicopter facilities (*see* IMO Resolution A.1023(26), December 2, 2009). Where appropriate, the 2009 MODU Code refers to the latest ICAO Annex 14 provisions for helicopter and heliport safety.

Among other things, the 2009 MODU Code addresses:

—Fire safety measures for helidecks (i.e., firefighting equipment, helideck design and construction materials, emergency exits),
—MODU-helicopter communications,
—Safety measures for refueling facilities and equipment,
—Isolation of aviation fuel storage areas and tanks,
—Helideck design and construction material,
—Helideck perimeter safety netting and protection,
—Visual aids (*e.g.,* wind direction indicators, markings and warnings, perimeter and flood lighting, status and warning lights),
—Removal or marking of obstacles on helidecks, and
—Manuals for helideck operating procedures (including helicopter refueling).

In addition to such international standards, several foreign countries with significant offshore oil and gas operations have adopted regulations, standards, and guidance applicable to helidecks and aviation fuel safety on fixed and floating offshore facilities. For example, the Norwegian Oil and Gas Association (OLF) *Helideck Manual,* Jan. 2011, for petroleum facilities on Norway's continental shelf provides guidelines for helideck personnel training and qualifications, as well as summaries of Norwegian regulatory requirements for helideck materials, safety and rescue devices, firefighting equipment and systems, visual aids, and communications.[21] The OLF *Helideck Manual* also provides guidance on helideck operations and aviation fuel safety procedures, including:

—Fuel sampling and testing,
—Inspection of fuel hoses and nozzles,
—Fuel transport and storage tanks, and
—Normal and 'hot' refueling procedures.

[14] The AIM is available for free online on FAA's Web site at *http://www.faa.gov/air_traffic/publications/ATpubs/AIM/index.htm.*

[15] For example, the helideck warning and marking standards in existing API RP 2L and HSAC 2008–1 may not be fully consistent with the most current international standards, including the latest version of the ICAO's Annex 14 to the CICA.

[16] The OGP Aircraft Management Guidelines are available for free online at *http://www.ogp.org.uk/pubs/390.pdf.*

[17] Information about ICAO and its publications is available at *http://www.icao.int/publications.*

[18] The UK's CAP 437 is available free online at *http://www.caa.co.uk/docs/33/CAP437.pdf.*

[19] Other international standards organizations include the Energy Institute (EI), which jointly produced (with API) EI 1529 (Aviation Fuelling Hose and Hose Assemblies), Sixth Ed., May 2005, an international standard for performance and testing of aircraft fueling hoses, couplings, and assemblies. Information about EI and its publications can be found at *www.energyinst.org.*

[20] Information about IMO and its publications is available at *www.imo.org/Publications.*

[21] The OLF *Helideck Manual,* Jan. 2011, is available for free on OLF's Web site at *http://www.norskoljeoggass.no/en/Publica/HSE-and-operations/Helideck-manual/.* A companion OLF document, *Recommended Guidelines for Helideck Personnel—074,* April 2002, is also available at *http://www.norskoljeoggass.no/Global/Retningslinjer/Drift/LuftfartHelikopter/074%20%20Recommended%20guidelines%20for%20helideck%20personnel.pdf.*

Although BSEE is not required to incorporate by reference any standards that are not adopted by voluntary consensus standard-setting organizations, each of the above domestic and international documents, as well as others not described above, may contain valuable information on the best available and safest technology for fixed OCS facilities.[22] Thus, such standards, codes, and guidelines could be considered for possible incorporation (in whole or in part) in BSEE's rules or could help BSEE determine whether other standards—such as API's and HSAC's RPs—should be incorporated instead. In addition, BSEE could consider incorporating a combination of appropriate domestic and international standards to create a comprehensive, up-to-date regulatory framework that reduces potential safety risks related to helidecks and aviation fuel systems on fixed OCS facilities.

Other Options for Consideration

In addition to considering incorporating by reference existing industry or other domestic and/or international standards, BSEE is considering other regulatory approaches to reduce aviation-related safety risks for fixed offshore facilities. For example, some portions of an otherwise useful standard may be out of date or may be incompatible with portions of another potentially useful standard. In such cases, BSEE could incorporate in the regulations relevant parts of an existing standard, and/or adopt appropriate modifications to other parts of that standard or other standards, and/or develop and adopt new prescriptive requirements to minimize risks and improve safety.

The BSEE is also considering whether any newly incorporated or other new regulatory standards for helideck design or construction, and for aviation fuel systems, should apply only to new helidecks and aviation fuel systems installed on fixed facilities after the effective date of such final regulations, or should also apply to existing helidecks and fuel systems on fixed OCS facilities, even if that requires retrofitting. Accordingly, BSEE will seek additional information on the potential costs and other impacts of retrofitting.

As an alternative to incorporating specific standards or adopting other prescriptive requirements, BSEE is considering whether to require owners or operators of fixed OCS facilities to develop aviation-related safety plans that would demonstrate how the owner or operator would ensure safe helicopter, helideck, and aviation fuel system operations. For example, such a plan could demonstrate that a fixed OCS facility would comply with certain industry or other standards that, taken together, would reduce risks and ensure safe and workmanlike conditions and safe work areas. The BSEE is also considering whether such plans, if required, should be submitted to and approved by BSEE or should be subject to evaluation by BSEE upon request (like the SEMS programs required under Subpart S of 30 CFR part 250).

In addition, in order to determine whether OCS facilities and their personnel are complying with such plans, BSEE is considering whether such aviation-related safety plans should be subject to periodic auditing by BSEE or by an accredited third-party (like the SEMS programs, *see* 30 CFR 250.1920–250.1922) or by any other entity.

Finally, BSEE is aware of the importance of consistency between regulatory requirements for all OCS facilities, whether fixed or floating. Accordingly, BSEE is considering various options for coordinating any future proposed rulemaking with the USCG to maximize consistency between BSEE's and USCG's rules. The BSEE also plans to consult with the FAA and other agencies interested in safety of offshore helicopter operations, as appropriate.

Issues for Public Comment

For the reasons described above, BSEE seeks public comments on the following issues only. Although BSEE is not required to respond in writing to such comments, BSEE will consider relevant comments in developing any proposed rules for improving safety of helidecks and aviation fuel storage and handling on fixed OCS facilities. Please identify the specific issue that your comments address by referring to the following issue numbers.

(1) In addition to the statistical reports and summaries described in this notice, what other relevant, reliable data on accidents or other safety issues related to helicopters, helidecks, or aviation fuel systems on fixed offshore facilities should BSEE consider before deciding whether to propose any new regulations?

(2) Which existing domestic or international standards or guidance documents, if any, related to planning, design, construction, inspection, maintenance and/or use of helidecks on fixed offshore facilities should BSEE consider incorporating by reference in its regulations? What would the potential cost impacts be if BSEE incorporated, and required compliance with, such documents?

(3) Which domestic or international standards or guidance for aviation fuel quality, storage, or handling should BSEE consider incorporating in its regulations for fixed offshore facilities? What would the potential cost impacts be if BSEE incorporated, and required compliance with, such documents?

(4) If you think that BSEE should consider incorporating any existing standards for helidecks or aviation fuel systems, please identify any specific provisions in those standards that BSEE should not incorporate, or that BSEE should modify or supplement before incorporation.

(5) If you are a fixed offshore facility owner or operator, please describe how you currently address any existing industry or other standards regarding safety of helidecks and aviation fuel systems.

(6) What differences between fixed and floating offshore facilities should BSEE consider with regard to whether any existing standards that apply to floating offshore facilities should be incorporated by BSEE for applicability to fixed offshore facilities? How important is it that requirements for helidecks and/or aviation fuel systems on fixed and floating offshore facilities be consistent?

(7) What provisions, if any, of USCG's regulations for helidecks on MODUs (46 CFR parts 108 and 109) should BSEE consider in developing any helideck regulations for fixed offshore facilities?

(8) If, as an alternative to requiring facilities to comply with specific standards, BSEE required owners or operators of fixed offshore facilities to develop aviation-related safety plans demonstrating how they would ensure safe helicopter, helideck, and aviation fuel management operations, how should BSEE ensure the adequacy of, and compliance with, such plans?

(a) For example, should BSEE or an accredited third party or some other entity conduct audits of such plans to verify the adequacy and proper implementation of the plans?

(9) If BSEE proposes to incorporate any existing industry standard or prescribe any other requirements for

[22] For example, the Air Transport Association of America (ATA), an association of commercial airlines, has adopted a standard (ATA Spec. 103: Jet Fuel Quality Control at Airports, revised 2006) that provides guidance on recognized industry inspection procedures and safety checks for jet fuel storage and distribution at airports. Although this standard is intended primarily for the commercial airline industry, and is not focused on helicopter fuel or offshore helidecks, it may contain useful information regarding aviation fuel quality, storage, and handling that could inform BSEE's future decisions. More information about ATA and this standard is available at *www.airlines.org.*

helideck lighting, what helideck perimeter lighting properties (e.g., specific color, brightness) should we incorporate or otherwise require?

(10) If BSEE decides to apply any new regulatory standards for helideck design or construction, and for aviation fuel systems, to all existing helidecks and fuel systems on fixed OCS facilities, even if that required retrofitting existing helidecks or aviation fuel systems, what types of costs would existing facilities potentially incur?

(11) What structural, technical or economic issues related to the aging of existing offshore facilities and helidecks should BSEE consider when deciding how to improve aviation-related safety on fixed OCS facilities?

(12) Are you aware of any potential risks from helicopter engines ingesting methane or other gases vented from a fixed OCS facility and, if so, how should BSEE address those potential risks?

Dated: September 11, 2014.

David E. Haines,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2014–22716 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

RIN 1810–AB22

[Docket ID ED–2014–OESE–0079]

Proposed Requirements—School Improvement Grants—Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed requirements; correction.

SUMMARY: On September 8, 2014, the Department of Education published in the **Federal Register** a notice of proposed requirements for the School Improvement Grants authorized under title I of the Elementary and Secondary Education Act of 1965, as amended. This notice corrects the Docket ID used to submit public comments that is listed in the *Paperwork Reduction Act of 1995* section.

DATES: Effective September 24, 2014.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 8, 2014 (79 FR 53254), on page 53275, in the middle column under **ADDRESSES**, the Docket ID is listed as ED–2014–OESE–0179. The correct Docket ID to comment on the information collection requirements is ED–2014–OESE–0079.

Program Authority: 20 U.S.C. 6303(g); Consolidated Appropriations Act, 2014 (Pub. L. 113–76).

FOR FURTHER INFORMATION CONTACT: Elizabeth Ross, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C116, Washington, DC 20202. Telephone: (202) 260–8961 or by email: *Elizabeth.Ross@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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 19, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–22690 Filed 9–23–14; 8:45 am]

BILLING CODE 4000–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1809, 1815, 1816, 1817, 1819, 1823, 1827, 1828, 1831, 1832, 1837, 1842, 1849, and 1852

RIN 2700–AE09

NASA FAR Supplement Regulatory Review No. 2

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is updating the NASA FAR Supplement (NFS) with the goal of eliminating unnecessary regulation, streamlining overly-burdensome regulation, clarifying language, and simplifying processes where possible. This proposed rule is the second in a series and includes updates and revisions to 14 parts of the NFS. On January 18, 2011, President Obama signed Executive Order (E.O.) 13563, Improving Regulations and Regulatory Review, directing agencies to develop a plan for a retrospective analysis of existing regulations. The revisions to this proposed rule are part of NASA's retrospective plan under E.O. 13563 completed in August 2011.

DATES: Interested parties should submit comments to NASA at the address below on or before November 24, 2014 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AE09 via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via email at *leigh.pomponio@NASA.gov.*

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, (202) 358–0592, email: *leigh.pomponio@NASA.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The NASA FAR Supplement (NFS) is codified at 48 CFR part 1800. Periodically, NASA performs a comprehensive review and analysis of the regulation, makes updates and corrections, and reissues the NASA FAR Supplement. The last reissue was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient and effective, faster and simpler, in support of NASA's mission. Consistent with Executive Order (E.O.)

13563, Improving Regulations and Regulatory Review, NASA is currently reviewing and revising the NFS with an emphasis on streamlining it and reducing associated burdens. Due to the volume of the NFS, these revisions are being made in increments. This proposed rule is the second of three expected rules which together will constitute the NFS update and reissue. This proposed rule includes regulatory revisions to the following 14 parts of the NFS:

1809—Contractor Qualifications
1815—Subpart 1815.4, Contract Pricing (Changes to other subparts proposed in Rule no. 1)
1816—Types of Contracts
1817—Special Contracting Methods
1819—Small Business Programs
1823—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace
1827—Patents, Data, and Copyrights
1828—Bonds and Insurance
1831—Contract Cost Principles and Procedures
1832—Contract Financing
1837—Service Contracting
1842—Contract Administration and Audit Services
1849—Terminations
1852—Solicitation Provisions and Contract Clauses

Further, this proposed rule provides notice that no regulatory changes will be made to the following eight parts of the NFS:

1806—Competition
1810—Market Research
1826—Socio-Economic Programs
1829—Taxes
1830—Cost Accounting Standards Administration
1836—Construction and A&E Contracts
1838—Federal Supply Schedule
1844—Subcontracting

NASA analyzed the existing regulation to determine whether any portions should be modified, streamlined, expanded, or repealed in order to make the regulation more efficient and effective. Special emphasis was placed on identifying and eliminating or simplifying overly burdensome processes that could be streamlined without jeopardizing Agency mission effectiveness. Additionally, NASA sought to identify current regulatory coverage that is not regulatory in nature, and to remove or relocate such coverage to internal guidance. In addition to substantive changes, this proposed rule includes administrative changes necessary to make minor corrections and updates.

Specifically, the major changes in this proposed rule are summarized as follows:

Part 1809—Contractor Qualifications:

—1809.206–70, Small businesses, is deleted. FAR 19.6 adequately addresses small business participation and requirements and NASA supplementation is not needed.

—The prescription at 1809.206–71 and the clause at 1852.209–70, Product Removal from Qualified Products List, are deleted. The clause is not necessary as FAR 52.209–1, Qualification Requirements, sufficiently covers product removal from Qualified Products Lists.

—Contractor Team Arrangements in 1809.6, the prescription at 1809.607, and the clause at 1852.209–72, Composition of the Contractor, are removed. FAR 9.6 adequately addresses teaming arrangements and NASA supplementation is not needed.

Subpart 1815.4—Contract Pricing:

—To conform to FAR, ''cost or pricing data'' terminology is changed throughout the subpart to clearly distinguish between ''certified cost or pricing data'' and ''data other than certified cost or pricing data.'' These changes are consistent with changes made to FAR, 15.4, by FAC 2005–45, FAR Case 2005–036, Definition of Cost or Pricing Data.

Part 1816—Types of Contracts:

—NASA technical performance initiatives at 1816.402–270, and the corresponding clause at 1852.216–88, are revised to change ''non-hardware contracts'' to ''supply and service contracts'' to conform to the FAR terminology and to broaden application to include services.

1816.405–274(g)(1)and (2), Award Fee evaluation factors, is revised to reflect current small business subcategories by adding small disadvantaged business (SDB), and Historically Black Colleges and Universities (HBCU) and to delete the requirement to evaluate performance against small businesses in specified NAICS groups consistent with the ruling in Rothe Dev. Corp. v. Dept. of Defense, 545 F.3d (Fed. Cir 2008).

—1816.405–274(g)(4), to add specificity, award fee evaluation factors, is revised to specify that 10 percent, in lieu of the currently specified 'up to 15 percent', of available award fee shall be assigned to the contractor's performance against the subcontracting plan.

—Award fee evaluation, at 1816.405–275, is revised to indicate that contacting officers may supplement, but not alter, the FAR adjectival rating descriptions. The FAR gives COs this authority; it is reiterated here because the NFS instructions may otherwise appear to override the FAR authority.

—Part 1817—Special Contracting Methods:

—1817.71, Exchange or sale of personal property, is deleted from this part, and will be relocated to part 1845, and be proposed as part of Rule #3 in the NFS Rewrite series.

—The clause 1852.217–70, Property Administration and Reporting, is deleted as unnecessary. The appropriate FAR 45 and NFS 1845 property clauses should be used for interagency acquisitions.

—In the clause 1852.217–71, Phased Acquisition Using Down-Selection Procedures, paragraph (e) is revised to delete the last sentence. NASA no longer provides paper copies of solicitations because solicitations are electronically available via the internet (NASA Acquisition Internet Service, FedBizOps, etc.)

Part 1819—Small Business Programs:

—The policy at 1819.201 is revised to clarify an annual goal of five percent for prime and subcontract awards to SDBs and to set forth a three percent goal for HUBZone and service-disabled, veteran-owned small business (SDVOSB) concerns.

—1819.201 is revised to remove the phrase ''not traditionally dominated'' and replace it with ''had low involvement level'' to better describe the past participation level of small businesses in high-technology area. It is also revised to clarify NASA's annual goal of 5 percent of prime and subcontract awards to small SDBs and women-owned small businesses (WOSBs), and a three percent goal for HubZone and SDVOSB concerns.

—Protesting a small business representation at 1819.302 is revised to include 'rerepresentation' in the title, to conform to FAR, and to establish a notification requirement to the Agency Small Business Office and the Small Business Administration (SBA)when the contracting officer (CO) determines that an award must be made to protect the public interest.

—Clause prescriptions are added at 1819.811–3.

—Subpart 1819.10, Small Business Competitiveness Demonstration Program, is removed in its entirety, to conform to FAR.

—At Subpart 1819.70, the eight percent goal is removed. This is an administrative reporting requirement that does not require regulatory coverage.

—Subpart 1819.71, NASA Rural area small business plan, is removed. NASA is required to create an internal plan addressing this requirement, but there is no need for regulatory coverage.

—Subpart 1819.72, NASA Mentor-Protégé Program, is updated to clarify policy and program requirements, such as indicating the program goal is not only to develop viable suppliers for NASA, but also for other Government and commercial entities, specify that required subcontracting plan cannot be a commercial plan, clarify the office to which applications should be submitted, specify that a protégé many be an active SBIR/STTR or AbilityOne Program participant. Further, sections 1819.7203, Mentor Approval Process, 1819.7204, Protégé Selection, and 1819.7205, Mentor-protégé agreements, are deleted in their entirety because they are not regulatory in nature and are now covered in the NASA Mentor-Protégé Guidance at *http://osbp.nasa.mpp/index.html.* A note about advance payments that was previously under 1819.7205 is retained, renumbered 1819.7203, and cross referenced to FAR subpart 32.4 to clarify that there are not special considerations for Mentor-Protégé entities with respect to advance payments.

—1819.7302(c),(d), and (e) are revised to allow the contracting officer to deviate from certain SBIR/STTR program requirements after coordination with the NASA SBIR Program Manager/Coordinator in accordance with SBA's SBIR Program Directive which can be found at *http://sbir.gov/sites/default/files/sbir_pd_1-8-14_amendments_2-24-14.pdf.*

—Clause 1852.219–11, Special 8(a) Contracting Conditions, and Provision

1852.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, are added to implement NASA's Partnership Agreement with SBA. The provision and clause are currently used under authority of a NASA class deviation, PIC 12–08, dated Nov. 28, 2012, and provide NASA-specific instructions and requirements for 8(a) contracts.

—The clause at 1852.219–75 is retitled as 'Individual Subcontracting Reports' and a requirement is added for contractors to enter goals as a percentage of total contract value as well as a percentage of total subcontract dollars.

—1852.219–76, NASA's eight percent goal is deleted. This is an internal NASA reporting requirement and a clause is not necessary.

—1852.219–79, Mentor Requirements and Evaluation, is revised to advise contractors that their evaluation will include consideration of the extent to which the mentor has contributed to advancing the protégé's technical readiness level.

Part 1823—Environment, Energy and Water Efficiency, Renewable Technologies, Occupational Safety, and Drug-Free Workplace:

—Subpart 1823.10, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, is deleted because E. O. 13423, as implemented in the FAR, now requires contractors to comply with the Agency's environmental management system.

—The prescription at 1823.71 and corresponding clause at 1852.223–71 are clarified to specifically address radio frequency rather than just generic frequency.

Part 1827—Patents, Data, and Copyrights:

—The entire part has been revised and renumbered to conform to the FAR and the recodification of the National Aeronautics and Space Act (Space Act).

—1827.302(a), the second sentence has been removed as it is not necessary. For inventions made under contracts with small businesses and nonprofit organizations, NASA follows FAR 27.302.

—1827.302(b)(2)(v) (formerly at 1827.301(d)) provides clarifying language specifying that under NASA contracts, with entities other than a small business or nonprofit organizations, title to subject inventions may vest in NASA in accordance with its authority under the Space Act.

—1827.302(b)(3) was revised to conform to the language regarding waivers in the Space Act (51 U.S.C. 20135). Additionally, the changes provide clarifying guidance on NASA's requirements for meeting the statutory standard of ''any invention or class of inventions.''

—1827.302(g) is revised to clarify the language, and to reference the legal authority underlying the preference for products resulting from subject inventions to be manufactured substantially in the United States.

—1827.302(k) adds coverage on NASA policy regarding monetary awards for inventions in accordance with 14 CFR 1240.105.

—1827.303(b)(1)(i)(formerly at 1827.303(a)(1)(B)) has been modified to clarify the process for a contracting officer to determine status of a contractor that claims to be a small business concern or nonprofit organization.

—1827.303(b)(1)(iii) adds new Agency instructions on completing FAR 52.227–11(j), as directed by that clause.

—1827.303(b)(7) prescribes use of Alternate V of FAR 52.227–11 when a contractor is directed to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA).

—1827.303(d)(formerly 1827.303–70(d)) reflects changes in identifying installation Patent Representatives.

—1827.304–2(a)(3)adds clarifying guidance on use of NFS clauses when issuing contracts for other agencies. When the funding agency does not specify a patent rights clause to be used, NFS clauses will be used.

—1827.304–3 (formerly at 1827.304–4) clarifies flow down of applicable patent rights clauses in subcontracts.

—Section 1827.404–4(b)(1) clarifies requirements related to release of software to others under NFS clause 1852.227–14.

—1827.404–4(b)(2)(ii)adds open source software release as a basis for granting the contractor's request to assert copyright in software developed under the contract.

—1827.405–4 and 1827.409–70 are revised to address Government property requirements. In accordance with FAR 45.000, the FAR Government-furnished-property provisions do not apply to software and intellectual property. Accordingly, NFS clause 1852.227–88, Government-Furnished Computer Software and Related Technical Data, was added and was modeled, in part, after the Defense Federal Acquisition Regulation Supplement(DFARS) Clause 252.227–7025(c), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

—1827.409(d) is revised to provide consistency and protect the Government's rights and option for deferred ordering of data; it also provides additional guidance on the use of the clause at FAR 52.227–16, Additional Data Requirements.

—Clause 1852.227–11 is renamed and renumbered to conform with FAR.

—Clause 1852.227–14(c)(1)(iv) adds a requirement for contractors to include a Government rights notice in their publications, in order to protect the Government's license in a scientific and technical article, based on or containing data first produced in the performance of the subject contract, and submitted for publication in academic, technical or professional journals, symposia proceedings or similar works. This requirement is modeled after the Department of Energy Acquisition Regulation (DEAR) clause (48 CFR Part 970.5227–2(d)(2)).

Part 1828—Bonds and Insurance:

The following are removed from subpart 1828.1 because no supplementation is required by NASA. FAR coverage on bid guarantees and payment and performance bonds is adequate.

—1828.101, Bid guarantees

—1828.101–70, NASA solicitation provision

—1828.103, Performance and payment bonds and alternatives.

—1828.103–70, Subcontractors performing construction work under non-construction contracts.

—1828.103–71, Solicitation requirements and contract clauses.

—The clause prescription at 1828.311–1 is revised to delete ''must'' and replace it with ''shall'', and to delete ''as prescribed in FAR 28.311–1'' and replace it with ''in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated'', for clarification because FAR 28.311–1 requires use ''in accordance with agency policy.''

—The clause at 1852.228–73, Bid Bond, is deleted because it is redundant. FAR clause 52.228–1 already provides fill-ins for the percent or dollar amount of the bid bond.

Part 1831—Contract Cost Principles and Procedures:

—The prescription at 1831.205–671, Solicitation provision, and the provision at 1852.231–71, Determination of Compensation Reasonableness, are revised to delete the $500,000 threshold and replace it with the ''threshold for obtaining certified cost or pricing data (FAR 15.403–4)'', to conform with the FAR and to ensure that periodic inflationary adjustments made in the FAR also apply to the NFS.

Part 1832—Contract Financing:

—The prescription at 1832.705–270(a), NASA clauses for limitation of cost or funds, is revised to require the clause be included in all fixed-price, incrementally-funded contracts and task orders, rather than just those for research and development. All fixed-price, incrementally-funded contracts should include the requirements at 1852.232–77.

—1832.1110, Solicitation provision and contract clauses, is revised to indicate that NASA utilizes the System for Award Management (SAM) and it is not necessary for contractors to register separately with NASA for electronic funds transfer.

Part 1837—Service Contracting:

—Coverage on access to sensitive information is deleted at 1837.203 as well as the clauses at 1852.237–72, Access to Sensitive Information, 1852.237–73, Release of Sensitive Information.

The NFS addresses protection and handling of sensitive information in 1827.

Part 1842—Contract Administration and Audit Services:

—Because coverage addressing delegation to Contracting Officer's Representatives (CORs) is being relocated to NFS Part 1801 to conform with the FAR, the prescription at 1842.271 and the clause at 1852.242–70, Technical Direction, are proposed for deletion from 1842. These sections will be proposed for addition to 1801 with the next NFS rewrite rule, #3 in the series.

PART 1849—Terminations

—The prescription at 1849.505–70, NASA contract clause, and the clause at 1852.249.72, Termination (Utilities), are deleted because the FAR termination clauses do not require supplementation by NASA.

B. 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 proposed rule is not a ''significant regulatory action'' under section 3(f) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA does not expect this proposed 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 it mainly clarifies or updates existing regulations. In several instances, this proposed rule deletes existing requirements which eases the regulatory burden on all entities, minimizing the number of resources used to collect the data and report it to the government.

D. Paperwork Reduction Act

This proposed rule contains no new 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). Patent and copyright reports required by NFS Part 1827 are covered under existing, OMB-approved collection 2700–0052.

List of Subjects in 48 CFR 1809, 1815, 1816, 1817, 1819, 1823, 1827, 1828, 1831, 1832, 1837, 1842, 1849, and 1852

Government procurement.

Cynthia Boots,

Alternate Federal Register Liaison.

Accordingly, 48 CFR Parts 1809, 1815, 1816, 1817, 1819, 1823, 1827, 1828, 1831, 1832, 1837, 1842, 1849, and 1852 are proposed to be amended as follows:

PART 1809—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for part 1809 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1809.206–70 & 1809.206.71 [Removed]

■ 2. Sections 1809.206–70 and 1809.206–71 are removed.

Subpart 1809.6 [Removed]

■ 3. Subpart 1809.6 Contractor Team Arrangements is removed in its entirety.

Subpart 1815.4—Contract Pricing

■ 4. The authority citation for part 1815 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1815.403 [Amended]

■ 5. In section 1815.403, the section heading is amended by adding the word ''certified'' between the words ''Obtaining'' and ''cost''.

■ 6. Revise section 1815.403–170 to read as follows:

1815.403–170 Waivers of certified cost or pricing data.

(a) NASA has waived the requirement for the submission of certified cost or pricing data when contracting with the Canadian Commercial Corporation (CCC). This waiver applies to the CCC and its subcontractors. The CCC will provide assurance of the fairness and reasonableness of the proposed price. This assurance should be relied on; however, contracting officers shall ensure that the appropriate level of data other than certified cost or pricing data is submitted by subcontractors to support any required proposal analysis, including a technical analysis and a cost realism analysis. The CCC also will provide for follow-up audit activity to ensure that any excess profits are found and refunded to NASA.

(b) NASA has waived the requirement for the submission of certified cost or pricing data when contracting for Small Business Innovation Research (SBIR) program Phase II contracts. However, contracting officers shall ensure that the appropriate level of data other than certified cost or pricing data is submitted to determine price reasonableness and cost realism.

PART 1816—TYPES OF CONTRACTS

■ 7. The authority citation for part 1816 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1816.307 [Amended]

■ 8. In section 1816.307, remove the last sentence.

■ 9. Section 1816.402–270 is revised to read as follows:

1816.402–270 NASA technical performance incentives.

(a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts that are based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial item procedures of FAR Part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than $25 million. Any exception to this requirement shall be approved in writing by the head of the contracting activity. Performance incentives may be included in supply and service contracts valued under $25 million, acquired under procedures other than Part 12, at the discretion of the contracting officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on performance after acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient performance requirement. This standard performance level is normally the contract's target level of performance. No performance incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive or negative, and its associated unit of measurement should reflect the value to the Government of that level of performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once performance exceeds the standard, the

contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable supply or service lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

* * * * *

1816.405–270 [Amended]

■ 10. In section 1816.405–270, paragraph (a) and the first sentence of paragraph (b) are removed and paragraphs (b), (c), and (d) are renumbered as (a), (b), and (c).

1816.405–272 [Amended]

■ 11. In section 1816.405–272(b), remove the word ''should'' in the last sentence and replace it with ''shall''.

1816.405–273 [Amended]

■ 12. In section 1816.405–273(a), remove the word ''often'' in the first sentence.

■ 13. In section 1816.405–274 (e)(3), add the word ''fee'' between the words ''award'' and ''shall'' in the second sentence.

■ 14. In section 1816.405–274, paragraph (g)(1) is revised to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business concerns, and Historically Black Colleges and Universities—Minority Institutions (HBCU/MIs). The evaluation should consider both goals as a percentage of subcontracting dollars as well as a percentage of the total contract value.

(2) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(3) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) and (g)(2) shall be significant (up to 10 percent of available award fee) and shall be separate from all other factors.

* * * * *

■ 15. In section 1816.405–275, paragraph (a) is revised to read as follows:

1816.405–275 Award fee evaluation rating.

(a) All award fee contracts shall utilize the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in FAR 16.401(e)(3)(iv). Contracting officers may supplement these descriptions with more specifics relative to their procurement but they cannot alter or delete the FAR adjectival rating descriptions.

* * *

1816.405–274 [Amended]

■ 16. In section 1816.405–275 (b), the parenthetical reference at the end of the first sentence is amended to read ''(see FAR 16401(e)(3)(iv)).''

■ 17. In section 1816.406–70(f), the last sentence is revised to read

1816.406–70 NASA contract clauses.

* * * * *

(f)* * * A clause substantially as stated at 1852.216–88 may be included in lower dollar value supply or service contracts at the discretion of the contracting officer.

PART 1817—SPECIAL CONTRACTING METHODS

■ 18. The authority citation for part 1817 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

Subpart 1817.71 [Removed]

■ 19. Subpart 1817.71 is removed in its entirety.

Subpart 1817.73 [Redesignated]

■ 20. Subpart 1817.73 is redesignated as Subpart 1817.70.

PART 1819—SMALL BUSINESS PROGRAMS

■ 21. The authority citation for part 1819 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

■ 22. In section 1819.201, the last sentence in paragraph is (a)(i) and paragraph (a)(ii) are revised to read as follows:

1819.201 General Policy.

(a)(i) * * * The participation of these entities is emphasized in high-technology areas where they have had low involvement level.

(a)(ii) NASA biennially negotiates Agency small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has an annual goal of five percent for prime and subcontract awards to small disadvantaged businesses (SDBs) and women-owned small businesses (WOSBs), and a three percent goal for HubZone and service-disabled, veteran-owned small business concerns.

* * * * *

■ 23. Section 1819.302 is revised to read as follows:

1819.302 Protesting a small business representation or rerepresentation.

(h) When the contracting officer determines in writing that an award must be made to protect the public interest, the contracting officer shall notify the Headquarters Office of Procurement, Program Operations Division, the Headquarters Office of Small Business Programs, and the SBA.

■ 24. In section 1819.708–70, paragraph (b) is revised to read as follows:

1819.708–70 NASA solicitation provision and contract clauses.

* * * * *

(b) The contracting officer shall insert the clause at 1852.219–75, Individual Subcontracts Reporting, in solicitations and contracts containing the clause at FAR 52.219–9, except for contracts covered by an approved commercial subcontracting plan.

■ 25. Section 1819.811–3 is added to read as follows:

1819.811–3 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–11, Special 8(a) Contract Conditions, in contracts and purchase orders awarded directly to the 8(a) contractor when the acquisition is accomplished using the procedures of FAR *19.811–1*(a) and (b).

(d) The contracting officer shall insert the clause at 1852.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of FAR *19.805.*

(1) The clause at 1852.219–18 with Alternate I to the FAR clause at 52.219–18 will be used when competition is to

be limited to 8(a) concerns within one or more specific SBA districts pursuant to *19.804–2.*

(2) The clause at 1852.219–18 with Alternate II to the FAR clause at 52.219–18 will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see FAR *19.102*(f)(4) and (5)).

(e) Follow the prescription at FAR 19.811–3(e).

Subparts 1819.10, 1819.70, & 1819.71 [Removed and reserved]

■ 26. Subparts 1819.10, 1819.70, and 1819.71 are removed and reserved.

■ 27. Section 1819.7201(a)(1) is revised to read as follow:

1819.7201 Scope of subpart.

(a) * * *

(1) Provide incentives to NASA contractors, performing under at least one active, approved subcontracting plan negotiated with NASA, to assist protégés in enhancing their capabilities to perform as viable NASA contractors, other Government contractors, and commercial suppliers on contract and subcontract requirements.

* * * * *

■ 28. Sections 1819.7202, 1819.7203, 1819.7204, and 1819.7205 are revised to read as follows:

1819.7202 Eligibility.

(a) Eligibility of Mentors: To be eligible as a mentor, an entity must be—

(1) A large prime contractor performing with at least one approved subcontracting plan, other than a commercial plan, negotiated with NASA, pursuant to FAR Subpart 19.7, the Small Business Subcontracting Program. A contractor may apply to become a mentor if they currently are not performing under a NASA contract as long as they are currently performing another Federal agency contract with an approved subcontracting plan. The NASA mentor-protégé agreement, however, will not be approved until the mentor company is performing under a NASA contract with an approved subcontracting plan; and

(2) Eligible for receipt of Government contracts. An entity will not be approved for participation in the Program if, at the time of submission of the application to the Headquarters Office of Small Business Programs, the entity is currently debarred or suspended from contracting with the Federal Government pursuant to FAR Subpart 9.4, Debarment, Suspension, and Ineligibility.

(b) Eligibility of Protégés: To be eligible to participate as a protégé, an entity must be—

(1) Classified as a Small Disadvantaged Business (SDB), a small disadvantaged business, a women-owned small business, an historically underutilized business zone concern, a veteran-owned, service-disabled small business, an historically black college and university, or a minority institution. The protégé entity may also be an active NASA SBIR/STTR Phase II company, or an entity participating in the AbilityOne program.

(2) Eligible for the award of Federal contracts; and

(3) A small business according to the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) code that represents the contemplated supplies or services to be provided by the protégé to the mentor.

(c) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (b) of this seciton. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements.

1819.7203 Mentor-protégé advance payments.

If advance payments are contemplated, the mentor must first have the advance payments approved the contracting officer in accordance with FAR Subpart 32.4, Advance Payments for Non-commercial items.

1819.7204 Agreement submission and approval process.

(a) To participate in the Program, entities approved as mentors in accordance with 1819.7203, will submit a complete agreement package to the Contracting Officer who will forward the completed agreement package to the cognizant Small Business Specialist at the NASA Center. The submission package must include the following—

(1) A signed mentor-protégé agreement;

(2) A signed protégé application;

(3) The estimated cost of the technical assistance to be provided, broken out per year and per task, in a separate cost volume; and

(4) Additional information as may be requested by the NASA OSBP; and

(5) A signed letter of endorsement of the agreement by the contracting officer and the contracting officer representative.

(b) The mentor-protégé agreement must be approved by the Assistant Administrator, NASA OSBP, prior to the mentor incurring eligible costs for developmental assistance provided to the protégé.

(c) The cognizant NASA center will issue a contract modification, if justified, prior to the mentor incurring costs for developmental assistance to the protégé.

1819.7205 Award Fee Pilot Program.

(a) Mentors will be eligible to earn a separate award fee associated with the provision of developmental assistance to NASA SBIR/STTR Phase II Protégés only. The award fee will be assessed at the end of the Mentor-Protégé agreement period.

(b) The overall developmental assistance performance of NASA contractors, in promoting the use of small businesses as subcontractors, will be a required evaluation factor in award fee plans.

(c) Evaluation criteria to determine the award fee should include:

(1) Benefit of the agreement to NASA;

(2) Active participation in the Program;

(3) The amount and quality of developmental assistance provided;

(4) Subcontracts awarded to small businesses and others;

(5) Success of the protégés in increasing their business as a result of receiving developmental assistance; and

(6) Accomplishment of any other activity as related to the mentor-protégé relationship.

(d) The Award Fee Pilot Program is an addition to the credit agreement. Participants that are eligible for award fee may also receive credit under their individual contract's award fee plan.

1819.7206, 1819.7207, 1819.7208, 1819.7209, 1819,7210, and 1819.7211 [Removed and reserved]

■ 29. Sections 1819.7206, 1819.7207, 1819.7208, 1819.7209, 1819.7210, and 1819.7211 are removed and reserved.

■ 30. In section 1819.7212, paragraph (e) is revised to read as follows:

1819.7212 Reporting requirements.

* * * * *

(e) The protégé semiannual report required by paragraph (d) must be submitted separately from the Mentor's semiannual report submission.

* * * * *

1819.7213 and 1819.7214 [Removed and reserved]

■ 31. Remove and reserve Sections 1819.7213 and 1819.7214.

1819.7301 [Amended]

■ 32. In section 1819.7301, add ''‚as amended.'' at the end of the first sentence.

■ 33. Amend section 1819.7302 by:
■ a. Adding the sentences ''Occasionally, deviations from this requirement may be approved. Any deviations from this requirement shall be approved in writing by the contracting officer after coordination with the Agency SBIR Program Manager/Coordinator '' at the end of paragraphs (c), (d) and (e);
■ b. Revise paragraph (f) to read as follows:

1819.7302 NASA contract clauses.

* * * * *

(f) Contracting officers shall insert the clause at 1852.219–85, Conditions for Final Payment—SBIR and STTR Contracts, in all Phase I and Phase II contract awarded under the Small Business Technology Transfer (STTR) Program and the Small Business Innovation Research (SBIR) Program established pursuant to Pub. L. 97–219 (The Small Business Innovation Development Act of 1982.)

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 34. The authority citation for part 1832 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1823.10 [Removed]

■ 35. Subpart 1823.10 is removed.
■ 36. In Subpart 1823.71, the subpart heading and section 1823.7101 are revised to read as follows:

1823.71 Authorization for Radio Frequency Use

1823.7101 Contract clause.

The contracting officer shall insert the clause at *1852.223–71*, Authorization for radio Frequency Use, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency equipment authorization is required.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

■ 37–38. Part 1827 is revised to read as follows:

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Sec.
1827.000 Scope of part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.
1827.302 Policy.
1827.303 Contract clauses.
1827.304 Procedures.
1827.304–1 General.
1827.304–2 Contracts placed by or for other Government agencies.
1827.304–3 Subcontracts.
1827.304–4 Appeals.
1827.305 Administration of the patent rights clauses.
1827.305–3 Securing invention rights acquired by the Government.

Subpart 1827.4—Rights In Data And Copyrights

1827.404 Basic rights in data clause.
1827.404–4 Contractor's release, publication, and use of data.
1827.409 Solicitation provisions and contract clauses.

Authority: 51 U.S.C. 20113(a).

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and contract clauses pertaining to patents, data, and copyrights. The provisions of *FAR Part 27* apply to NASA acquisitions unless specifically excepted in this part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

As used in this subpart—

Administrator means the Administrator of NASA or a duly authorized representative.

Reportable item means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectable under Title 17 of the United States Code.

Subject invention, in lieu of the definition in *FAR 27.301*, means any reportable item that is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

1827.302 Policy.

(a) *Introduction.* NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation of related property rights is based upon Section 20135 of the National Aeronautics and Space Act (51 U.S.C. 20135) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(b)(4) of Executive Order 12591. NASA contractors subject to Section 20135 of the Act shall ensure the prompt reporting of reportable items in order to protect the Government's interest and to provide the widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) *Contractor right to elect title.*

(1) For NASA contracts, the contractor right to elect title under the FAR only applies to contracts with small businesses and nonprofit organizations. For other business entities, see paragraph (2)(v);

(2)(v) Under any NASA contract with other than a small business or nonprofit organization (i.e., contracts subject to Section 20135(b) of the Act), title to subject inventions vests in NASA when the determinations of Section 20135(b)(1)(A) or (b)(1)(B) have been made. The Administrator may grant the contractor a waiver of title in accordance with 14 CFR Part 1245.

(3) *Contractor petitions for waiver of title.* The Administrator may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or which may be made in the performance of NASA contracts with other than a small business firm or a nonprofit organization if the Administrator determines that the interests of the United States will be served. The procedures and instructions for contractors to submit petitions for waiver of rights in subject inventions are provided in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, *http://www.gpo.gov/fdsys/pkg/CFR-2012-title14-vol5/pdf/CFR-2012-title14-vol5-part1245.pdf.* Waiver may be requested in advance of contract award for any subject invention or class of subject inventions or during contract performance for individually identified

subject inventions reported under the contract. For individual identified subject inventions, the petition shall identify each invention with particularity (e.g., by NASA's assigned number to the Disclosure of Invention and New Technology report or by title and inventorship). For advance waivers, the petition shall identify the invention or class of inventions that the Contractor believes will be made under the contract and for which waiver is being requested. To meet the statutory standard of ''any invention or class of inventions,'' the petition must be directed to a single invention or to inventions directed to a particular process, machine, manufacture, or composition of matter, or to a narrowly-drawn, focused area of technology. When a waiver of title is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver, such as requirements for reporting and filing patent applications on waived inventions, are provided in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, and the Instrument of Waiver executed under those Regulations.

(c) *Government license.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of title has been granted, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(e) *Utilization reports.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, and the Instrument of Waiver executed under those Regulations.

(f) *March-in rights.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, and the Instrument of Waiver executed under those Regulations.

(g) *Preference for United States industry.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or a nonprofit organization and for which waiver of title has been granted, waiver of the requirement for substantial manufacture in the United States shall be in accordance with Title 35 of the United States Code, Section 204.

(i) *Minimum rights to contractor.*

(1) For NASA contracts with other than a small business firm or a nonprofit organization, where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with the NASA Patent Waiver Regulations, 14 CFR 1245.108, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The procedures for revoking or modifying the license to a contractor that is other than a small business firm or a nonprofit organization are described in 14 CFR 1245.108.

(k) *Awards.* It is the policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board in accordance with 14 CFR Part 1240, Subpart 1, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

1827.303 Solicitation Provisions and Contract clauses.

(a)(1) The contracting officer shall insert the provision at *1852.227–84*, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization.

(b)(1) When the clause at *FAR 52.227–11* is included in a solicitation or contract, it shall be modified as set forth at *1852.227–11*.

(i) To qualify for the clause at *FAR 52.227–11*, a prospective contractor shall be required to represent itself as either a small business firm or a nonprofit organization. If the contracting officer has reason to question the size or nonprofit status of the prospective contractor, the contracting officer will follow the procedures at FAR 27.304–1(a).

(iii) The contracting officer shall complete paragraph (j) of the clause at FAR 52.227–11 with the following: Communications and information submissions required by this clause will be made to the individuals identified in the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative.

(iv) See also paragraph (d)(3) of this section.

(6) Alternate IV to 52.227–11 is not used in NASA contracts. See instead 1827.303(b)(1).

(7) The contracting officer shall consult with the center patent or intellectual property counsel regarding the use of Alternate V in contracts for the performance of services at a NASA installation when a contractor is directed to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a. Alternate V may be included in, or added to, the contract when it is contemplated that a Contractor will be directed to fulfill NASA's obligations under a CRADA, but should be added prior to the contractor performing work under the CRADA.

(d)(1) The contracting officer shall insert the clause at 1852.227–70, New Technology-Other than a Small Business Firm or Nonprofit Organization, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 21035(b) of the Act), if the contract is to be performed in the United States, and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not all inclusive):

(i) Conduct of basic or applied research.

(ii) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(iii) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(iv) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or

could be made suitable for a NASA objective.

(v) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(vi) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in paragraphs (i) through (v) of this section.

(2) The contracting officer shall insert the provision at *1852.227–71*, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at *1852.227–70*, New Technology—Other than a Small Business Firm or Nonprofit Organization (see subparagraph (1) of this paragraph (d)).

(3) The contracting officer shall insert the clause at *1852.227–72*, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at *FAR 52.227–11*, Patent Rights—Ownership by the Contractor, or 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see subparagraph (1) of this paragraph (d)). It may also be inserted, upon consultation with the center patent or intellectual property counsel, in solicitations and contracts using another patent rights clause. The center New Technology and Patent Representatives are identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html.*

(e)(1) When work is to be performed outside the United States by contractors that are not domestic firms, the clause at *1852.227–85*, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the center patent or intellectual property counsel, that the objectives of the contract would be better served by use of the clause at *FAR 52.227–13*, Patent Rights—Ownership by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304–3 regarding subcontracts with U.S. firms.)

(2) When one of the conditions in FAR 27.303(e)(1)(i) through (iv) is met, the contracting officer shall consult with the center patent or intellectual property counsel to determine the appropriate clause.

1827.304 Procedures.

1827.304–1 General.

(b)(1) *Exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, shall apply.

(c) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)(3)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

(d) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* For contracts with other than a small business firm or a nonprofit organization, revocation or modification of the contractor's license rights in subject inventions made and reported under the contract shall be in accordance with 14 CFR 1245.108 (see 1827.302(i)(2)).

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Agency Counsel for Intellectual Property (ACIP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at *1852.227–72* and forwarded, with recommendation of the Patent Representative, to the ACIP for approval.

1827.304–2 Contracts placed by or for other Government agencies.

(a)(3)(i) When a contract is placed for another agency with a small business or nonprofit organization and the agency does not request the use of a specific patent rights clause, the contracting officer shall use the clause at *FAR 52.227–11*, Patent Rights—Ownership by the Contractor as modified by 1852.227–11 (see 1827.303(b)(1)).

(ii) When a contract is placed for another agency with other than a small business or nonprofit organization, the contracting officer, in accordance with Section 20135 of the Act, shall use the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization (see 1827.303(d)(1)).

(iii) When work is to be performed outside the United States by contractors that are not domestic firms, the contracting officer shall use one of the clause described in 1827.303(e)(1).

1827.304–3 Subcontracts.

(a) Unless otherwise authorized or directed by the contracting officer, contractors awarding subcontracts at any tier shall select and include in the subcontracts one of the clauses identified in subparagraphs (a)(1) or (2) of this section. At all tiers, the applicable clause identified below shall be modified to identify the parties as follows: References to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(1) The clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, shall be used in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303(d)(1).

(2) The clause at *FAR 52.227–11*, Patent Rights—Ownership by the Contractor, modified by 1852.227–11 (see 1827.303(b)(1)), shall be used in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

1827.304–4 Appeals.

FAR 27.304–4 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1.

1827.305–3 Securing invention rights acquired by the Government.

When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, a determination of title is to be made in accordance with Section 20135(b) of the Act (51 U.S.C. 20135(b)),

and reflected in appropriate instruments executed by NASA Administrator and forwarded to the contractor by the contracting officer.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.

1827.404–4 Contractor's release, publication, and use of data.

(b)(1) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227–14, Rights in Data—General, is modified by *1852.227–14* (see 1827.409(b)(1)), the contractor shall not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. The prohibition on ''release to others'' does not prohibit release to another Federal Agency for its use or its contractors' use, as long as any such release is consistent with any restrictive markings on the software. Any restrictive markings on the software shall take precedence over the aforementioned release. Any such release to a Federal Agency in accordance with this paragraph shall limit use to the Federal Agency or its contractors for Government purposes only.

(2) The contracting officer may, in consultation with the center patent or intellectual property counsel, grant the contractor permission to assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract if:

(i) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that line, either directly itself or through a licensee;

(ii) The contractor has identified an existing open source software project or proposes a new one and states a positive intention of incorporating identified computer software first produced under the contract into that project, or has been instructed by the Agency to incorporate software first produced under the contract into an open source software project or otherwise release the software as open source software;

(iii) The contractor has made, or will be required to make, substantial contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(iv) The concurrence of the Agency Counsel for Intellectual Property, or designee, is obtained.

(c)(1) The contractor's request for permission in accordance with 1827.404–4(b) may be made either before contract award or during contract performance.

(2)(i) If the basis for permitting the assertion under 1827.404–4(b)(2) is subsection (i), then the permission shall be granted by a contract modification prepared by the contracting officer in consultation with the Center patent or intellectual property counsel that contains appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a specified reasonable time, with contingencies enabling the Government to obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(3) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at *FAR 52.227–14* and without any obligation of confidentiality on the part of the Government unless, in accordance with 1827.404–4(b)(2)(iii), the contributions of the Contractor are considered ''substantial'' for the purposes of *FAR 27.408* (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(d) If the contractor has not been granted permission to assert claim to copyright, paragraph (d)(4)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee. The contracting officer may, in consultation with the center patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

1827.409 Solicitation provisions and contract clauses.

(b)(1) When the clause at *FAR 52.227–14*, Rights in Data—General, is included in a solicitation or contract, it shall be modified as set forth at *1852.227–14*. In contracts for basic or applied research to be performed solely by universities and colleges, the contracting officer shall consult with the center patent or intellectual property counsel regarding the addition of subparagraph (4) as set forth at *1852.227–14* to paragraph (d) of the clause at *FAR 52.227–14* and they will consider the guidance provided at FAR 27.404–4.

(2) The contracting officer, with the concurrence of the center patent or intellectual property counsel, is the approval authority for use of Alternate I of the clause at FAR 52.227–14. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(3) The contracting officer shall review the disclosure purposes listed in *FAR 27.404–2(c)(1)(i)–(v)* and, in consultation with the center patent or intellectual property counsel, determine which disclosure purposes apply based on the nature of the acquisition, and add them to paragraph (g)(3) of Alternate II of the clause at *FAR 52.227–14*, Rights in Data—General. If none apply, the CO shall insert ''none''. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the center patent or intellectual property counsel.

(4) The contracting officer shall consult with the center patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III of the clause at *FAR 52.227–14*, Rights in Data—General. Where it is impractical to actually modify the notice of Alternate III, such greater or lesser rights may be indicated by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(5) The contracting officer, with the concurrence of the center patent or intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic or applied research to be performed solely by a college or

university (but not for the management or operation of Government facilities). See the guidance at FAR 27.404–3(a)(3).

(d) The clause at 52.227–16, Additional Data Requirements, shall be used in all solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less), unless after consultation between the Contracting Officer and the center patent or intellectual property counsel a determination is made otherwise.

(h) Normally the clause at 52.227–20, Rights in Data—SBIR Program, is the only data rights clause used in SBIR contracts. However, if during the performance of an SBIR contract (Phase I, Phase II, or Phase III) the need arises for NASA to obtain delivery of limited rights data or restricted computer software as defined in the clause at *FAR 52.227–20*, and the contractor agrees to such delivery, the limited rights data or restricted computer software may be acquired by modification of the contract (for example, by adding the clause at FAR 52.227–14 with any appropriate Alternates and making it applicable only to the limited rights data or restricted computer software to be delivered), using the rights and related restrictions as set forth in *FAR 27.404–2* as a guide.

(m)(1) The contracting officer, shall consult with the center patent or intellectual property counsel and the installation software release authority to determine when to use the clause at *1852.227–88,* Government-furnished computer software and related technical data.

(2) The clause may be included in, or added to, the contract when it is contemplated that computer software and related technical data will be provided to the contractor as Government-furnished information for use in performing the contract.

PART 1828—BONDS AND INSURANCE

■ 39. The authority citation for part 1828 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

Subpart 1828.1 [Removed]

■ 40. Remove Subpart 1828.1.

■ 41. In section 1828.311–1, the introductory text is revised to read as follows:

1828.311–1 Contract clause.

The contracting officer shall insert the clause at *FAR 52.228–7*, Insurance-Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless—

* * * * *

PART 1831—CONTRACTOR COST PRINCIPLES AND PROCEDURES

■ 42. The authority citation for part 1831 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1831.205–671 [Amended]

■ 43. Section 1831.205–671 is amended by removing the phrase ''in excess of $500,000'' and replacing it with ''expected to exceed the threshold for requiring certified cost and pricing data as set forth in FAR 15.403–4.''

PART 1832—CONTRACT FINANCING

■ 44. The authority citation for part 1832 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

■ 45. Section 1832.705–270, paragraph (a) is revised to read as follows:

1832.705–270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at *1852.232–77,* Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price, incrementally-funded contracts or task orders.

* * * * *

■ 46. In section 1832.1110, remove and reserve paragraph (a).

PART 1837—SERVICE CONTRACTING

■ 47. The authority citation for part 1837 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1837.203-70, 1837.203-71, 1837.203-72 [Removed]

■ 48. Sections 1837.203–70, 1837.203–71, and 1837.203–72 are removed.

PART 1842—CONTRACT ADMINISTRATION

■ 49. The authority citation for part 1842 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

■ 50. Section 1842.271 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 51. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a).

1852.209-72 [Removed and reserved]

■ 52. Section 1852.209–72 is removed and reserved.

1852.216-88 [Amended]

■ 53. Section 1852.216–88 is amended as follow:

■ a. remove the words ''hardware'' and ''delivered'' in paragraph (a);

■ b. remove the word ''hardware'' and the second sentence in subparagraph (a)(1);

■ c. remove the word ''hardware'' in paragraph (c);

■ d. remove the word ''hardware'' in paragraph (d);

■ e. remove the word ''hardware'' in paragraph (f); and

■ f. add the word ''descriptor'' in paragraph (g)(1) between ''numbers(s)'' and ''and/or nomenclature''.

1852.217-70 [Removed and reserved]

■ 54. Remove and reserve section 1852.217–70.

1852.217-71 [Amended]

■ 55. In the introductory text in section 1852.217–71, the reference 1817.7302(a) is revised to read as 1817.7002(a), and the last sentence in paragraph (e) is removed.

■ 56. Sections 1852.219–11 and 1852.219–18 are added to read as follows:

1852.219–11 Special 8(a) Contract Conditions.

As prescribed in 1819.811–3(a), insert the following clause in lieu of 52.219–11:

Special 8(a) Contract Conditions

(XX/XX)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Partnership Agreement between the Small Business Administration (SBA) and the National Aeronautics and Space Administration. Accordingly, the SBA is not a signatory to this contract. SBA does retain responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

_____

_____

_____

_____

(*insert name and address of cognizant SBA office*)

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract; provided, however, that the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity

shall also coordinate with the SBA prior to processing any novation agreement. The contracting activity may assign contract administration functions to a contract administration office.

(c) The contractor agrees to notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Public Law 100–656, transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(End of clause)

1852.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 1819.811–3(d), insert the following clause:

Notification of Competition Limited to Eligible 8(a) Concerns

(XX/XX)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____[*insert name of SBA's contractor*] will notify the _____ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

1852.219-74 [Removed and reserved]

■ 57. Remove and reserve section 1852.219–74.

■ 58. Section 1852.219–75 is revised to read as follows:

1852.219–75 Individual Subcontracting Reports.

As prescribed in 1819.708–70(b), insert the following clause:

Individual Subcontracting Reports

(XX/XX)

When submitting Individual Subcontracting Reports in eSRS in accordance with FAR 52.219–9(l)(1), the contractor shall enter goals as a percentage of total contract value as well as a percentage of total subcontract dollars.

(End of clause)

1852.219-76 [Removed and reserved]

■ 59. Remove and reserve section 1852.219–76.

1852.219-77 [Amended]

■ 60. In section 1852.219–77, (MAY 2009) is removed and (XX/XX) is added in its place, and remove the word ''certified'' in the second sentence of paragraph (b)(2).

■ 61. Section 1852.219–79 is amended as follows:

■ a. The words (MAY 200) are removed and (XX/XX) is added in its place,

■ b. In the second sentence of paragraph (a), ''NASA SBIR'' is revised to read ''NASA SBIR/STTR''.

■ c. Add paragraph (b)(5) to read as follows:

1852.219–79 [AGENCY TO INSERT HEADER]

* * * * *

(b) * * *

(5) To what extent the mentor contributed to advancing the protégé's technical readiness level.

■ 62. Section 1852.223–71 is revised to read as follows:

1852.223–71 Authorization for Radio Frequency Use.

As prescribed in *1823.7101,* insert the following clause:

Authorization for Radio Frequency Use

(XX/XX)

(a) The contractor or subcontractor shall obtain equipment authorization of use of radio frequencies required in support of this contract following the procedures in NPR 2570.1, NASA Radio Frequency (RF) Spectrum Management Manual.

(b) For any experimental, developmental, or operational equipment for which the appropriate equipment frequency authorization has not been made, the Contractor or subcontractor shall provide the technical and operating characteristics of the proposed electromagnetic radiating device to the NASA Center Facility Spectrum Manager during the initial planning, experimental, or developmental phase of contractual performance.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223-73 [Amended]

■ 63. Section 1852.223–73 is amended as follows:

■ a. Remove (NOVEMBER 2004) and add (DATE) in its place.

■ b. In paragraph (a), the reference ''NPR 8715.3'' is revised to read ''NASA General Safety Program Requirements Manual, Appendix E''.

■ c. In Alternate, the reference ''NPR 8715.3'' is revised to read ''NASA General Safety Program Requirements Manual, Appendix E''.

■ 64. Sections 1852.227–11 through 1852.227–87 are revised and section 1852.227–88 is added to read as follows:

1852.227–11 Patent Rights—Ownership by the Contractor (DATE).

As prescribed at 1827.303(b)(1), modify the clause at *FAR 52.227–11* by: (1) Adding the following subparagraphs (5) and (6) to paragraph (c) of the basic clause; (2) by adding the following subparagraph (iii) to paragraph (e)(1) of the basic clause; (3) by using the following paragraph (j) in lieu of paragraph (j) of the basic clause; and (4) by using the following subparagraph (2) in lieu of subparagraph (k)(2) of the basic clause:

(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov.*

(6) In addition to the above, the Contractor shall provide the New Technology Representative identified in this contract at 1852.227–72 the following:

(i) An interim new technology summary report every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, listing all subject inventions required to be disclosed during the period or certifying that there were none.

(ii) A final new technology summary report, within 3 months after completion of the contracted work,

listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(End of addition)

(iii) The Contractor shall, through employee agreements or other suitable Contractor policy, require that its employees ''will assign and do hereby assign'' to the Contractor all right, title, and interest in any subject invention under this Contract.

(End of addition)

(j) For the purposes of this clause, communications between the Contractor and the Government shall be as specified in the NASA FAR Supplement at 1852.227–72, Designation of New Technology Representative and Patent Representative.

(End of addition)

(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology—Other than a Small Business Firm or Nonprofit Organization, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization. At all tiers, the New Technology—Other than a Small Business Firm or Nonprofit Organization clause shall be modified to identify the parties as follows: References to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(End of substitution)

1852.227–14 Rights in Data—General (DATE).

As prescribed in 1827.409(b)(1), modify the clause at FAR 52.227–14 by: (1) Adding the following subparagraph (iv) to paragraph (c)(1) of the basic clause; (2) by adding the following provision to the end of Alternate IV if used in lieu of paragraph (c)(1) of the basic clause; and (3) by adding subparagraph (4) to paragraph (d) of the basic clause:

(iv) The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings or similar works with a notice, similar in all material respects to the following, on the cover or first page of the article, reflecting the Government's non-exclusive worldwide license in the copyright.

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(End of Notice)

(End of addition)

The contractor shall mark each scientific and technical article based on or containing data first produced in the performance of this contract and submitted for publication in academic, technical or professional journals, symposia proceedings or similar works with a notice, similar in all material respects to the following, on the cover or first page of the article, reflecting the Government's non-exclusive worldwide license in the copyright.

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(End of Notice)

(End of addition)

(4)(i) The Contractor agrees not to assert claim to copyright, publish or release to others any computer software first produced in the performance of this contract unless the Contracting Officer authorizes through a contract modification.

(ii) The prohibition on ''release to others'', as set forth in (d)(4)(i), does not prohibit release to another Federal Agency for its use or its contractors' use, as long as any such release is consistent with any restrictive markings on the software. Any restrictive markings on the software shall take precedence over the aforementioned release. Any release to a Federal Agency shall limit use to the Federal Agency or its contractors for Government purposes only. Any other release shall require the Contracting Officer's prior written permission.

(iii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(4)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, a claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(End of addition)

1852.227–70 New Technology—Other Than a Small Business Firm or Nonprofit Organization.

As prescribed in 1827.303(d)(1), insert the following clause:

New Technology

(XX/XX)

(a) Definitions. As used in this clause—

Administrator means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Made means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under

such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectable under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

Small business firm means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the criteria and size standard adopted in the FAR Subpart 2.1 definitions for ''small business concern'' and for ''small business subcontractor'' will be used.)

Subject invention means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights.*

(1) *Presumption of title.*

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the National Aeronautics and Space Act (51 U.S.C. 20135(b)) (hereinafter ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item in accordance with paragraph (e)(2) of this clause the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver as described in paragraph (b)(3) of this clause, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.*

(i) Section 20135(g) of the Act provides for the promulgation of regulations by which the Administrator may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1)(A) or (1)(B) of Section 20135(b) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, provide procedures for the Contractor to submit petitions (requests) for waiver of rights and guidance for NASA in acting on petitions for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, the Contractor may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any invention or class of inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.*

(1) With respect to each subject invention for which a waiver of rights has been granted, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention in which the Government has title and in any resulting patent, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. The Contractor's license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revoking or modifying the Contractor's license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) *Contractor's obligations.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose in writing each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology-Other than a Small Business Firm or Nonprofit Organization clause or within six months after the Contractor becomes aware that a reportable item has been made, whichever is earlier, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The

disclosure to the agency shall identify the inventor(s) or innovator(s) and this contract under which the reportable item was made. It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, sale or offer for sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any sale, offer for sale, or public use planned by the Contractor for such invention.

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (including computer software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site *http://invention.nasa.gov.*

(4) The Contractor shall furnish the Contracting Officer the following:

(i) Interim new technology summary reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions).

(ii) A final new technology summary report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(5) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(6) The Contractor agrees, subject to paragraph 27.302(j) of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contracting Officer may require the Contractor to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim new technology summary reports pursuant to paragraph (e)(4)(i) of this clause or a final new technology summary report pursuant to paragraph (e)(4)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final new technology summary report pursuant to paragraph (e)(4)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.*

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; or

(ii) Include the clause at *FAR 52.227–11,* as modified by 1852.227–11, (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(iii) Modify the applicable clause in any subcontract hereunder (regardless of tier) to identify the parties as follows: References to the Government are not changed, and in all references to the Contractor, the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract hereunder (regardless of tier) by identifying the subcontractor, the applicable patent rights clause in the subcontract, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture

substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

1852.227–71 Requests for Waiver of Rights to Inventions.

As prescribed in 1827.303(d)(2), insert the following provision in all solicitations that include the clause at 1852.227–70, New Technology-Other than a Small Business Firm or Nonprofit Organization:

Requests for Waiver of Rights to Inventions

(XX/XX)

(a) In accordance with Section 20135(g) of the National Aeronautics and Space Act (51 U.S.C. 20135(g)) (hereinafter ''the Act'') and the NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, NASA may waive all or any part of the rights of the United States with respect to any invention or class of inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization if the Administrator determines that the interests of the United States will be served thereby. Waiver of rights in inventions made or that may be made under such NASA contract or subcontract may be requested at different time periods. Advance waiver of rights to any invention or class of inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor (or such longer period as may be specified by the Contracting Officer). In addition, waiver of rights to an individually identified invention or to a class of inventions made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individually identified invention or class of inventions; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested. For individually identified inventions or a class of inventions, the petition shall identify each invention with particularity (e.g., by NASA's assigned number to the Disclosure of Invention and New Technology report or by title and inventorship). For advance waivers, the petition shall identify the invention or class of inventions that the Contractor believes will be made under the contract and for which waiver is being requested. To meet the statutory standard of ''any invention or class of inventions,'' the petition must be directed to a single invention or to inventions directed to a particular process, machine, manufacture, or composition of matter, or to a narrowly-drawn, focused area of technology. Additionally, each petition shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the name, address, and telephone number of the party with whom to communicate when the request is acted upon; the signature of the petitioner or authorized representative; and the date of signature. In general, waivers are granted in order to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. Thus, it is preferable that the petition also include a description of the Contractor's plan for commercializing the invention or class of inventions for which waiver is being requested (e.g., identify specific fields of use).

(c) Petitions for advance waiver of rights should, preferably, be included with the proposal, or at least in advance of contract negotiations. Petitions for advance waiver, prior to contract execution, shall be submitted to the Contracting Officer. All other petitions shall be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

1852.227–72 Designation of New Technology Representative and Patent Representative.

As prescribed in 1827.303(d)(3), insert the following clause:

Designation of New Technology Representative and Patent Representative

(XX/XX)

(a) For purposes of administration of the clause of this contract entitled ''New Technology—Other than a Small Business Firm or Nonprofit Organization'' or ''Patent Rights—Ownership by the Contractor,'' whichever is included, the installation New Technology and Patent Representatives identified at *http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html* are hereby designated by the Contracting Officer to administer such clause for the appropriate installation:

(b) Disclosures of reportable items and of subject inventions, interim new technology summary reports, final new technology summary reports, utilization reports, and other reports required by the applicable ''New Technology'' or ''Patent Rights—Ownership by the Contractor'' clause, as well as any correspondence with respect to such matters, shall be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters shall be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a ''New Technology—Other than a Small Business Firm or Nonprofit Organization'' clause or ''Patent Rights—Ownership by the Contractor'' clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the aforementioned representatives are set forth in 1827.305–270 of the NASA FAR Supplement.

(End of clause)

1852.227–84 Patent Rights Clauses.

As prescribed in 1827.303(a)(1), the contracting officer shall insert the following provision in solicitations for experimental, developmental, or research work to be performed in the United States when the eventual awardee may be a small business or a nonprofit organization:

Patent Rights Clauses

(XX/XX)

This solicitation contains the patent rights clauses of *FAR 52.227–11* (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at *FAR 52.227–11* shall not apply.

(End of Provision)

1852.227–85 Invention Reporting and Rights—Foreign.

As prescribed in 1827.303(e)(1), insert the following clause:

Invention Reporting and Rights—Foreign

(XX/XX)

(a) As used in this clause, the term ''invention'' means any invention, discovery or improvement, and ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the foreign country in which this contract is to be performed. As to such foreign country, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that foreign country for each such invention. Where Contractor does not elect to file such patent application for any such invention in that foreign country, full right, title and interest in and to such invention in that foreign country shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions required to be reported under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause (suitably modified to substitute the subcontractor in place of the Contractor) and the name and address of the Contracting Officer.

(End of Clause)

1852.227–86 Commercial Computer Software License.

As prescribed in 1827.409(g), insert the following clause:

Commercial Computer Software License

(XX/XX)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract. Those portions of the vendor's/contractor's standard commercial license or lease agreement that conflict with Federal law (e.g., indemnity provisions or choice of law provisions that specify other than Federal law) are not incorporated into and made a part of this purchase order/contract and do not apply to any computer software delivered under this purchase order/contract.

(b) If the vendor/contractor does not propose its standard commercial software license until after this purchase order/contract has been issued, or until at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, no document associated with the aforementioned activities shall alter the terms of this clause unless such document explicitly references this clause and an intent to amend this clause and is signed by the NASA Contracting Officer.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government, or Government contractors or their subcontractors at any tier, except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2)(i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is otherwise available without disclosure restrictions, it is licensed to the Government, without disclosure restrictions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are set forth in Government Contract No. _____.

(End of clause)

1852.227–88 Government-Furnished Computer Software and Related Technical Data.

As prescribed in 1827.409(m), insert the following clause:

(a) *Definitions.* As used in this clause—

Government-furnished computer software'' or *GFCS* means computer software:

(1) In the possession of, or directly acquired by, the Government whereby the Government has title or license rights thereto; and

(2) Subsequently furnished to the Contractor for performance of a Government contract.

''*Computer software, data* and *technical data* have the meaning provided in the Federal Acquisition Regulations (FAR) Subpart 2.1—Definitions or the Rights in Data—General clause (FAR 52.227–14).

(b) The Government shall furnish to the Contractor the GFCS described in this contract or in writing by the Contracting Officer. The Government shall furnish any related technical data needed for the intended use of the GFCS.

(c) *Use of GFCS and related technical data.* The Contractor shall use the GFCS and related technical data, and any modified or enhanced versions thereof, only for performing work under this contract unless otherwise provided for in this contract or approved in writing by the Contracting Officer.

(1) The Contractor shall not, without the express written permission of the Contracting Officer, reproduce, distribute copies, prepare derivative works, perform publicly, display publicly, release, or disclose the GFCS or related technical data to any person except for the performance of work under this contract.

(2) The Contractor shall not modify or enhance the GFCS unless this contract specifically identifies the modifications and enhancements as work to be performed. If the GFCS is modified or enhanced pursuant to this contract, the Contractor shall provide to the Government the complete source code, if any, and all related documentation of the modified or enhanced GFCS.

(3) Allocation of rights associated with any GFCS or related technical data modified or enhanced under this contract shall be defined by the FAR Rights in Data clause(s) included in this contract (as modified by any applicable NASA FAR Supplement clauses). If no Rights in Data clause is included in this contract, then the FAR Rights in Data—General (52.227–14) as modified by the NASA FAR Supplement (1852.227–14) shall apply to all data first produced in the performance of this contract and all data delivered under this contract.

(4) The Contractor may provide the GFCS, and any modified or enhanced versions thereof, to subcontractors as necessary for the performance of work under this contract. Before release of the GFCS, and any modified or enhanced versions thereof, to such subcontractors (at any tier), the Contractor shall insert, or require the insertion of, this clause, including this paragraph (c)(4), suitably modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(d) The Government provides the GFCS in an ''AS–IS'' condition. The Government makes no warranty with respect to the serviceability and/or suitability of the GFCS for contract performance.

(e) The Contracting Officer may by written notice, at any time—

(1) Increase or decrease the amount of GFCS under this contract;

(2) Substitute other GFCS for the GFCS previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract;

(3) Withdraw authority to use the GFCS or related technical data; or

(4) Instruct the Contractor to return or dispose of the GFCS and related technical data.

(f) *Title to or license rights in GFCS.* The Government shall retain title to or license rights in all GFCS. Title to or license rights in GFCS shall not be affected by its incorporation into or attachment to any data not owned by or licensed to the Government.

(g) *Waiver of Claims and Indemnification.* The Contractor agrees to waive any and all claims against the Government and shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of the GFCS and related technical data by the Contractor, a subcontractor, or by any person to whom the Contractor has released or disclosed such GFCS or related technical data.

(h) *Flow-down of Waiver of Claims and Indemnification.* In the event a contract includes this NASA FAR Supplement clause 1852.227–88, the Contractor shall include the foregoing clause 1852.227–88(g), suitably modified to identify the parties, in all subcontracts, regardless of tier, which involve use of the GFCS and/or related technical data in any way. At all tiers, the clause shall be modified to define GFCS as it is defined herein and to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause. In subcontracts, at any tier, the Government, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause 1852.227–88 constitute a contract between the subcontractor and the Government with respect to the matters covered by the clause.

(End of clause)

1852.228-73 [Removed]

■ 65. Section 1852.228–73 is removed.

■ 66. in section 1852.231–71, paragraph (d) is revised to read as follow

1852.231–71 Determination of Compensation Reasonableness.

* * *

Determination of Compensation Reasonableness

(XX/XX)

* * * * *

(d) The offeror shall require all service subcontractors provide, as part of their proposal, the information identified in (a) through (c) of this provision for cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value expected to exceed the threshold for requiring certified cost or pricing data as set forth in FAR 15.403–4.

(End of provision)

■ 67. In section 1852.232–70, paragraphs (a)(2) and (c)(3) are revised to read as follows:

1852.232–70 NASA Modification of FAR 52.232–12 .

* * * * *

NASA Modification of FAR 52.232–12

(XX/XX)

(a) * * *

(2) In paragraph (m)(1), delete ''in the form prescribed by the administering office'' and substitute ''and Standard Form 425, Federal Financial Report.''

* * * * *

(c) * * *

(3) In paragraph (j)(1), insert between ''statements,'' and ''and'' ''together with Standard Form 425, Federal Financial Report''

* * * * *

1852.237-72, 1852.237-73, 1852.242-70, 1852.249-72 [Removed]

■ 68. Sections 1852.237–72 and 1852.237–73 are removed.

■ 69. Section 1852.242–70 is removed.

■ 70. Section 1852.249–72 is removed.

[FR Doc. 2014–21476 Filed 9–23–14; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8– ES–2014–0039; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Eriogonum corymbosum var. nilesii and Eriogonum diatomaceum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plants *Eriogonum diatomaceum* (Churchill Narrows buckwheat) and *Eriogonum corymbosum* var. *nilesii* (Las Vegas buckwheat) as endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing either *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* or their habitats at any time.

DATES: The finding announced in this document was made on September 24, 2014.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2014–0039. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300; or facsimile 775–861–6301.

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300; or facsimile 775–861–6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We identified *Eriogonum diatomaceum* as a candidate species in the May 4, 2004, candidate notice of review (CNOR; 69 FR 24876). *Eriogonum diatomaceum* was included in all subsequent annual CNORs (70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013). When it was first identified as a candidate, we assigned a listing priority number (LPN) of 2, reflecting a species with threats that were high in magnitude and imminent. The LPN was changed to 5 in 2008 (73 FR 75176, December 10, 2008) to reflect a species with threats that were high in magnitude but not imminent; the LPN remained at 5 in all subsequent CNORs.

We identified *Eriogonum corymbosum* var. *nilesii* as a candidate species in the December 6, 2007, CNOR (72 FR 69034). *Eriogonum corymbosum* var. *nilesii* was included in all subsequent annual CNORs (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013). On April 22, 2008, we received a petition (Center for Biological Diversity 2008) to list *E. c.* var. *nilesii* as endangered or threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). We did not publish separate substantial 90-day and warranted-but-precluded 12-month petition findings, but made these findings in the 2008 CNOR (73 FR 75176, December 10, 2008). When it was first identified as a candidate, we assigned a LPN of 6, reflecting a species with threats that were high in magnitude but not imminent; the LPN remained at 6 in all subsequent CNORs.

Background

We completed comprehensive assessments of the biological status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii,* and we prepared reports of the assessments (Species Reports), which provide a thorough account for each of the plants. This finding is based upon these Species Reports for *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* and scientific analyses of available information prepared by the Service and an application of section 4(a) of the Act. The Species Reports contain the best scientific and commercial data available concerning the status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii,* including the past, present, and future stressors to the plants. As such, the Species Reports provide the scientific basis that informs our regulatory decision in this document, which involves the further application of standards within the Act and its regulations and policies. The Species Reports (including all references) and other materials relating to this finding can be found on the Nevada Fish and Wildlife Office Web site at: *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html* and at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2014–0039.

A summary of the biology, taxonomy, life history, and distribution for each of the plants follows. The reader is directed to the Species Reports for a more detailed discussion of these topics as well as the current conditions of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* (Service 2014a; Service 2014b; *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html*).

Eriogonum diatomaceum

Eriogonum diatomaceum is a member of the Polygonaceae (buckwheat family). It is a low, matted, herbaceous perennial forb with leaves that have densely matted, wooly hairs and with head-like clusters of creamy-white flowers. Flowering typically occurs between the months of June and September. *E. diatomaceum* occurs between 4,300 and 4,560 feet (ft) (1,311 and 1,390 meters (m)) in elevation on diatomaceous outcrops, and is a narrow endemic of the Lahontan Basin section of the western Great Basin (Service 2014a, pp. 3–6). We recognize four populations of this species that are restricted to approximately 3 square miles (7.8 square kilometers) in the Churchill Narrows area of the Pine Nut Mountains in Lyon County, Nevada. These four populations occupy approximately 18 acres (ac) (7.3 hectares (ha)) on lands managed entirely by the Bureau of Land Management (BLM) (Service 2014a, pp. 7–10), and *E. diatomaceum's* historical range is the same as its current range. *E. diatomaceum* was added to the Nevada State list of fully protected species of native flora in 2004. In addition, *E. diatomaceum* is recognized by the BLM as a sensitive species (Service 2014a, p. 3).

BLM monitored each of the four populations from 2005–2007 and in 2012. This sampling data and estimated abundance data for *Eriogonum diatomaceum* in each monitoring location are presented in the Species Report (Service 2014a, pp. 10–13). Overall, BLM sampled 1,104–1,604 plants during each sampling year, and of those, approximately 638–994 were live plants. The estimated abundance of *Eriogonum diatomaceum* in each monitoring location extrapolated from data collected in BLM monitoring macroplots, for each year of data collection, showed a range from 35,950 to 59,307 plants present depending on

the year of the monitoring effort (Service 2014a, p. 13).

Eriogonum corymbosum var. nilesii

Eriogonum corymbosum var. *nilesii* (Las Vegas buckwheat) is a member of the Polygonaceae (buckwheat family) (Service 2014b, pp. 4–8). It is an open to somewhat spreading perennial shrub with numerous yellow to pale yellow flowers. Flowering typically occurs between the months of August and November. *Eriogonum corymbosum* var. *nilesii* occurs between 656 and 2,789 ft (200–850 m) in elevation on clayey, gravelly, or rarely sandy flats and slopes (0–3 percent) or gypsum flats and mounds (Service 2014b, pp. 17–18). We recognize the geographic range of *E. c.* var. *nilesii* as restricted to southern Nevada, in contrast to some prior accounts showing a range extending into southern Utah and northern Arizona based on morphological and genetic data described in detail in the Species Report (Service 2014b, pp. 4–11). In southern Nevada, *E. c.* var. *nilesii* is found northwest of the Virgin River (in Lincoln County) and west of Lake Mead (in Clark County). Within this region, *E. c.* var. *nilesii* currently occupies a total of approximately 795.3 ac (321.85 ha) (Service 2014b, pp. 11–12). The majority (80 percent) of this occupied acreage is federally owned, with 72 percent administered by the BLM, and another 8.15 percent by the Department of Defense (DOD), at Nellis Air Force Base. Landownership for the remainder of occupied habitat is as follows: City of Las Vegas (0.13 percent), Clark County (0.80 percent), State of Nevada (0.001 percent), and private landowners (18.81 percent). Of 12 historically recognized populations of the plant (all located in southern Nevada), 9 populations remain extant (4 in Las Vegas Valley, 2 in White Basin Mountains, 1 in Muddy Mountains, 1 in Coyote Springs Valley, and 1 in Toquop Wash), and 3 have been extirpated (2 in the Las Vegas Valley and 1 in the White Basin Mountains) (Service 2014b, pp. 14–16). In addition, four of the extant populations (Las Vegas Valley) have been partially extirpated. *Eriogonum corymbosum* var. *nilesii* is not listed by the State of Nevada, but it is recognized as a sensitive species by the BLM (Service 2014b, p. 3).

Expressed in terms of acreage, *Eriogonum corymbosum* var. *nilesii* has been extirpated from 1,303.5 ac (527.5 ha) of formerly occupied habitat, corresponding to nearly 62 percent of its range. Most of the lands from which the plant has been extirpated are in private ownership (94.9 percent) (Service 2014b, pp. 11–12). Within the range of the plant, the combined total of available estimates of plants at the nine extant populations ranges between 31,176–31,773 individuals across a total of 795.3 ac (321.85 ha). Of the total 31,176–31,773 estimated individuals, 7,529–7,817+ are located in four populations in Las Vegas Valley, 296+ are located in one population in Muddy Mountains, 308–550+ are located in two populations in White Basin, 13,043–13,110+ are located in Coyote Springs, and 10,000+ are located in Toquop Wash (Service 2014b, pp. 14–16). However, reliable estimation of population size or trends in *E. c.* var. *nilesii* is complicated by many factors including varied survey methods, and as a result, the data are not always directly comparable and must be interpreted with caution (Service 2014b, pp. 18–19).

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed comprehensive assessments of the biological status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii,* and we prepared reports of the assessments (Species Reports), which provide a thorough account for each of the plants. In this section, we summarize the conclusions of those reports, which can be accessed at Docket FWS–R8–ES–2014–0039 on *http://www.regulations.gov,* and at *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html.* Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, and reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

A species is an endangered species for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is a threatened species if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For purposes of this analysis, we first evaluate the status of the species throughout all of its range, and then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

In making this finding, information pertaining to *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* in relation to the five factors provided in section 4(a)(1) of the Act is summarized below, based on the analysis of stressors contained in the Species Reports. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor stressor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine the scope and severity of the potential threat. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

Analysis Under Section 4(a)(1) of the Act

The Act requires that the Secretary determine whether a species is an endangered or threatened species because of any of the five factors enumerated in 16 U.S.C. 1533(a)(1). Our discussion of the threats, which we have categorized here under each of these five factors, is contained in the Species Reports (can be accessed at Docket FWS–R8–ES–2014–0039 on *http://www.regulations.gov,* and at *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html*). In the Species Reports, we present detailed discussions of current and future stressors to *Eriogonum*

diatomaceum and *Eriogonum corymbosum* var. *nilesii.* We consider in this document how threats categorized under each of the five factors are affecting each of the plants. In our Species Reports, we describe the timing, scope, and severity for each stressor associated with each of the plants. We describe the scope as the percentage of the plant's distribution that is reasonably expected to be affected by a stressor within a specified, foreseeable amount of time, given continuation of current circumstances and trends. Within the scope of the threat, the severity is the level of damage to the plant's population or breeding occurrences that is reasonably expected from the stressor within a specified, foreseeable amount of time, given continuation of current circumstances and trends.

All potential stressors currently acting upon *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* or likely to affect either of the plants in the foreseeable future (and consistent with the five listing factors identified above) are evaluated and addressed in the Species Reports, and summarized in the following paragraphs. The reader is directed to the Species Reports (can be accessed at Docket FWS–R8–ES–2014–0039 on *http://www.regulations.gov,* and at *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html*) for a more detailed discussion of the stressors summarized in this document.

Eriogonum Diatomaceum

The Species Report evaluated the biological status of the species and each of the potential stressors affecting its continued existence (Service 2014a, entire). It was based upon the best available scientific and commercial data and the expert opinion of the Species Report team members. Based on the analysis and discussion contained in the Species Report, we evaluated the potential threats under the five statutory factors: Mineral exploration and development (Factors A and E); livestock grazing (Factors A and E); herbivory (Factor C); off-highway vehicle (OHV) activity and road development (Factors A and E); nonnative, invasive plant species (Factors A and E); disease (Factor C); and climate change (Factors A and E). We found that these factors currently may have minor impacts on individuals in some locations, but they are not impacting the species as a whole currently and are not expected to in the future. The full analyses of these possible stressors are documented in the Species Report and are summarized below. Based on the analysis contained in the Species Report, we find that the best available scientific and commercial information does not indicate that these stressors are causing a decline in the species or its habitat, either now or into the future.

Mineral Exploration and Development (Factors A and E)

Eriogonum diatomaceum occurs on diatomaceous soil deposits, which is an economically valuable mineral that is in increasing demand. Mineral activity (exploration and development of diatomaceous earth deposits) has impacted *E. diatomaceum* habitat and resulted in the loss of individual plants and habitat at one of the four populations, corresponding to a loss of 5 ac (1.67 ha) or 22 percent of historically occupied habitat for the species. Two active mining claims still remain open within the plant's range, and 95 claims are closed within this area; all lands occupied by *E. diatomaceum* are open to mineral entry. The BLM requires that all operations comply with State law and permits, and since *E. diatomaceum* is listed as threatened by the State, the BLM requires claimants to be in compliance with State law (Service 2014a, p. 29). The BLM has affirmed that protecting *E. diatomaceum* and its habitat from impacts is clearly within the BLM's discretion when it comes to mineral material sales, and expressed its intent to continue managing the species as a Special Status Species, avoid impacts to the species and its habitat, and otherwise coordinate with the Service to develop effective mitigation measures (Service 2014a, p. 21). The scope of the mining stressor historically was 100 percent, because all populations were thought to be affected by the potential for mining. In addition, the severity of the stressor of mining historically was moderate, because of the loss of 5.5 ac (2.2 ha) of historically occupied habitat from mining. However, this stressor is one of historical significance, because it is not known to be occurring at present. Given the limited number of mining claims and the active management of these claims by BLM, we do not consider mining (Factors A and E) to be a current or future threat to the species such that the species would warrant listing.

Livestock Grazing (Factors A and E)

All populations of *Eriogonum diatomaceum* are within grazing allotments and are potentially exposed to livestock grazing, so the scope of livestock grazing is 100 percent. Livestock grazing may result in impacts, such as trampling, resulting in broken stems and leaves of plants, and soil compaction, to individual *Eriogonum diatomaceum* plants, but we have no data indicating (qualitatively or quantitatively) the numbers (or percentages) of individuals or habitat acreage lost as a result of grazing. In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that grazing is affecting the species through habitat loss (Service 2014a, p. 13). Therefore, while livestock grazing may affect individuals, based on the information that is available at this time, the information does not indicate that grazing is a current or future threat to the species such that the species would warrant listing.

Herbivory (Factor C)

Herbivory by jackrabbits, resulting in clipping of flower stems and tunneling into roots, has been documented on individuals at all four populations of *Eriogonum diatomaceum;* however, the best available scientific information does not provide any indication of a significant effect on recruitment of *E. diatomaceum.* In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that herbivory is affecting the species (Service 2014a, p. 13). Therefore, while herbivory may affect individuals, based on the information that is available at this time, the information does not indicate that herbivory is a current or future threat to the species such that the species would warrant listing.

OHV Activity and Road Development (Factors A and E)

OHV activity and road development is known to occur at three of the four *Eriogonum diatomaceum* populations; roads can alter the hydrology of a site, and OHV activity can compact soils, crush plants, and provide a means for nonnative plant species to invade otherwise remote, intact habitats. However, we are currently not aware of individuals or habitat having been lost as a result of these activities, and the best available scientific information does not provide an indication of the level to which OHV activity and road development currently affects *E. diatomaceum* or is likely to affect the species into the future. In addition, BLM monitored each of these populations from 2005–2007 and in 2012, and the results of these surveys do not indicate

that the population numbers are declining or that OHV activity and road development is affecting the species through habitat loss (Service 2014a, p. 13). Therefore, while OHV activity and road development may affect individuals, based on the information that is available at this time, the information does not indicate that OHV activity and road development is a current or future threat to the species such that the species would warrant listing.

Nonnative, Invasive Plant Species (Factors A and E)

Nonnative, invasive plant species can negatively affect *Eriogonum diatomaceum* through competition with and displacement of native plant species and degradation of habitat. When *E. diatomaceum* habitat is undisturbed, nonnative, invasive plant species are not a threat because the specialized habitat of *E. diatomaceum* does not appear to be conducive to their spread. However, when soil disturbances occur within occupied *E. diatomaceum* habitat, nonnative, invasive plant species can impact *E. diatomaceum* due to their ability to potentially compete with and displace this species from its habitat. Nonnative, invasive plant species are present within all *E. diatomaceum* populations. However, the severity of nonnative, invasive plant species is unknown because the best available scientific information does not provide any indication of the level to which nonnative, invasive plant species affect *E. diatomaceum.* In addition, BLM monitored each of the four populations from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that nonnative, invasive plant species are affecting the species (Service 2014a, p. 13). Therefore, while nonnative, invasive plant species may affect individuals, based on the information that is available at this time, the information does not indicate that nonnative, invasive plant species are a current or future threat to the species that the species would warrant listing.

Disease (Factor C)

A rust (fungal) pathogen was observed on approximately 26 percent of the overall *Eriogonum diatomaceum* population during survey work in the late 1990s. At this time, no studies are known that identify this pathogen, its origin, or its ultimate effect on this plant, and the long-term survival rate of rust-infected plants has not been determined or monitored. However, BLM monitored each of the four populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that pathogens are affecting the species (Service 2014a, p. 13). Therefore, based on the best information that is available at this time, the information does not indicate that disease is a current or future threat to the species such that the species would warrant listing.

Climate Change (Factors A and E)

In the Great Basin, temperatures have risen, and current climate change projections indicate further warming over the rest of the century. Winter temperatures are projected to increase, which will change the balance of temperature and precipitation resulting in earlier spring snow runoff, declines in snowpack, and increased frequency of drought and fire events. Warmer temperatures and greater concentration of atmospheric carbon dioxide can create conditions favorable for nonnative, invasive plant species. We anticipate that the alteration of precipitation and temperature patterns could result in decreased survivorship of *Eriogonum diatomaceum* due to physiological stress of individual plants, altered phenology, and reduced seedling establishment and plant recruitment. However, the severity of climate change is unknown because even though climate projections exist for the Great Basin, we do not know how *E. diatomaceum* is likely to respond to these climatic changes. In addition, BLM monitored each of the four populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that climate change is currently affecting the species (Service 2014a, p. 13). In addition, we do not know of any information that demonstrates climate change is affecting the species. Therefore, based on the information that is available at this time, the information does not indicate that climate change is a current or future threat to the species such that the species would warrant listing.

Inadequacy of Existing Regulatory Mechanisms (Factor D)

The Act requires that the Secretary assess existing regulatory mechanisms in order to determine whether they are adequate to address threats to the species (Factor D). The Species Report includes discussions of applicable regulatory mechanisms for *Eriogonum diatomaceum* (Service 2014a, pp. 16–30). In the Species Report, the Service examines the applicable Federal, State, and other statutory and regulatory mechanisms to determine whether these mechanisms provide protections to *E. diatomaceum.* For *E. diatomaceum,* all four populations occur on BLM land, and BLM has monitored these populations over time. *E. diatomaceum* is identified as a BLM sensitive species, which means that BLM's management objective is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing. Occupied and potential habitat for this species was nominated as an Area of Critical Environmental Concern (ACEC) in 2008; however, BLM has postponed finalizing this ACEC designation pending the completion of an amendment to the Carson City District Resource Management Plan (RMP). A decision for the RMP is not expected until 2016. During the preparation of the Species Report, we met with BLM managers to discuss the status of *E. diatomaceum* and BLM's ongoing management of the species. During those conversations, the BLM affirmed its intent to continue managing the species as a BLM sensitive species, regardless of the species' status under the Act, and to avoid impacts to the species or its habitat, particularly in the context of mining activity (Service 2014a, p. 16).

Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that there is an inadequacy of existing regulatory mechanisms to address impacts from the identified potential threats such that listing would be warranted.

Interaction Among Factors

When conducting our analysis about the potential threats affecting *Eriogonum diatomaceum,* we also assessed whether the species may be affected by a combination of factors. In the Species Report (Service 2014a, p. 30), we identified multiple potential stressors that may have interrelated impacts on *E. diatomaceum* or its habitat. Mineral development and exploration result in the loss of habitat; depending on the nature of mining activities, these impacts can be permanent and irreversible (conversion to land uses unsuitable to the species) or less so (minor ground disturbance and loss of individual plants) (Factors A and E). When mineral development and exploration occurs in between (but not within) populations, this can eliminate corridors for pollinator movement, seed dispersal, and population expansion. Livestock grazing may result in direct

impacts to individual *Eriogonum diatomaceum* plants due to trampling (Factors A and E). Both livestock grazing and OHV/road corridors create patterns of soil disturbance that in turn alter habitat function and create conditions conducive to the invasion of nonnative plant species (Factors A and E). Once nonnative, invasive plant species are established, these species tend to spread beyond the footprint of mineral development and exploration or OHV/road corridors, further deteriorating otherwise intact habitat and native vegetation, including *E. diatomaceum.* Herbivory, when combined with climate change and altered precipitation and temperature regimes, may interfere with seedling recruitment and persistence of the species on the landscape (Factors A, C, and E). Each of these potential stressors may affect individuals of *E. diatomaceum.* However, BLM monitored each of the four populations of *E. diatomaceum* from 2005–2007 and in 2012, and the results of these surveys do not indicate that the population numbers are declining or that these stressors are currently affecting the species (Service 2014a, p. 13). Therefore, the current best available scientific and commercial information does not show that these combined impacts are resulting in current or future impacts to the species such that the species would warrant listing.

All or some of the potential stressors could act in concert to result in cumulative stress on *Eriogonum diatomaceum.* However, the best available scientific and commercial information currently does not indicate that these stressors singularly or cumulatively are resulting now or will in the future result in a substantial decline of the total extant population of the plant or have impacts to *E. diatomaceum* at the species level. Therefore, we do not consider the cumulative impact of these stressors to *E. diatomaceum* to be substantial at this time, nor into the future such that the species would warrant listing under the Act.

Eriogonum corymbosum var. nilesii

The Species Report for *Eriogonum corymbosum* var. *nilesii* evaluated the biological status of the plant and each of the potential stressors affecting its continued existence (Service 2014b, entire). It was based upon the best available scientific and commercial data and the expert opinion of the Species Report team members. Based on the analysis and discussion contained in the Species Report, we evaluated the potential threats under the five statutory factors: Development for residential, commercial, or other purposes (A and E); OHV use and road development (Factors A and E); mineral exploration and development (Factors A and E); nonnative, invasive plant species (Factors A and E); modified wildfire regime (Factors A and E); and climate change (Factors A and E). We found that these factors are not likely to impact the plant as a whole currently and are not expected to in the future. The full analyses of possible stressors are documented in the Species Report and summarized below. Based on the analysis contained in the Species Report and under the five statutory factors, we find that the best available scientific and commercial information does not indicate that current and future threats are causing or going to cause a decline in the plant or its habitat, either now or into the future. We recognize that habitat and individuals have been lost from 62 percent of the historical occurrences of *E. c.* var. *nilesii* through past development on private lands, and we anticipate that approximately 5.5 percent of remaining habitat will be lost into the future as a result of development. However, we do not anticipate future development to be a threat to the remaining populations because most are on public lands (many of which are in conservation areas) where we do not anticipate similar losses.

Development for Residential, Commercial, or Other Purposes (Factors A and E)

We found that past development has had an impact on *Eriogonum corymbosum* var. *nilesii* and has resulted in the loss of 1,303.5 ac (527.5 ha) of formerly occupied habitat mostly on private lands (Service 2014b, pp. 11–12, 24)). Future development is likely to impact an additional 43.93 ac (17.78 ha) of *E. c.* var. *nilesii* habitat (Service 2014b, pp. 24–30). Development has occurred in the past and is imminent into the future in these limited areas (43.93 ac (17.78 ha)). The future development of 43.93 ac (17.78 ha) will result in partial loss of two populations and entire loss of one population in Las Vegas Valley, and it will also result in partial loss of one population in Coyote Springs (Service 2014b, pp. 14–16). There should be no future development loss in one other population in Las Vegas Valley, one population in the Muddy Mountain Wilderness, two populations in White Basin, and one population in Toquop Wash. Even though some limited development will occur in the future, we found that development is not imminent in the future over most of the remaining extant habitat, because 80 percent of the remaining occupied habitat is on Federal lands where development is unlikely due to conservation plans, conservation areas, wilderness areas, ACECs, and other protective means. The best available scientific and commercial information indicates that even though development has resulted in losses of historical occurrences of *E. c.* var. *nilesii,* we do not anticipate future development to result in large losses that would be a threat to the plant such that listing the plant would be warranted.

OHV Activity and Road Development (Factors A and E)

OHV use and road development can cause loss, degradation, and fragmentation of *Eriogonum corymbosum* var. *nilesii* habitat and compact soils, crush plants, and provide a means for nonnative plant species to enter otherwise remote, intact habitats. OHV use and road development is authorized and currently occurs to some degree in six of the nine extant populations of *E. c.* var. *nilesii.* The 1998 BLM Las Vegas District Resource Management Plan (RMP) includes provisions limiting OHV activity to designated roads, trails, and/or dry washes in all ACECs and Wilderness Study Areas. We do know that OHV use and road development do occur to some degree in many of the extant populations, but we are not currently aware of individuals or habitat having been lost as a result of these activities (Service 2014b, pp. 30–31). Therefore, while OHV activity and road development may affect individuals, based on the information that is available at this time, the information does not indicate that OHV activity and road development are a current or future threat to the plant such that the plant would warrant listing.

Mineral Exploration and Development (Factors A and E)

When *Eriogonum corymbosum* var. *nilesii* became a candidate for Federal listing in 2007 (72 FR 69034, December 6, 2007), mining activities were identified as having the potential to impact 2 of the 12 populations recognized in that document. In 2013, we reviewed the status of all locatable mining claims within the legal sections containing the plant. According to this review, there are 74 ''closed'' (an administrative term that indicates a prior claim that is no longer current) and no ''active'' (meaning paperwork and fees filed with the BLM in support of the claim are current) locatable mineral claims within the sections

occupied by this plant (Service 2014b, p. 33).

With regard to the timing of mining-related impacts, although this activity has been previously identified as having the potential to affect *Eriogonum corymbosum* var. *nilesii,* we are unaware of mining having directly affected this plant in the form of losses of individuals or habitat. With regard to scope, to the best of our knowledge, historically no populations have been affected by this activity, and no open locatable mineral claims currently exist within occupied habitat. In light of the above information, severity is low to nonexistent.

Overall, mineral exploration and development has been previously identified as having the potential to affect *Eriogonum corymbosum* var. *nilesii,* but we are unaware of mining having directly affected this plant in the form of losses of individuals or habitat. Historically, no populations have been affected by this activity, and no open locatable mineral claims currently exist within occupied habitat (Service 2014b, pp. 31–33); therefore, we do not consider mining to be a current or future threat to the plant such that the plant would warrant listing.

Nonnative, Invasive Plant Species (Factors A and E)

The majority of *Eriogonum corymbosum* var. *nilesii* habitat is not affected by nonnative, invasive plant species, likely because the specialized habitat of the plant has not experienced high levels of soil disturbances conducive to their spread. However, in areas where soil disturbances have occurred, nonnative, invasive plant species may pose a threat to *E. c.* var. *nilesii* due to their ability to potentially compete with and displace the plant and other native species from its habitat. Nonnative, invasive plant species are present to some degree in five of the nine extant populations; however, the severity of nonnative, invasive plant species is unknown because the best available scientific information does not provide any indication of the level of which nonnative, invasive plant species affect *E. c.* var. *nilesii,* and the majority of *E. c.* var. *nilesii* habitat is not affected by nonnative, invasive plant species (Service 2014b, pp. 33–34). Therefore, we do not consider nonnative, invasive plant species to be a current or future threat to the plant such that the plant would warrant listing.

Modified Wildfire Regime (Factors A and E)

Historically, wildfire has been infrequent in the Mojave Desert due to limited fuels created by sparse vegetation. However, since the 1970s, fires have become more frequent due to recent invasions by annual grasses (Service 2014b, p. 34). Due to increasing invasion by nonnative, annual grasses, wildfire is now considered one of the primary stressors to the conservation of native plants and animals and to the maintenance of ecosystem integrity in the Mojave Desert. Regardless of an overall increase of wildfire in the Mojave Desert, there are no reported accounts of wildfire within *Eriogonum corymbosum* var. *nilesii* habitat (Service 2014b, pp. 34–35). We are unaware of wildfire having directly affected this plant in the form of losses of individuals or habitat, and we do not have information indicating that this plant would be negatively affected by wildfire. Therefore, based on the information that is available at this time, the information does not indicate that a modified wildfire regime is a current or future threat to the plant such that the plant would warrant listing.

Climate Change (Factors A and E)

The direct, long-term impact from climate change to *Eriogonum corymbosum* var. *nilesii* is yet to be determined. Current climate change projections for the Mojave Desert indicating warming temperatures, and climate predictions for the geographic range of *E. c.* var. *nilesii* suggest there will be more frequent and/or prolonged drought. However, predictions for this area in particular suggest localized, increasing August precipitation. We anticipate that the alteration of precipitation and temperature patterns could result in decreased survivorship of *E. c.* var. *nilesii* due to physiological stress of individual plants, altered phenology, and reduced seedling establishment and plant recruitment. Climate change also may exacerbate impacts from other factors currently affecting this plant and its habitat. However, the severity of climate change is unknown because even though climate projections indicating warming temperatures exist for the Mojave Desert, we do not know how *E. c.* var. *nilesii* is likely to respond to these climatic changes (Service 2014b, pp. 35–37). In addition, we do not know of any information that demonstrates climate change is affecting the plant. Therefore, based on the information that is available at this time, the information does not indicate that climate change is a current or future threat to the plant such that the plant would warrant listing.

Inadequacy of Existing Regulatory Mechanisms (Factor D)

The Act requires that the Secretary assess existing regulatory mechanisms in order to determine whether they are adequate to address threats to the species (Factor D). The Species Report includes discussions of applicable regulatory mechanisms (Service 2014b, entire). In the Species Report, the Service examines the applicable Federal, State, and other statutory and regulatory mechanisms to determine whether these mechanisms provide protections to *Eriogonum corymbosum* var. *nilesii. E. c.* var. *nilesii* is a BLM sensitive species (Service 2014b, p. 3). In addition, BLM has entered into conservation agreements (CA) for many lands to preserve, enhance, and restore riparian areas and their associated uplands for the plant (Service 2014b, pp. 38–42).

In 2002, the Muddy Mountains Wilderness, which supports the Muddy Mountains population of *Eriogonum corymbosum* var. *nilesii,* was added to the National Wilderness Preservation System by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (Pub. L. 107–282). This designation protects this population from mining, grazing, OHV use, and human development (Service 2014b, p. 41).

In 2005, BLM, the Service, Nevada Division of Forestry (NDF), and the City of North Las Vegas entered a CA to retain 300 ac (121 ha) of the Upper Las Vegas Wash area in Federal ownership to establish it as the Eglington Preserve. The goal is to preserve, enhance, and restore riparian areas and their associated uplands within the Eglington Preserve. In 2011, the BLM established the 10,669-ac (4,318-ha) conservation transfer area (CTA), which contains the 300-ac (121-ha) Eglington Preserve, and encompasses one of the populations in the Las Vegas Valley. The BLM's vision for the CTA is ''to preserve the natural functioning of the Upper Wash, protect the sensitive resources within, and support education, research, and low-impact recreational use. The CTA is ecologically functional to the maximum extent possible and managed to ensure the long-term integrity of the Las Vegas Formation and associated fossil beds, the rare plant habitat for *Arctomecon californica, Arctomecon merriamii,* and *Eriogonum corymbosum* var. *nilesii,* as well as natural flood water capacity for present and future generations.'' The BLM will require mitigation and monitoring measures to minimize impacts to resources caused by future allowable uses in the CTA as

determined on a case-by-case basis (Service 2014b, pp. 39–41).

In 2007, BLM re-purchased approximately 1,103 ac (446 ha) of land that supports one of the White Basin populations of *Eriogonum corymbosum* var. *nilesii.* Ongoing revisions to the Las Vegas BLM's RMP are expected to include a proposal to designate the property and the surrounding area as the Bitter Spring ACEC, for the protection of *E. c.* var. *nilesii* and two other special status plant species (Service 2014b, p. 41).

Another population in the Las Vegas Valley was designated as a ''Buckwheat Conservation Area'' by Clark County in 2010. Also in 2010, the Nellis Air Force Base (AFB) established a conservation area where sites containing *Eriogonum corymbosum* var. *nilesii* would remain undeveloped unless military mission requirements dictate otherwise, and the DOD would not allow further development for activities that are purely recreational. In addition, Nellis AFB will also consult with NDF and the Service to incorporate conservation measures for the plant if development is to occur within occupied habitat.

As described in the Species Report, there are several Federal, State, and County protections for *Eriogonum corymbosum* var. *nilesii.* In addition, BLM has entered into CAs for many lands to preserve, enhance, and restore riparian areas and their associated uplands for the plant (Service 2014b, pp. 38–42). Overall, there are conservation protections (such as conservation areas, ACECs, and wilderness areas) or limits on activities (such as OHV activity) within eight of the nine extant populations.

Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that there is an inadequacy of existing regulatory mechanisms to address impacts from the identified potential threats such that listing the plant would be warranted.

Interaction Among Factors

When conducting our analysis about the potential stressors affecting *Eriogonum corymbosum* var. *nilesii,* we also assessed whether the plant may be affected by a combination of factors. In the Species Report (Service 2014b, p. 38), we identified multiple potential stressors that may have interrelated impacts on *E. c.* var. *nilesii* or its habitat. OHV and other road corridors can exacerbate habitat loss and fragmentation, and tend to be associated with (accompanying or following) development activities (Factors A and E). Development and OHV/road corridors tend to create conditions that favor the establishment of nonnative, invasive plant species; once established, these species tend to spread well beyond the footprint of development actions or OHV/road corridors, further deteriorating otherwise intact habitat and native vegetation (Factors A and E). Some nonnative, invasive plant species, particularly annual grasses, then increase the frequency of wildfire, leading to modified wildfire regimes (Factors A and E). Climate change has the potential to alter many patterns of land use, including development and associated infrastructure, but also the precipitation and temperature regimes that in turn influence the establishment and persistence of vegetation, both native and nonnatives alike (Factors A and E). However, the current best available scientific and commercial information does not show that these combined impacts are resulting in current impacts or are likely to result in future impacts to the plant.

All or some of the potential stressors could act in concert to result in cumulative stress on *Eriogonum corymbosum* var. *nilesii.* However, the best available scientific and commercial information currently does not indicate that these stressors singularly or cumulatively are resulting now or will in the future result in a substantial decline of the total extant population of the plant or have impacts to *E. c.* var. *nilesii* at the taxon level. Therefore, we do not consider the cumulative impact of these stressors to *E. c.* var. *nilesii* to be substantial at this time, nor into the future.

Determination

As required in section 4(a)(1) of the Act, we conducted a review of the status of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* and assessed the five factors in consideration of whether *E. diatomaceum* and *E. c.* var. *nilesii* are endangered or threatened species throughout all of their ranges. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to these plants. We reviewed information available in our files and other available published and unpublished information. We also consulted with species experts and land managers in the areas where these plants occur.

Eriogonum diatomaceum

We evaluated each of the potential stressors in the Species Report for *Eriogonum diatomaceum,* and we determined that mineral exploration and development (Factors A and E); livestock grazing (Factors A and E); herbivory (Factor C); OHV activity and road development (Factors A and E); nonnative, invasive plant species (Factors A and E); disease (Factor C); and climate change (Factors A and E) are factors that have had impacts on individuals in some locations, but they are not impacting the species currently or into the future such that listing would be warranted. Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that these stressors are going to cause a decline in the species or its habitat, either now or are likely to do so into the future. In addition, we evaluated existing regulatory mechanisms and did not determine an inadequacy of existing regulatory mechanisms for *E. diatomaceum.* Finally, although there is uncertainty in extrapolations of population estimates based on survey results, the best available scientific and commercial information shows that *E. diatomaceum* population numbers do not appear to be in decline (Service 2014a, pp. 12–13).

Eriogonum corymbosum var. nilesii

We evaluated each of the potential stressors in the Species Report for *Eriogonum corymbosum* var. *nilesii,* and we determined that development for residential, commercial, or other purposes (Factors A and E); OHV use and road development (Factors A and E); mineral exploration and development (Factors A and E); nonnative, invasive plant species (Factors A and E); modified wildfire regime (Factors A and E); and climate change (Factors A and E) are factors that may have impacts on individuals in some locations, but they are not impacting the plants currently or into the future such that listing would be warranted. Based on the analysis contained within the Species Report, we conclude that the best available scientific and commercial information does not indicate that these stressors currently are going to cause a decline in the plant or its habitat, either now or are likely to do so into the future. In addition, we evaluated existing regulatory mechanisms and did not determine an inadequacy of existing regulatory mechanisms for *E. c.* var. *nilesii.* Even though we found that some of the potential stressors have caused the loss of *E. c.* var. *nilesii* populations in the past, we do not anticipate that the potential threats are likely to impact the remaining populations in the future

such that listing the plant would be warranted, because of the large amount of occupied habitat being conserved and the land ownership of much of *E. c.* var. *nilesii's* habitat.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' Based on our analyses conducted in the Species Reports and summarized in this finding, and using the best scientific and commercial information available, we find that the magnitude and imminence of threats do not indicate that *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* are in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout their ranges. In the Species Report, we describe how our ability to project future trends in the various factors identified as relevant to *E. diatomaceum* and *E. c.* var. *nilesii* differs for each factor, with some factors better assessed in terms of relatively short time periods, whereas others are more appropriately assessed in terms of longer time horizons. Our ability to project future trends in the various factors identified as relevant to each of the plants differs for each factor, with some factors (such as development and grazing) more easily predicted in terms of relatively short time periods (such as the 1–10 years for which future development is anticipated based on plans and the 10–15 year time period for grazing allotment permits). Others (such as climate change) can often be predicted over longer time horizons (such as 50 years for most climate models). We do not have a single foreseeable future timeframe because each of the potential stressors can be predicted into the future over different time horizons, and we do not have data to support a single foreseeable future timeframe.

In general, we assessed the potential stressors as a continuation of current circumstances as discussed in the Species Reports (Service 2014, p. 17; Service 2014b, p. 24). In the case of *Eriogonum diatomaceum,* as discussed above, the best available information indicates that there is no evidence of population declines within the species at current threat levels. In a continuation of current conditions, it is therefore likely that the populations will remain stable in the future. For *Eriogonum corymbosum* var. *nilesii,* our information shows that development is likely to reduce the overall population and habitat by a small percentage within a reasonably short timeframe, however, aside from this stressor, the best available information indicates that populations are not currently being affected by other potential stressors. Additionally, much of the remaining populations and habitat are in conserved areas, or areas with limited activity, whereby the species would not likely be impacted by these potential stressors or the species exposure to these potential stressors would be reduced. Therefore, a continuation of current conditions would indicate that the remaining populations will likely be stable in the future. With regard to both species, although models can predict climate changes over longer timeframes, the best available scientific information does not indicate how climate change effects will impact either of these plants into the future. Therefore, our ability to predict future climate change effects is limited.

Therefore, based on our assessment of the best available scientific and commercial information, we find that listing *Eriogonum diatomaceum* or *Eriogonum corymbosum* var. *nilesii* throughout all or a significant portion of their ranges as endangered or threatened species is not warranted at this time.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently an endangered or a threatened species throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a

significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (i.e., the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is ''significant.''

We evaluated the current ranges of *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* to determine if there is any apparent geographic concentration of potential threats for either of the plants. We examined potential threats to *E. diatomaceum* from mineral exploration and development; livestock grazing; herbivory; OHV activity and road development; nonnative, invasive plant species; disease; and climate change. We examined potential threats to *E. c.* var. *nilesii* from development for residential, commercial, or other purposes; OHV use and road development; mineral exploration and development; nonnative, invasive plant species; modified wildfire regime; and climate change. Even though we found that some of the potential threats have caused the loss of *E. c.* var. *nilesii* populations in the past, we do not anticipate that the potential threats are likely to impact the remaining populations in the future such that listing the plant would be warranted, because of the large amount of occupied habitat being conserved and the land ownership of much of *E. c.* var. *nilesii*'s habitat. Overall, we found no current concentration of threats now or into the future that suggests that either of these plants may be in danger of extinction in a portion of its range. We found no portions of their ranges where current or future potential threats are significantly concentrated or substantially greater than in other portions of their ranges. Therefore, we find that potential threats affecting each plant are essentially uniform throughout its range, indicating no portion of the range of either plant warrants further consideration of possible endangered or threatened species status under the Act.

Our review of the best available scientific and commercial information indicates that neither *Eriogonum diatomaceum* nor *Eriogonum corymbosum* var. *nilesii* are in danger of extinction (an endangered species) or likely to become endangered within the foreseeable future (a threatened species), throughout all or a significant portion of their ranges. Therefore, we find that listing either of these two plants as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, *Eriogonum diatomaceum* and *Eriogonum corymbosum* var. *nilesii* to our Nevada Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor these plants and encourage their conservation. If an emergency situation develops for either of these two plants, we will act to provide immediate protection.

References Cited

Service 2014a. Species Report for *Eriogonum diatomaceum* (Churchill Narrows buckwheat). Nevada Fish and Wildlife Office. March 28, 2014.

Service 2014b. Species Report for *Eriogonum corymbosum* var. *nilesii* (Las Vegas buckwheat). Nevada Fish and Wildlife Office. March 28, 2014.

A complete list of references cited in each of the Species Reports (Service 2014a; Service 2014b) is available on the Internet at *http://www.regulations.gov* or at *http://www.fws.gov/nevada/highlights/species_actions/species_actions.html* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this finding are the staff members of the Pacific Southwest Regional Office and the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–22668 Filed 9–23–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BE24

Fisheries of the Exclusive Economic Zone Off Alaska; Establishing Transit Areas Through Walrus Protection Areas at Round Island and Cape Peirce, Northern Bristol Bay, Alaska; Amendment 107

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 107 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 107, if approved, would establish seasonal transit areas for vessels designated on Federal Fisheries Permits (FFPs) through Walrus Protection Areas in northern Bristol Bay, AK. This action would allow vessels designated on FFPs to transit through Walrus Protection Areas in the U.S. Exclusive Economic Zone (EEZ) near Round Island and Cape Peirce from April 1 through August 15, annually. This action is necessary to restore the access of Federally-permitted vessels to transit through Walrus Protection Areas that was limited by

regulations implementing Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), and to maintain adequate protection for walruses on Round Island and Cape Peirce. This action would maintain an existing prohibition on deploying fishing gear in Walrus Protection Areas by vessels designated on an FFP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the BSAI FMP, Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and other applicable law.

DATES: Comments on the amendment must be received on or before November 24, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0066, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NMFS-2014-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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), 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.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, 907–586–7172.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 107 to the BSAI FMP is available for public review and comment.

NMFS manages the groundfish fisheries in the EEZ of the BSAI under the BSAI FMP. The Council prepared, and NMFS approved, the BSAI FMP under the authority of the Magnuson-Stevens Act. Amendment 107 would apply only to the management of the vessels transiting in the northern part of Bristol Bay, AK. This proposed action would apply to EEZ waters in statistical area 514 of the BSAI, as shown in Figure 1 to 50 CFR part 679. In this area of Bristol Bay, Federal waters occur at least 3 nm from shore.

The Council has recommended and NMFS has implemented a series of closure areas, known as Walrus Protection Areas, in Bristol Bay around important walrus haul-out sites to reduce potential disturbance to walrus from fishing activities (54 FR 50386, December 6, 1989; corrected 55 FR 1036, January 11, 1990; technically amended 56 FR 5775, February 13, 1991 and 57 FR 10430, March 26, 1992). These management measures apply in a portion of Federal waters in the EEZ (i.e., from 3 nm to 12 nm from shore). These closures were established from April 1 through September 30 to reduce disturbance to walrus haul-out sites during periods of peak walrus use (Section 1.2 of the Analysis).

If approved, Amendment 107 would establish transit areas through the Walrus Protection Area at Round Island and Cape Peirce, in northern Bristol Bay, AK. Amendment 107 would: (1) establish a transit area in the EEZ near Round Island open from April 1 through August 15, annually, north of a line from 58°47.90′ N, 160°21.91′ W to 58°32.94′ N, 159°35.45′ W; and (2) establish a transit area in the EEZ near Cape Peirce open from April 1 through August 15, annually, east of a line from 58°30.00′ N, 161°46.20′ W to 58°21.00′ N, 161°46.20′ W.

This action is necessary to restore the access to Federally-permitted vessels to transit through Walrus Protection Areas that was limited by regulations implementing Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) (76 FR 74670, December 1, 2011; corrected 76 FR 81872, December 29, 2011), and to maintain adequate protection for walruses on Round Island and Cape Peirce. This action would maintain an existing prohibition on deploying fishing gear in Walrus Protection Areas by vessels designated on an FFP.

Prior to 2012, vessel owners were able to easily surrender an FFP for a period of time to allow their vessel to transit through Walrus Protection Areas. Some vessel owners surrendered their FFPs during the spring and summer so that these vessels could transit through Walrus Protection Areas around Round Island and Cape Peirce when operating as a tender. A tender is a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor (see definition at § 679.2). In northern Bristol Bay many vessels that are active in Federally-managed fisheries operate as tenders for vessels fishing in State-managed herring and salmon fisheries. These tenders receive catch in Togiak Bay, Kulukak Bay, and other bays in northern Bristol Bay and deliver that catch to processing plants in Dillingham and other communities in Bristol Bay. Prior to 2012, some vessel owners also surrendered their FFPs to allow a vessel to transit through Walrus Protection Areas to deliver processed groundfish from fishing grounds in the Bering Sea to delivery locations in northern Bristol Bay.

Without an FFP, vessels can transit through Walrus Protection Areas and avoid the additional time, operating expenses, increased exposure to weather, and navigational challenges when operating in State waters compared to vessels that are designated on an FFP and are prohibited from entering the Walrus Protection Areas. Section 1.3.2 of the Analysis describes the factors affecting vessels that are prohibited from transiting through Walrus Protection Areas. The following paragraphs summarize these factors.

On January 1, 2012, NMFS implemented Amendment 83 to GOA FMP (76 FR 74670, December 1, 2011; corrected 76 FR 81872, December 29, 2011). Regulations implementing Amendment 83 to GOA FMP (Amendment 83) limited the ability for vessel owners to easily surrender an FFP. An FFP is issued for 3-years under the FFP application process and is in effect from the effective date through the

expiration date, unless it is revoked, suspended, surrendered (see regulations at § 679.4(b)(4)(i)). NMFS will not reissue a surrendered FFP with certain endorsements (see regulations at § 679.4(b)(4)(ii)); therefore, a vessel owner cannot surrender an FFP more than once in a 3-year period to transit the Walrus Protection Areas.

NMFS intends the regulations implementing Amendment 83 to allow the proper tracking and accounting of Federal fishery allocations. NMFS did not intend the regulations to specifically limit the ability of vessel owners to surrender FFPs to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish. However, the regulations implementing Amendment 83 require vessel owners who had historically surrendered their FFPs in order to transit through Walrus Protection Areas when operating as tenders or delivering processed groundfish to either surrender their FFPs and be prohibited from fishing in Federal waters for up to 3 years, or retain their FFPs and be prohibited from transiting through Walrus Protection Areas.

Vessel owners prefer to transit through the Walrus Protection Areas north of Round Island because transiting to the north and outside of Walrus Protection Areas requires vessels to transit through shallower waters in State waters. This transit can be more difficult to navigate and may create additional safety concerns. Transiting to the south of Round Island and outside of the Walrus Protection Areas requires vessels to transit around Round Island and through Hagemeister Strait, which adds considerable distance and time to each transit. The additional time increases the fuel costs required for transit and potentially exposes vessels to more adverse weather conditions for a longer period of time. Vessels delivering groundfish to floating processors in the Togiak Bay area also experience increased costs because of additional transit distances. Transit through Hagemeister Strait also puts vessels in close proximity (i.e., within 3 nm) to a walrus haulout on the southern tip of Hagemeister Island. This vessel traffic may disturb walrus using the haulout on Hagemeister Island. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas north of Round Island could reduce vessel transits through Hagemeister Strait and the potential for disturbance to walrus using the haulout on Hagemeister Island.

Currently, vessels can transit through State waters (from 0 to 3 nm from the shore) near Cape Peirce while tendering herring or salmon from fishing locations near Cape Peirce or when delivering groundfish in northern Bristol Bay. As noted in Section 3.2.7.3 of the Analysis, the U.S. Fish and Wildlife Service has not monitored walrus in the Cape Peirce area for disturbance; therefore the incidence of disturbance at Cape Peirce is not known. However, vessels transiting through State waters (*i.e.,* within 3 nm of Cape Peirce) may be more likely to disturb walruses. An alternative route that would allow vessels designated on FFPs to transit through a portion of the Walrus Protection Areas east of Cape Peirce could reduce vessel transits through State waters near Cape Peirce and the potential for disturbance to walruses using the haulout at Cape Peirce.

NMFS is soliciting public comments on proposed Amendment 107 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 107 following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 107 to be considered in the approval/disapproval decision on Amendment 107. NMFS will consider all comments received by the end of the comment period on Amendment 107, whether specifically directed to the FMP amendment or the proposed rule, in the FMP amendment approval/disapproval decision. Comments received after that date may not be considered in the approval/disapproval decision on Amendment 107. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: September 19, 2014

Alan D. Risenhoover,

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

[FR Doc. 2014–22688 Filed 9–23–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 185

Wednesday, September 24, 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

Submission for OMB Review; Comment Request

September 18, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 24, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Volunteer Programs.

OMB Control Number: 0560–0232.

Summary of Collection: Section 1526 of the Food and Agriculture Act of 1981 (7 U.S.C. 2272) permits the Secretary of Agriculture to establish a program to use volunteers to perform a wide range of activities to carry out the programs of or supported by the Department of Agriculture (USDA). Each USDA agency is granted with the authority to establish programs designed to provide educationally related work assignments for students in non-pay status. USDA, Departmental Regulation 4230–1 requires documentation of service performed without compensation by persons who do not receive Federal appointment. This information collection request is necessary in order to continue implementation of the programs, which allow Agencies to use volunteers to perform a wide range of activities to carry out the programs of or supported by the Agency.

Need and Use of the Information: Applicants who are accepted in the program will complete the ''Service Agreement and Attendance Record.'' The Farm Service Agency (FSA) will use the recorded information to respond to request for information on volunteers from the USDA Office of Human Resources Management. If the information were not collected for each volunteer, FSA would be unable to document service performed without compensation by persons in the program.

Description of Respondents: Individuals or households.

Number of Respondents: 60.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 30.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–22676 Filed 9–23–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Tongass Advisory Committee (Committee) will meet in Klawock, Alaska. The Committee is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2). The most up to date information concerning the Committee, including meeting times and agendas can be found by visiting the Committee's Web site at: *http://www.fs.usda.gov/goto/R10/Tongass/TAC.* The meeting is open to the public.

DATES: The meeting will be held on:

- October 8, 2014 from 8:30 a.m. to 12:30 p.m. (AKDT).
- October 9, 2014 from 1:00 p.m. to 5:00 p.m. (AKDT).
- October 10, 2014 from 8:30 a.m. to 2:00 p.m.

All meetings are subject to change and cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Fireweed Lodge at 6851 Klawock Hollis Hwy, Klawock, AK 99925. For more information on the meeting or to attend please visit the Web site listed in the **SUMMARY** section, or contact Nicole McMurren at *nmcmurren@fs.fed.us* for further details. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Tongass National Forest Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nicole McMurren, Committee Coordinator, by phone at 907–772–5875, or by email at *nmcmurren@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide advice and recommendations on ecologically, socially, and economically sustainable forest management strategy on the Tongass National Forest with an emphasis on young growth management. Recommendations and advice may directly inform the development of a proposed action for modification of the 2008 Tongass Land Management Plan.

Agenda: On October 8–10, the Committee will: conduct site visits and field trips to inform Committee deliberations, host presentations and discussion on broader economic trends and conditions associated with the transition, and have initial conceptual discussions of substantive issues to identify where there is concurrence and disagreement.

In addition, all agendas include time for oral public comment. Those interested in providing comment orally can register at the meeting. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee's staff before or after the meeting. Written comments may be sent to Jason Anderson, Designated Federal Officer, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833; by email to *jasonanderson@fs.fed.us,* or via facsimile to 907–772–5895. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 18, 2014.

Christopher B. French,

Assistant Director, Ecosystem Managament Coordination.

[FR Doc. 2014–22713 Filed 9–23–14; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee for a Meeting on Discussing the Committee's Response to the Events in Ferguson, Missouri

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Monday, September 29, 2014, at 12:00 p.m. for the purpose of discussing the recent events in Ferguson, Missouri, and determining what the appropriate next steps for the committee should be in light of these events.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–572–7025, conference ID: 7226252. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office by October 29, 2014. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Missouri Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions

12:00 p.m. to 12:10 p.m.

S. David Mitchell, Chairman, Missouri Advisory Committee

Update on Events in Ferguson, MO

12:10 p.m. to 12:20 p.m.

Missouri Advisory Committee

Planning Next Steps

12:20 p.m. to 1:00 p.m.

Adjournment

1:00 p.m.

DATES: The meeting will be held on Monday, September 29, 2014, at 12:00 p.m. CST

Public Call Information

Dial: 888–572–7025.

Conference ID: 7226252.

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances currently happening in Ferguson, MO. Given the exceptional urgency of the events, the agency and advisory committee deem it important for the advisory committee to begin planning an appropriate response immediately.

Dated: September 19, 2014.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2014–22689 Filed 9–23–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2014]

Foreign-Trade Zone 244—Riverside County, California, Authorization of Production Activity, ModusLink Global Solutions, (Camera and Accessories Kitting) Riverside, California

On May 21, 2014, the March Joint Powers Authority, grantee of FTZ 244, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of ModusLink Global Solutions, within Site 5, in Riverside, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 32532, 06–05–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14. Also, as noted in the request, all textile inputs (classified

under HTSUS Subheadings 4202.92 and 6307.90) will be admitted to the site in privileged foreign status (19 CFR 146.41) or in domestic/duty-paid (19 CFR 146.43) status.

Dated: September 18, 2014.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2014–22736 Filed 9–23–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). The period of review (POR) is February 16, 2012, through July 31, 2013. The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). ILJIN, ILJIN Electric, and LSIS, were not selected for individual examination.

We preliminarily determine that sales of subject merchandise by Hyosung and Hyundai were made at less than normal value during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Brian Davis or David Cordell, 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) 482–7924 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for AD/CVD Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2012–2103'' (Preliminary Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price (CEP) is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

The Preliminary 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). Access to 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 Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that, for the period February 16, 2012, through July 31, 2013, the following dumping margins exist: [1]

Manufacturer/exporter	Weighted-average margin (percent)
Hyosung Corporation	6.56
Hyundai Heavy Industries Co., Ltd.	9.34
ILJIN Electric Co., Ltd.	8.11
ILJIN	8.11
LSIS Co., Ltd.	8.11

Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[2] The Department will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that the Department will announce and rebuttal briefs within five days after the time limit for filing case briefs.[3] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[4]

Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5] Case and rebuttal briefs should be filed using IA ACCESS.[6] Case and rebuttal briefs must be served on interested parties.[7] Executive summaries should be limited to five pages total, including footnotes.

Within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs.[8] Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.[9] Written argument and hearing requests should be electronically submitted to the Department via IA ACCESS.[10] The Department's electronic

[1] The rate applied to the non-selected companies (*i.e.,* ILJIN, ILJIN Electric, and LSIS) is a weighted-average percentage margin calculated based on the publicly-ranged U.S. volumes of the two reviewed companies with an affirmative dumping margin, for the period February 16, 2012, through July 31, 2013. *See* Memorandum to the File titled, ''Large Power Transformers from the Republic of Korea: Margin for Respondents Not Selected for Individual Examination,'' through Angelica Mendoza, Program Manager, dated concurrently with this notice.

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[4] *See* 19 CFR 351.309(d)(1) and (2).

[5] *See* 19 CFR 351.309(c)(2).

[6] *See generally* 19 CFR 351.303.

[7] *See* 19 CFR 351.303(f).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310(d)(1).

[10] *See generally* 19 CFR 351.303.

records system, IA ACCESS, must successfully receive an electronically-filed document in its entirety by 5:00 p.m. Eastern Daylight Time within 30 days after the date of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Parties will be notified of the time and location of the hearing.

The Department intends to publish the final results of this administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[12]

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.[13] If respondents' weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If respondents' weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or de minimis, no antidumping duties will be assessed.'' [14]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[15] This clarification will apply to entries of subject merchandise during the POR produced by Hyosung and Hyundai in these preliminary results of review for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyosung and Hyundai will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 22.00 percent, which is the all-others rate established in the investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 18, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Companies Not Selected for Individual Examination
3. Deadline for Submission of Updated Sales and Cost Information
4. Scope of the Order
5. Comparisons to Normal Value
   A. Determination of Comparison Method
   B. Results of the Differential Pricing Analysis
6. Product Comparisons
7. Date of Sale
8. Constructed Export Price
9. Normal Value
   A. Home Market Viability
   B. Level of Trade
   C. Cost of Production
   1. Calculation of Cost of Production
   2. Test of Comparison Market Sales Prices
   3. Results of the Cost of Production Test
   D. Calculation of Normal Value Based on Comparison Market Prices
   E. Price-to-Constructed Value Comparison
   F. Constructed Value
10. Currency Conversion

[FR Doc. 2014–22744 Filed 9–23–14; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.310(c).

[12] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

[13] *See* 19 CFR 351.212(b)(1).

[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[15] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 24, 2014, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the eighth administrative review of the antidumping duty *Order*[1] on certain warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam'').[2] Based upon our analysis of the comments and information received, we

[1] See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005) (''*Order*'').

[2] *See Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 2012–2013,* 79 FR 15944 (March 24, 2014) (''*Preliminary Results*'').

determine that Minh Phu Group,[3] and Stapimex,[4] the two mandatory respondents, sold subject merchandise at less than normal value during the period of review (''POR''), February 1, 2012, through January 31, 2013.

DATES: *Effective Date:* September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068 or (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION: On March 24, 2013, the Department published the *Preliminary Results.* On June 3, 2014, the Department extended the time limit for these final results by 60 days. On April 28, 2014, Petitioner[5] and the Minh Phu Group submitted additional surrogate value (''SV'') information.

We gave interested parties an opportunity to comment on the *Preliminary Results.* On April 23, 2014, Gallant Ocean (Quang Ngai) Co., Ltd., Gallant Dachan Seafood Co., Ltd., and Gallant Ocean (Vietnam) Co., Ltd. submitted a case brief. On May 28, 2014, Petitioner, Domestic Processors,[6] Quoc Viet, the Minh Phu Group and Stapimex submitted case briefs. On June 2, 2014, Petitioner, Domestic Processors, Quoc Viet, the Minh Phu Group and Stapimex submitted rebuttal briefs.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. The written description of the scope of the order is dispositive. A full description of the scope of the *Order* is available in the accompanying Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the accompanying Issues and Decision Memorandum.[8] A list of the issues which parties raised, and to which we respond 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 in the Central Records Unit, 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 electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily determined the following companies did not have any reviewable transactions during the POR: Anvifish Joint Stock Company, Bac Lieu Fisheries Company Limited, Bien Dong Seafood Co., Ltd., Camranh Seafoods Processing Enterprise Pte., Ngoc Sinh Private Enterprise, Ngoc Tri Seafood Joint Stock Company, Nhat Duc Co., Ltd., Seavina Joint Stock Company, and Vinh Hoan Corporation. We have not received any information to contradict this determination. Therefore, the Department made the final determination that the above-named companies did not have any reviewable entries of subject merchandise during the POR, and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.

Changes Since the Preliminary Results

The Department has not made changes to any surrogate values or company-specific margin calculations since the *Preliminary Results.* For detailed information, *see* the Issues and Decision Memorandum and the company-specific final results analysis memoranda.

Separate Rates

In the *Preliminary Results,* we determined that 30 companies[9] (''Separate Rate Respondents'') in addition to Minh Phu Group and Stapimex met the criteria for separate rate status. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that these 32 companies meet the criteria for a separate rate for the final results.

Rate for Non-Selected Companies

For the final results, the calculated rates for both mandatory respondents have not changed from the *Preliminary Results.* Therefore, there is no change to the separate rate assigned to the Separate Rate Respondents for the final results of this review, and we continue to determine that a ''reasonable method for determining the weighted-average dumping margins for the non-selected respondents in this review is to average the weighted-average dumping margins calculated for the mandatory respondents,'' as noted in the *Preliminary Results.*[10]

Vietnam-Wide Entity

In the *Preliminary Results,* we determined that 45 companies failed to demonstrate their eligibility for a separate rate. In non-market economy (''NME'') proceedings, '''rates' may consist of a single dumping margin applicable to all exporters and producers.''[11] Therefore, we assigned the Vietnam-wide entity a rate of 25.76 percent, the only rate ever determined for the Vietnam-wide entity in this proceeding. We have not received any information since the *Preliminary Results* that provides a basis for reconsidering this determination. We, therefore, continue to apply the Vietnam-wide entity rate of 25.76 percent to these 45 companies.[12]

[3] Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corporation, Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, and Minh Phu Hau Giang Seafood Co., Ltd. (collectively, the ''Minh Phu Group'').

[4] Soc Trang Seafood Joint Stock Company (''Stapimex'').

[5] The Ad Hoc Shrimp Trade Action Committee (''Petitioner'').

[6] American Shrimp Processors Association (''Domestic Processors'').

[7] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, From Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results, (''Issues and Decision Memorandum'') dated concurrently and hereby adopted by this notice.

[8] *Id.*

[9] *See* Issues and Decision Memorandum at Appendix I.

[10] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 10–11.

[11] *See* 19 CFR 351.107(d).

[12] *See* Issues and Decision Memorandum at Appendix II for a list of the companies included in the Vietnam-Wide Entity.

Final Results of Review

The Department determines that the following final dumping margins exist:

Exporter	Weighted-average margin %
Minh Phu Group: [13]	
Minh Phu Seafood Corp., aka Minh Phu Seafood Corporation, aka Minh Phu Seafood Pte, aka Minh Phu Hau Giang Seafood Co., Ltd., aka Minh Phat Seafood Co., Ltd., aka Minh Qui Seafood Co., Ltd	4.98
Soc Trang Seafood Joint Stock Company, aka Stapimex, aka Soc Trang Aquatic Products and General Import Export Company, aka Stapimex Soc Trans Aquatic Products and General Import Export Company, aka Stapmex	9.75
BIM Seafood Joint Stock Company	6.37
Camau Frozen Seafood Processing Import Export Corporation, aka Camimex, aka Camau Seafood Factory No. 4, aka Camau Seafood Factory No. 5, aka Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX–FAC 25), aka Frozen Factory No. 4	6.37
C.P. Vietnam Corporation, aka C.P. Vietnam Livestock Corporation, aka C.P. Vietnam Livestock Company Limited, aka C.P. Vietnam	6.37
Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka Cai Doi Vam Seafood Import-Export Company, aka Caidoivam Seafood Company, aka Cadovimex-Vietnam, aka Cadovimex	6.37
Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Cafatex Corp., aka Cafatex, aka Taydo Seafood Enterprise, aka Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho	6.37
Camau Seafood Processing and Service Joint Stock Company	6.37
Can Tho Import Export Fishery Limited Company, aka CAFISH	6.37
Coastal Fisheries Development Corporation, aka COFIDEC, aka Coastal Fisheries Development Corp., aka Coastal Fisheries Development Co., aka Coastal Fisheries Development	6.37
Cuu Long Seaproducts Company, aka Cuu Long Seaproducts Limited, aka Cuulong Seapro aka Cuu Long Seapro	6.37
Danang Seaproducts Import Export Corporation, aka Danang Sea Products Import Export Corporation, aka Tho Quang Seafood Processing & Export Company, aka Tho Quang Seafood Processing and Export Company, aka Tho Quang, aka Tho Quang Co., aka Seaprodex Danang	6.37
Gallant Ocean (Vietnam) Co., Ltd	6.37
Hai Viet Corporation	6.37
Investment Commerce Fisheries Corporation, aka Investment Commerce Fisheries Corp., aka Investment Commerce Fisheries, aka Incomfish, aka Incomfish Corp., aka Incomfish Corporation	6.37
Kim Anh Company Limited, aka Kim Anh Co, Ltd	6.37
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Jostoco, aka	6.37
Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai, aka Sea Minh Hai, aka Seaprodex Min Hai, aka Seaprodex Minh Hai-Factory No. 78, aka Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.), aka Seaprodex Minh Hai (Workshop 1), aka Seaprodex Minh Hai Factory No. 69	6.37
Minh Hai Sea Products Import Export Company, aka Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam aka Seaprimexco aka Minh Hai Seaproducts Co Ltd	6.37
Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco aka Nhatrang Fisheries Joint Stock Company, aka Nhatrang Fisco, aka Nha Trang Fisheries, Joint Stock	6.37
Nha Trang Seafoods: [14]	
Nha Trang Seaproducts Company, aka Nha Trang Seafoods, aka NT Seafoods Corporation, aka NT Seafoods, aka Nha Trang Seafoods—F.89 Joint Stock Company, aka Nha Trang Seafoods—F.89, aka NTSF Seafoods Joint Stock Company, aka NTSF Seafoods	6.37
Phu Cuong Jostoco Seafood Corporation, aka Phu Cuong Seafood Processing and Import-Export Co., Ltd., aka Phu Cuong Seafood Processing and Import Export Company Limited, aka Phu Cuong Jostoco Seafood Corp	6.37
Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd	6.37
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd	6.37
Sao Ta Foods Joint Stock Company, aka Fimex VN aka Sao Ta Seafood Factory aka Saota Seafood Factory	6.37
Thong Thuan Company Limited, aka Cong Ty Tnhh Thong Thuan	6.37
Thuan Phuoc Seafoods and Trading Corporation, aka Thuan Phuoc Corp., aka Frozen Seafoods Factory No. 32, aka Seafoods and Foodstuff Factory, aka Seafoods and Foodstuff Factory Vietnam, aka My Son Seafoods Factory	6.37
UTXI Aquatic Products Processing Corporation, aka UT XI Aquatic Products Processing Corporation, aka UTXI Aquatic Products Processing Company, aka UT XI Aquatic Products Processing Company, aka UTXI Co. Ltd., aka UTXI, aka UTXICO, aka Hoang Phuong Seafood Factory, aka Hoang Phong Seafood Factory	6.37
Viet Foods Co., Ltd., aka Nam Hai Foodstuff and Export Company Ltd	6.37
Vietnam Clean Seafood Corporation, aka Vina Cleanfood	6.37
Viet Hai Seafood Co., Ltd., aka Vietnam Fish One Co., Ltd., aka Fish One	6.37
Viet I-Mei Frozen Foods Co., Ltd	6.37
Vietnam-wide Entity [15]	25.76

[13] The Department found the companies comprising the Minh Phu Group are a single entity and, because there have been no changes to the facts which supported this determination since the sixth administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review,* 77 FR 13547, 13549 (March 7, 2012), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 55800 (September 11, 2012).

[14] The Department found the companies comprising Nha Trang Seafoods are a single entity and, because there have been no changes to the fact which supported this determination since the fifth administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review,* 76 FR 12054, 12056 (March 4, 2012), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158 (September 12, 2011).

[15] *See* Issues and Decision Memorandum at Appendix II for a list of the companies included in the Vietnam-Wide Entity.

Disclosure and Public Comment

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).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales. Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).[16] To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

Additionally, pursuant to a refinement to its assessment practice in NME cases, if the Department continues to determine that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[18]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: September 19, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

General Issues

Comment 1: Surrogate Country
Comment 2: Differential Pricing
A. Consideration of an Alternative Comparison Method in Administrative Reviews
B. Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations
C. Differential Pricing Analysis
D. Whether to apply the A-to-T methodology to all the Minh Phu Group's Sales

Surrogate Value Issues

Comment 3: Shrimp Surrogate Value
Comment 4: Bangladeshi Inflator Data
Comment 5: Calculation of Brokerage and Handling Expenses
Comment 6: Labor Surrogate Value
Comment 7: Whether the Chlorine, Birlox, Salt and Skewer SVs are Aberrational
a. Chlorine and Birlox
b. Salt
c. Skewers
Comment 8: Certain Adjustments to Financial Ratios

Company—Specific Issues

Minh Phu Group

Comment 9: Separate Rate Status for MPG Affiliate Names

Quoc Viet

Comment 10: Whether The Department Should Continue To Decline To Select Quoc Viet As A Voluntary Respondent
Comment 11: Whether the Rejection of Quoc Viet's Margin Calculation Submission was Contrary to Law

Quang Ngai and Dachan

Comment 12: Separate Rate Status of Gallant Ocean Quang Ngai and Gallant Dachan

SR Respondents

Comment 13: Whether to Include Abbreviated Company Names for Certain Separate Rate Companies

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[16] *See* 19 CFR 351.212(b)(1).

[17] *See* 19 CFR 352.106(c)(2); *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012) (''*Final Modification for Reviews*'').

[18] For a full discussion of this practice, see *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

United States Integrated Ocean Observing System Advisory Committee; Member Solicitation

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Member Solicitation for the United States Integrated Ocean Observing System Advisory Committee.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is soliciting applications for membership on the United States Integrated Ocean Observing System Advisory Committee (the Committee), a Federal advisory committee. The Integrated Coastal and Ocean Observation System (ICOOS) Act of 2009 establishes a national integrated System of ocean, coastal, and Great Lakes observing systems, comprised of Federal and non-Federal components including in situ, remote, and other coastal and ocean observation, technologies, and data management and communication systems. The System is designed to address regional and national needs for ocean information; to gather specific data on key coastal, ocean, and Great Lakes variables; and to ensure timely and sustained dissemination and availability of these data to support a variety of societal benefits. These benefits include supporting national defense; marine commerce; navigation safety; weather, climate, and marine forecasting; energy siting and production; economic development; ecosystem-based management of marine and coastal areas; conservation of ocean and coastal resources; and public safety. The System is also designed to promote research to develop, test, and deploy innovations and improvements in coastal and ocean observation technologies and modeling systems.

The ICOOS Act also requires the Under Secretary of Commerce for Oceans and Atmosphere to establish a System advisory committee to provide advice to the Under Secretary and to the Interagency Ocean Observation Committee, which is responsible for planning for the integrated design, operation, maintenance, enhancement, and expansion of the System.

NOAA will hereby accept applications for membership on the Committee through November 24, 2014. The ICOOS Act of 2009 states: ''Members shall be qualified by education, training, and experience to evaluate scientific and technical information related to the design, operation, maintenance, or use of the [Integrated Ocean Observing] System, or use of data products provided though the System.'' NOAA encourages individuals with expertise in oceanographic data, products, and services; coastal management; fisheries management; coastal and marine spatial planning; geodesy; water levels; and other science-related fields to submit applications for Committee membership. To apply for membership on the Committee, applicants should submit a resume as indicated in the **ADDRESSES** section. NOAA is an equal-opportunity employer.

DATES: Application materials should be sent to the address, email address, or fax number specified and must be received by November 24, 2014.

ADDRESSES: Submit an application for Committee membership, in the form of a resume, to Jessica Snowden via mail, fax, or email. Mail: 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910; Fax: 301–427–2073; Email: *jessica.snowden@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Snowden, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910; Telephone: 301–427–2453, Fax: 301–427–2073; Email: *jessica.snowden@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice responds to the ICOOS Act of 2009 (Pub. L. 111–11, section 12304), which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for Committee membership. The Committee will advise the NOAA Administrator or Interagency Ocean Observation Committee on matters related to the responsibilities and authorities set forth in section 12302 of the ICOOS Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The United States Integrated Ocean Observing System Advisory Committee will provide advice on:

(a) Administration, operation, management, and maintenance of the System;

(b) Expansion and periodic modernization and upgrade of technology components of the System;

(c) Identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in dissemination information to end-user communities and to the general public; and

(d) Any other purpose identified by the Under Secretary of Commerce for Oceans and Atmosphere or the Interagency Ocean Observation Committee.

The Committee's voting members will be appointed by the Under Secretary of Commerce for Oceans and Atmosphere. Members shall be qualified by education, training, and experience to evaluate scientific and technical information related to the design, operation, maintenance, or use of the System, or the use of data products provided through the System. Members are selected on a standardized basis, in accordance with applicable Department of Commerce guidance. Members will be appointed for three-year terms, renewable once. One Committee member will be designated by the Under Secretary as chairperson. Full-time officers or employees of the United States may not be appointed as a voting member. Members will be appointed as special Government employees (SGEs) for purposes of section 202(a) of title 18, United States Code. Members serve at the discretion of the Under Secretary and are subject to government ethics standards. Members of the Committee will not be compensated for service on the Committee, but they may be allowed travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

The Committee will meet at least once each year, and at other times at the call of the Under Secretary, the Interagency Ocean Observation Committee, or the Committee Chairperson. The Committee has approximately thirteen voting members. This solicitation is to obtain candidate applications for up to thirteen full voting member vacancies. Be advised that some voting members whose terms expire August 28, 2015 may be reappointed for another full term if eligible.

If an applicant submitted a resume application for the 2011 **Federal Register** Notice for IOOS Advisory Committee membership solicitation, and is still interested in being considered for membership on the Committee, the applicant needs to confirm his or her interest by contacting the Jessica Snowden as indicated in the **ADDRESSES** section. An applicant who is still interested, may either request this his or her 2011 resume application be resubmitted, or he or she may choose to submit a current resume application for the 2015 selection process.

Individuals Selected for Committee Membership

Upon selection and agreement to serve on the United States Integrated Ocean Observing System Advisory Committee, one becomes a Special Government Employee (SGE) of the United States Government. An SGE is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis. After the membership selection process is complete, applicants who are selected to serve on the Committee must complete the following actions before they can be appointed as a

Committee Member

(a) Background Security Check (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and

(b) Confidential Financial Disclosure Report: As an SGE, one is required to file annually a Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. One may find the Confidential Financial Disclosure Report at the following Web site: *http://www.usoge.gov/forms/form_450.aspx.*

Dated: September 8, 2014.

Zdenka Willis,

Director, U.S. Integrated Ocean Observing System.

[FR Doc. 2014–22697 Filed 9–23–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD070

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Coast Guard Station Monterey Waterfront Repairs in Monterey, California

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the United States Coast Guard (USCG) to take, by harassment, small numbers of seven species of marine mammals incidental to pile driving associated with the USCG's Station Monterey waterfront repair project in Monterey, California, between June 1, 2015, through September 1, 2015.

DATES: Effective October 1, 2014, through September 30, 2015.

ADDRESSES: A copy of the application containing a list of the references used in this document, USCG's Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at 1315 East West Highway, Silver Spring, MD 20910.

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 U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An 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.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On June 27, 2013, NMFS received an application from USCG for the taking of marine mammals incidental to its Station Monterey waterfront repairs project. The purpose of the proposed activity is to improve and maintain the structural integrity of the patrol boat pier (Pier) and potable waterline at USCG Station Monterey through the replacement of Pier piles and the water line. On March 12, 2014, NMFS published a **Federal Register** notice (FR 79 13991) for the proposed IHA. No changes was made for the proposed USCG's waterfront repair project as described in the proposed IHA except the project duration was changed to June 1 through September 1, 2015, from the original June 15 through October 15, 2014, due to funding and other constraints. Please refer to **Federal Register** notice for the proposed IHA for a detailed description of the project activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to USCG was published in the **Federal Register** on March 12, 2014 (79 FR 13991). That notice described, in detail, USCG's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission recommends NMFS issue the IHA to USCG, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. NMFS agrees with the Commission's recommendation and has issued the IHA with mitigation and monitoring measures described below. No other comment letters were received on the proposed action.

Description of Marine Mammals in the Area of the Specified Activity

The **Federal Register** notice (79 FR 13991) for the proposed IHA and in USCG's IHA application identified six marine mammal species under NMFS jurisdiction likely to occur in the construction area: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller

sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*). Subsequence analyses identified additional two species that could also occur in the action area: Risso's dolphin (*Grampus griseus*) and bottlenose dolphin (*Tursiops truncatus*). In addition, the density of harbor porpoise was updated based on new information provided by Carretta *et al.* (2009). This new information was included later in take number estimates (please see ''Estimated Take by Incidental Harassment'' section).

General information on the marine mammal species found in the vicinity of the project area in Washington waters can be found in Caretta *et al.* (2012), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2012.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from in-water pile driving and pile removal associated with the waterfront repair activities at the USCG's Station Monterey has the potential to result in Level B (behavioral) harassment of marine mammal species and stocks in the vicinity of the action area. The Notice of Proposed IHA included a discussion of the effects of anthropogenic noise on marine mammals, which is not repeated here. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of USCG's activities given the strong likelihood that marine mammals would avoid the immediate vicinity of the pile driving area.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term, local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

For the proposed USCG Station Monterey waterfront repair activities, NMFS requires that USCG implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity.

Use of Noise Attenuation Devices

Bubble curtains for noise attenuation will be used during all impact pile driving to interrupt the acoustic pressure and reduce the impact on marine mammals. By reducing underwater sound pressure levels at the source, bubble curtains would reduce the area over which both Level A and B harassment would occur, thereby potentially reducing the numbers of marine mammals affected.

With the bubble curtain system in place, the exclusion zone within which marine mammal injury could occur is eliminated.

Time Restriction

Work would occur only during daylight hours when visual monitoring of marine mammals can be implemented.

Establishment of Level B Harassment Zones of Influence

Before the commencement of in-water pile driving activities, USCG shall establish Level B behavioral harassment zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. The modeled maximum isopleths for ZOIs are listed in Table 1.

TABLE 1—MODELED LEVEL B HARASSMENT ZONES OF INFLUENCE FOR VARIOUS PILE DRIVING ACTIVITIES

Pile driving activities	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)
Vibratory pile driving	2,400	NA
Impact pile driving (with bubble curtain)	NA	465

Once the underwater acoustic measurements are conducted during initial test pile driving, USCG shall adjust the size of the ZOIs, and monitor these zones as described under the Proposed Monitoring section below.

NMFS-approved protected species observers (PSOs) shall conduct initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the exclusion zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray and killer whales. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone. These criteria are based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

Soft Start

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. For vibratory hammers, the contractor will initiate the driving for 15 seconds at reduced energy, followed by a 1-minute waiting period when there has been downtime of 30 minutes or more. This procedure shall be repeated two additional times before continuous driving is started. This procedure would also apply to vibratory pile extraction.

For impact driving, an initial set of three strikes would be made by the hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets before initiating continuous driving.

Shutdown Measures

Although no marine mammal exclusion zone exists due to the implementation of noise attenuation devices (i.e., bubble curtain), USCG

shall discontinue pile driving or pile removal activities if a marine mammal within the ZOI appears disturbed by the work activity. Work may not resume until the animal leaves the ZOI, or the required minutes have passed before the disturbed animal is last sighted.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. USCG submitted a marine mammal monitoring plan as part of the IHA application. The plan can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, temporary threshold shift (TTS), or permanent threshold shift (PTS); and

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

USCG shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Station Monterey waterfront repair project.

Before the start of the waterfront repair work, baseline biological monitoring shall be conducted to survey the potential Level A and B harassment zones on 2 separate days within 1 week before the first day of construction. Biological information collected during baseline monitoring will be used for comparison with results of monitoring during pile driving and removal activities.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 × 42 power).

Marine mammal visual monitoring shall be conducted from the best vantage point available, including the USCG pier, jetty, adjacent docks within the harbor, to maintain an excellent view of the exclusion zone and adjacent areas during the survey period. Monitors would be equipped with radios or cell phones for maintaining contact with work crews.

Vessel-based visual marine mammal monitoring within the 120 dB and 160 dB ZOIs shall be conducted during 10% of the vibratory pile driving and removal and impact pile driving activities, respectively.

Data collection during marine mammal monitoring will consist of a count of all marine mammals by species, a description of behavior (if

possible), location, direction of movement, type of construction that is occurring, time that pile replacement work begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as weather, visibility, temperature, tide level, current and sea state would also be recorded.

Reporting Measures

USCG would be required to submit weekly monitoring reports that summarize the monitoring results, construction activities and environmental conditions to NMFS.

A final report would be submitted to NMFS within 90 days after completion of the proposed project.

In addition, NMFS requires USCG to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. USCG shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by USCG that is not in the vicinity of the Station Monterey construction site, USCG would report the same information as listed above as soon as operationally feasible to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As discussed above, in-water pile driving (vibratory and impact) and pile removal generate loud noises that could potentially harass marine mammals in the vicinity of the USCG's proposed Station Monterey waterfront repair.

Currently NMFS uses 120 dB re 1 μPa and 160 dB re 1 μPa at the received levels for the onset of Level B harassment for non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. For airborne noises, NMFS uses 90 dB re 20 μPa and 100 dB re 20 μPa at the received levels for the onset of Level B harassment for harbor seal and all pinnipeds except harbor seal, respectively. Table 2 summarizes the current NMFS marine mammal take criteria.

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND

Criterion	Criterion definition	Threshold
Underwater Noise		
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa (cetaceans)/190 dB re 1 μPa (pinnipeds). root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 μPa (rms).
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 μPa (rms).
Airborne Noise		
Level B Harassment	Behavioral Disruption (for harbor seal)	90 dB re 20 μPa.
Level B Harassment	Behavioral Disruption (for pinnipeds other than harbor seal)	100 dB re 20 μPa.

The take calculations presented here relied on the best data currently available for marine mammal populations at the jetty and in the nearby waters of Monterey Bay. The population data used are discussed in each species take calculation subsection below. The formula below was developed for calculating take due to pile driving and is applied to each group-specific noise impact threshold. The formula is founded on the following assumptions:

- All piles to be installed would have a noise disturbance distance equal to the pile that causes the greatest noise disturbance (*i.e.,* the piling furthest from shore, in this case the farthest east pile along the jetty).
- It is estimated that an average of two or three piles will be installed and removed per day. The best estimate of the number of days during which pile driving would occur is 10 days, and this was used in all modeling calculations.
- Mitigation (*e.g.,* a noise attenuation system such as a bubble curtain) would be used during impact pile driving.
- An individual animal can only be taken once per method of installation during a 24 hour period.

The calculation for marine mammal take uses the following formula:

Take Estimate = (n × ZOI) × 10 days of activity

Where:

n (number of animals per unit area) = the density estimate used for each species. The unit of area is km^2.

ZOI (zone of influence) = the area encompassed by all locations where the sound pressure levels equal or exceed the threshold being evaluated.

Multiplying n × ZOI produces an estimate of the abundance of animals that could be present in the area of exposure per day. The final take estimate must be a whole number; therefore, values are rounded up to the next whole number.

The ZOI impact is the estimated range of noise impact for a given threshold. Because the work will be conducted near the jetty, underwater noise is not expected to spread spherically from the source. Underwater noise contours were therefore modeled using SoundPlan. The contours were then imported to ArcGIS to calculate the area within the contours and determine the ZOI for each threshold. The ZOI for vibratory pile driving encompasses the area out to the 120 dB isopleth (Level B threshold), while the ZOI for impact driving encompasses the area out to the 160 dB isopleth (Level B threshold). It is assumed that an underwater noise attenuation system, such as a bubble curtain with an estimated 10 dB attenuation, would be used as a mitigation measure. However, the actual attenuation that will be achieved in the field is unknown and would likely vary with each installation.

Airborne noise would spread spherically from the source; therefore, the ZOI for airborne impacts was calculated as the area within a circle (Area = pi × radius^2).

Although 10 days of total in-water work are proposed, pile extraction or driving would only occur periodically in that time, as described in earlier in this document. An average work day (beginning 2 hours after sunrise and ending 2 hours before sunset) is approximately 8 to 9 hours, depending on the month. Although it is anticipated that only 30 to 70 minutes would be spent pile driving per day, to take into account deviations from the estimated times for pile installation and extraction—and to account for the additional use of the impact pile driver in case of failure of the vibratory hammer to reach the desired embedment depth—the potential impacts were modeled as if the entire day could be spent pile driving.

The exposure assessment methodology estimates the number of individuals that would be exposed, because of pile extraction and driving activities, to noise levels that exceed established NMFS thresholds. Results of the acoustic impact exposure assessments should be regarded as conservative estimates that are strongly influenced by limited biological data. Although the numbers generated from the pile driving exposure calculations provide estimates of marine mammal exposures for consideration by NMFS, the short duration and limited extent of the repairs would limit actual exposures.

Based on the modeling results presented above, it is estimated that up to 2,099 Level B harassment takes of various species due to underwater and airborne noise from impact pile driving operations, and up to 2,849 Level B harassment takes of various species from vibratory pile driving and removal due to underwater and airborne noise. A summary of the take estimates is provided in Table 3.

TABLE 3—SUMMARY OF POTENTIAL MARINE MAMMAL TAKES AND PERCENTAGE OF STOCKS AFFECTED

	Estimated density	Estimated take by level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
California sea lion	At-sea: 8.62 per km^2 Haul-out: 250	4,231	396,750	1.06	Stable.
Harbor seal	0.965 per km^2	70	30,196	0.20	Stable.
Harbor porpoise	0.999 per km^2	77	1,492	5.16	Stable.
Killer whale (Eastern North Pacific offshore)	Rare	6	240	2.50	Stable.
Killer whale (west coast transient)	Rare	6	354	1.70	Stable.
Risso's dolphin	0.122 per km^2	10	6,272	0.16	Stable.
Bottlenose dolphin	0.122 per km^2	10	323	3.10	Stable.
Gray whale	Rare	6	19,126	0.03	Stable.

Analysis and Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

The USCG's proposed Station Monterey waterfront repair project would conduct pile driving and pile removal activities. Elevated underwater noises are expected to be generated as a result of pile driving and pile removal. However, USCG would use noise attenuation devices (i.e., bubble curtain) during the impact pile driving, thus eliminating potential for injury (PTS) and TTS. For vibratory pile driving and pile removal, noise levels are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with USCG construction project.

In addition, the USCG's proposed activities are localized and of short duration. The entire project area is limited to the USCG's Station Monterey pier and jetty. The entire waterfront repair project would replace 17 timber piles with small 14-inch steel pipe piles. The entire duration for pile driving is expected to be fewer than 10 days, assuming driving two piles per day. The duration for driving each pile would be about 20 to 25 minutes (vibratory or impact). These low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Station Monterey waterfront repair project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from USCG Station Monterey waterfront repair will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 4,231 California sea lions, 70 Pacific harbor seals, 77 harbor porpoises, 6 Eastern North Pacific offshore or West coast transient killer whales (or a combination of both stocks), 10 Risso's dolphins, 10 bottlenose dolphins, and 6 gray whales could be exposed to received noise

levels that could cause Level B behavioral harassment from the proposed construction work at the USCG Station Monterey. These numbers represent approximately 0.03%–5.16% of the stocks and populations of these species that could be affected by Level B behavioral harassment.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In January 2014, the USCG prepared a Final Environmental Assessment for Waterfront Repairs at United States Coast Guard Station Monterey, Monterey, California (EA) and provided supplement information on July 30, 2014. NMFS has reviewed the EA and concluded that the environmental consequences analyzed are reflect NMFS' action of issuance of an IHA to USCG. Therefore, NMFS determined to adopt the USCG EA and will not prepare its own EA or EIS for this action.

Authorization

NMFS has issued an IHA to USCG for the potential harassment of small numbers of marine mammal species incidental to its waterfront repair project at Station Monterey in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 18, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–22618 Filed 9–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC645

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations

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

ACTION: Notice of extension of public comment period.

SUMMARY: NMFS is announcing an extension to the public comment period for the amended permit to authorize the incidental, but not intentional, take of two stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA), under the Marine Mammal Protection Act (MMPA), by the California (CA) thresher shark/swordfish drift gillnet fishery (>14 in mesh) and the Washington (WA)/Oregon (OR)/CA sablefish pot fishery. On August 25, 2014, NMFS solicited comments from the public on the draft negligible impact determination and on the proposal to issue a permit to vessels that operate in these fisheries for the taking of affected endangered stocks of marine mammals.

NMFS is extending the comment period for 30 days.

DATES: Information and comments must be received by close of business on October 24, 2014.

ADDRESSES: The draft amended Negligible Impact Determination and list of references contained in this notice are available in electronic form via the Internet at: *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/marine_mammals.html.* The petition and a list of references contained in this notice are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/.*

You may submit comments, identified by NOAA–NMFS–2013–0073, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0073,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send comments or requests to: Chris Yates, Assistant Regional Administrator, Protected Resources Division, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be faxed to (562) 980–4027.

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 *http://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.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, NMFS West Coast Region, (562) 980–3232, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1361 *et seq.,* states that NMFS, as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the ESA, 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

NMFS proposes to issue an amended permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish drift gillnet fishery (>14 in mesh) to incidentally take individuals from two

stocks of threatened or endangered marine mammals: The CA/OR/WA stock of humpback whales (*Megaptera novaeangliae*) and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*); and to vessels registered in WA/OR/CA sablefish pot fishery to incidentally take individuals from the CA/OR/WA stock of humpback whales.

The data for considering these authorizations were reviewed coincident with the 2014 MMPA List of Fisheries (LOF; 79 FR 14418, March 14, 2014), final 2013 U.S. Pacific Marine Mammal Stock Assessment (SAR; Carretta *et al.* 2014), Carretta and Moore (2014), Moore and Barlow (in press), the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), recovery plans for these species (available on the Internet at: *http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals*), the best scientific information and available data, and other relevant sources.

Section 101(a)(5)(E)(i) of the MMPA requires NMFS to provide notice and opportunity for public comment on the proposed permit.

NMFS wants to provide adequate opportunity for review of all documents considered in making a negligible impact determination. Although NMFS believed all documents would be available to the public at the time we solicited comments on the draft negligible impact determination and on the proposal to issue the permit (79 FR 50626, August 25, 2014), the Moore and Barlow (in press) paper has not yet been published and made available for public review. Publication of the paper is imminent and NMFS has decided to extend the comment period to allow for publication of the paper and subsequent review of the paper for comments relevant to this proposed MMPA permit issuance. In this notice NMFS is extending the public comment period until October 24, 2014, to allow adequate time for the public to review the scientific information relevant to the amended permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish drift gillnet fishery (≥ in mesh) and vessels registered in WA/OR/CA sablefish pot fishery.

Information Solicited

To ensure that the amended permit under MMPA section 101(a)(5)(E) is based on the best scientific information available, we are soliciting public comments on the proposed permit and the preliminary determinations supporting the permit. Specifically, we seek comments on:

- The use of the revised abundance estimates in Moore and Barlow (in press)
- The use of a 13-year time period for estimating expected idental mortality of sperm whales in the gillnet fishery.

Dated: September 19, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–22696 Filed 9–23–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 140821696–4696–01]

RIN 0660–XC012

First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The First Responder Network Authority (''FirstNet'') publishes this *Notice* to request public comment on certain proposed interpretations of its enabling legislation that will inform, among other things, forthcoming requests for proposals, interpretive rules, and network policies. With the benefit of the comments received from this *Notice,* FirstNet may proceed to implement these or other interpretations with or without further administrative procedure.

DATES: Submit comments on or before October 24, 2014.

ADDRESSES: The public is invited to submit written comments to this *Notice.* Written comments may be submitted electronically through *www.regulations.gov* or by mail (to the address listed below). Comments received related to this *Notice* will be made a part of the public record and will be posted to *www.regulations.gov* without change. Comments should be machine readable and should not be copy-protected. Comments should include the name of the person or organization filing the comment as well as a page number on each page of the submission. All personally identifiable information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703–648–4167; or *elijah.veenendaal@firstnet.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the ''Act'') established the First Responder Network Authority (''FirstNet'') as an independent authority within the National Telecommunications and Information Administration (''NTIA''). The Act establishes FirstNet's duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (''NPSBN'').[1]

One of FirstNet's principal first steps in carrying out this responsibility under the Act is the issuance of open, transparent, and competitive requests for proposals (''RFPs'') for the purposes of building, operating, and maintaining the network. We have and will continue to seek public comments on many technical and economic aspects of these RFPs through traditional procurement processes, including requests for information (''RFIs'') and potential draft RFPs, prior to issuance of final RFPs.[2]

As a newly created entity, however, we are also confronted with many complex legal issues of first impression under the Act that will have a material impact on the RFPs, responsive proposals, and our operations going forward. Generally, the Administrative Procedure Act (''APA'')[3] provides the basic framework of administrative law governing agency action, including the procedural steps that must precede the effective promulgation, amendment, or repeal of a rule by a federal agency.[4]

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[1] 47 U.S.C. 1426(b).

[2] The pronouns ''we'' or ''our'' throughout this *Notice* refer to ''FirstNet'' alone and not FirstNet, NTIA, and the U.S. Department of Commerce as a collective group.

[3] *See* 5 U.S.C. 551–59, 701–06, 1305, 3105, 3344, 5372, 7521.

[4] *See* 5 U.S.C. 551–559. The APA defines a ''rule'' as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates,

However, Section 6206(d)(2) of the Act provides that any action taken or decision made by FirstNet is exempt from the requirements of the APA.[5]

Nevertheless, although excluded from these procedural requirements, FirstNet desires to solicit public comment on, in addition to technical and economic issues, certain foundational legal issues to guide our efforts in achieving our mission. The solicitation of comments on proposed legal interpretations and related implementations is more typically performed in a notice and comment process, rather than within an RFI or RFP process, including publication in the more widely accessed **Federal Register**, rather than the vendor-focused *FedBizOpps.* In addition, although not subject to the procedural requirements of the APA, FirstNet is subject to various consultation obligations under the Act, and this notice and comment process can contribute to such consultations.[6]

Thus, in general FirstNet may pursue APA-like public notice and comment processes such as this *Notice,* and we intend to rely upon comments filed in response to this *Notice* to inform the above-referenced RFPs and our operations going forward. In addition, we may rely upon such comments to help inform any future implementations of the Act that we may undertake, such as establishing the network policies required by Section 6206(c)(1) of the Act.[7]

With respect to this *Notice,* where we have drawn a preliminary conclusion and sought comments thereon, we currently intend to issue a subsequent document indicating final interpretative determinations, taking into consideration the comments received. This subsequent document might not precede release of the above-mentioned RFPs, which will nonetheless incorporate such final interpretive determinations in light of the received comments. Further, although we may, we do not now anticipate issuing further public notices and/or opportunities for comment or reply comments on the preliminary conclusions made in this *Notice,* and thus encourage interested parties to provide comments in this proceeding.

Where we have sought comment on a matter in this *Notice* without providing a preliminary conclusion, we may issue additional notices seeking comments on any preliminary conclusions we may reach following review and consideration of the comments responding to this *Notice.* That notice of preliminary conclusions, if issued, would then be followed by notice of final determinations. However, because we may not issue such a further notice of preliminary conclusions at all or prior to releasing the above-mentioned RFPs, we again encourage interested parties to provide comments in this proceeding.

II. Issues

A. FirstNet Network

1. Elements of the Network

Section 6202(a) of the Act charges FirstNet with the duty to ''ensure the establishment of a nationwide, interoperable public safety broadband network . . . based on a single, national network architecture. . . .''[8] Section 6202(b) defines the architecture of this network as initially consisting of a ''core network'' and a ''radio access network,'' with specific definitions discussed below.[9] In addition, Section 6206(b) requires FirstNet to take all actions necessary to ensure the building, deployment, and operation of the network, including issuing requests for proposals for the purposes of building, operating, and maintaining the network.[10] Thus, overall, FirstNet is responsible for ensuring the core network and radio access network is built, deployed, and operated.

Under the state and local implementation provisions of Section 6302, however, a State may, subject to the application process described in 6302(e), choose to conduct its own deployment of a radio access network in such State, including issuing requests for proposals for the construction, maintenance, and operation of the radio access network within the State.[11] Section 6302 does not provide for State deployment of a core network separate from the core network that FirstNet is charged with deploying under Sections 6202 and 6206. Section 6302(f) requires States that choose to build their own radio access network to pay any user fees associated with such State's use of ''the core network.''[12] The only user fees expressly defined under the Act are those FirstNet is authorized to assess and collect under Section 6208, and as mentioned above, the Act does not require any party other than FirstNet to build and operate a core network. In addition to and consistent with these statutory provisions, Sections 4.1.1 and 4.1.2 of the Interoperability Board Report[13] indicate that the FirstNet core network is the core network connected to and controlling opt-out State radio access networks. Thus, we preliminarily conclude that opt-out State radio access networks must use FirstNet's core network to provide services to public safety entities. This conclusion is also supported by the overall interoperability goal of the Act, which would, from a technical and operational perspective, be more difficult to achieve if States deployed their own, separate core networks to serve public safety entities.[14] We seek comments on this preliminary conclusion.

Section 6202(b) of the Act defines the FirstNet ''core network'' as providing the connectivity between the radio access network and the public Internet

wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.'' 5 U.S.C. 551(4).

[5] 47 U.S.C. 1426(d)(2).

[6] *See* 47 U.S.C. 1426(b)(1) (''[FirstNet] shall . . . take all actions necessary to ensure the building, deployment, and operation of the [NPSBN], in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee established in section 6205(a). . . .''). We note, however, that the specific consultations required under 47 U.S.C. 1426(c)(2)(A) must occur between FirstNet and the single officer or governmental body designated under Section 6302(d), and this *Notice* is not intended to address those consultations, which are ongoing. *See* 47 U.S.C. 1426(c)(2)(B). Comments from such designated single officer or governmental body are, of course, nevertheless welcomed in this proceeding. We expect to continue to consult directly with Federal agencies and, pursuant to its charter, with the public safety advisory committee established under 47 U.S.C. 1425(a).

[7] 47 U.S.C. 1426(c)(1).

[8] 47 U.S.C. 1422(a).

[9] *See* 47 U.S.C. 1422(b).

[10] *See* 47 U.S.C. 1426(b).

[11] *See* 47 U.S.C. 1442.

[12] 47 U.S.C. 1442(f).

[13] Section 6203 of the Act established the Technical Advisory Board for First Responder Interoperability (''Interoperability Board'') and directed it to develop minimum technical requirements to ensure the interoperability of the NPSBN. 47 U.S.C. 1423. On May 22, 2012, the Interoperability Board, in accordance with the Act, submitted its recommendations to the Commission in a report. *See* Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network* (''Interoperability Board Report'') (May 22, 2012), *available at http://apps.fcc.gov/ecfs/document/view?id=7021919873.* On June, 21, 2012, the Commission completed its review of the Interoperability Board's final report and approved it for transmittal to FirstNet. *See* FCC Order of Transmittal, Recommendations of the Technical Advisory Board for First Responder Interoperability, PS Dkt. No. 12–74, FCC 12–68 (rel. June 21, 2012), *available at https://apps.fcc.gov/edocs_public/attachmatch/FCC–12–68A1.pdf.*

[14] We note that roaming among networks with separate core networks, potentially from different vendors, can substantially complicate the goal of a national, interoperable network. For example, features such as end-to-end QOS, priority, and preemption are controlled by several elements in the core network, and handling these features across multiple core networks would materially increase costs and complexity overall.

or PSTN.[15] Section 6202(b) further describes the parts of the ''core network'' to include ''the national and regional data centers, and other elements and functions that may be distributed geographically . . . and provides connectivity between (i) the radio access network; and (ii) the public Internet or public switched network, or both . . . .'' [16] In accordance with this provision, relevant sections of the Interoperability Board Report, and commercial standards, we define the core network as including without limitation the standard Evolved Packet Core elements under the 3rd Generation Partnership Project (''3GPP'') standards (including the Serving and Packet Data Network Gateways, Mobility Management Entity, and the Policy and Charging Rules Function), device services, location services, billing functions, and all other network elements and functions other than the radio access network.

Section 6202(b) defines the ''radio access network'' as consisting of all cell site equipment, antennas, and backhaul equipment required to enable wireless communications with devices using the public safety broadband spectrum.[17] We propose to define the radio access network in accordance with this provision, commercial standards, and the relevant sections of the Interoperability Board Report, as consisting of the standard E–UTRAN elements (including the eNodeB).

We seek comments on our preliminary conclusions regarding the definitions of core network and radio access network above, including the delineation of elements between them and any possible ramifications that would result based on this construct with respect to the achievement of FirstNet's mission, particularly if a State elects to opt-out and build their own radio access network.

2. Public Safety Entities, Secondary Users, and Other Users

The Act clearly indicates that the NPSBN is intended primarily for use by public safety entities. Section 6101(a) of the Act generally directs the Federal Communications Commission (the ''Commission'') to reallocate the 700 MHz D block spectrum ''for use *by public safety entities* in accordance with the provisions of this Act.'' [18] Section 6206(b)(2)(B)(ii) further requires that FirstNet ensure that equipment used on the NPSBN is ''capable of being used by any public safety entity.'' [19] However, the Act also permits FirstNet to charge user fees to, and thus by direct implication serve, non-public safety entities under certain conditions.[20] We thus first propose to define below the legal scope of *all* potential *users* of the NPSBN, including both public safety entities and non-public safety users. In a later section, we will discuss the limitations imposed by the Act on the types of *services* FirstNet may offer to such users.

We note that FirstNet may, as a policy matter, decide to narrow the scope of users it actually serves relative to those it can legally serve if it determines it is reasonable and appropriate to do so in support of its mission. We also recognize that, even among the multiple user groups who are allowed to use the NPSBN, separate priority and preemption parameters will be established. In the future and following appropriate consultations, we will fully address the priority and preemptive use of and access to the NPSBN among the various user groups. Prior to that, we address below the specific types of users that FirstNet is statutorily authorized to serve on the NPSBN.

In determining who is legally authorized to use the NPSBN it is helpful to first examine whether the Act expressly precludes any specific user group. We preliminarily conclude that the Act does not contain a list of expressly precluded users. Section 6212, discussed more fully in the next section of this *Notice,* comes closest to such a preclusion by limiting the types of services that can be provided directly to ''consumers.'' [21] Section 6206(c)(2)(A)(vi) otherwise supports our general interpretation by requiring FirstNet to consult with regional, State, tribal, and local jurisdictions with regard to expenditures required to carry out policies on the ''selection of entities seeking access to or use of'' the network.[22] We preliminarily conclude that the Act grants FirstNet discretion, within the bounds of the provisions discussed below, to consider a broad range of users consistent with FirstNet's mission.

To reach this conclusion, we first look to the sections of the Act involving the imposition of fees to provide greater clarity about the users authorized to use the NPSBN. Section 6208(a)(1) permits FirstNet to charge ''user or subscription'' fees to ''each entity, *including* any public safety entity or secondary user, that seeks access to or use of the [NPSBN].'' [23] We note that this provision uses the word ''including,'' rather than, for example, a limiting word such as ''consisting'' as used in Section 6202(b), which identifies the closed set of specific network components making up the NPSBN.[24]

Thus, although this provision explicitly identifies public safety entities and secondary users as entities for which FirstNet may charge user or subscription fees, it does appear to leave open the possibility of a group of other, unspecified entities as NPSBN users to which FirstNet may charge a network user fee, and thus presumably provide service. For example, Section 6302(f) further authorizes FirstNet to charge opt-out States ''user fees'' associated with use of FirstNet's core network.[25] As discussed below, we preliminarily conclude that such opt-out States could constitute either public safety entities or fall within this other, unspecified category of entities within Section 6208(a)(1) in their capacity as an entity seeking access to and use of the FirstNet core network. Similarly, Section 6208(a)(3) authorizes us to collect a fee from any entity that seeks access to or use of any network equipment or infrastructure.[26] Such entities could also possibly fall under the other category of unspecified users or, like opt-out States, be considered users of the NPSBN by virtue of our direct authority to charge a fee for access to or use of any network equipment or infrastructure. We seek comments on the preliminary conclusions above.

i. Public Safety Entities

A public safety entity is defined in Section 6001(26) of the Act as an ''entity that provides public safety services.'' [27] We note here that the Act does not include any express language requiring a minimum amount or frequency of providing such services, but merely required that an entity provide such services, even if not full time. As is more fully discussed below, we preliminarily conclude that an entity may offer other services in addition to a non-*de minimis* amount of public safety services and still qualify as a public safety entity.

Public safety services, in turn, are defined in the Act as having ''the meaning given the term in section 337(f) of the Communications Act of 1934 [the

[15] 47 U.S.C. 1422(b)(1).

[16] *Id.*

[17] 47 U.S.C. 1422(b)(2).

[18] 47 U.S.C. 1411 (emphasis added).

[19] 47 U.S.C. 1426(b)(2)(B)(ii).

[20] 47 U.S.C. 1428(a)(1–3), 1442(f).

[21] *See* 47 U.S.C. 1432.

[22] 47 U.S.C. 1426(c)(2)(A)(vi).

[23] 47 U.S.C. 1428(a)(1) (emphasis added).

[24] 47 U.S.C. 1442(b).

[25] 47 U.S.C. 1442(f).

[26] 47 U.S.C. 1428(a)(3).

[27] 47 U.S.C. 1401(26).

''Communications Act''] (47 U.S.C. 337(f)); and (B) includes services provided by emergency response providers, as that term is defined in section 2 of the Homeland Security Act of 2002 [the ''HSA''] (6 U.S.C. 101).'' [28] Accordingly, we preliminarily conclude that ''public safety services'' are services that are either those satisfying Section 337(f) of the Communications Act or services satisfying Section 2 of the HSA. We believe an alternative interpretation requiring compliance with both definitions, rather than either definition, would not be an appropriate treatment of the word ''includes'' in the provision and would unduly constrain the pool of potential public safety entities that could use the network to a group smaller than either the Communications Act or the HSA definition would allow. We seek comment on this preliminary conclusion.

a. 47 U.S.C. 337(f)

The Communications Act defines ''public safety services'' to mean services:

> (A) the sole or principal purpose of which is to protect the safety of life, health or property; (B) that are provided by (i) State or local government entities, or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.[29]

This prong of the definition of public safety services defines these services by referencing both the purpose of the services and those entities that provide them. However, the Communications Act's definition of public safety services has historically been applied not in the context of determining entities that provide services, but rather to restrict or define the particular services that can be provided over limited-use spectrum. In contrast, the Act purports to define an entity, rather than a service, as one that performs certain services.

Accordingly, the definition of public safety entity under the Act will turn on the services being provided by the entity, with the definition of such services under the Communications Act turning on both (1) the nature of the services and (2) the entity providing them. In the case of a service in general, an entity may perform different kinds of services, only some of which may qualify as public safety services. In the case of a public safety entity as defined in the Act, however, there is no ''primary mission'' restriction on the entity as there is in the Communications Act definition of public safety services. Nevertheless, when we consider just the Communications Act prong of the definition of public safety services in the Act, a public safety entity under the Act may be limited, by definition, to the entities referenced in the Communications Act definition of public safety services.

To aid our interpretation of the Act, we have examined how the Commission has interpreted this Communications Act definition. On July 21, 2011, the Commission issued an Order interpreting Section 337(f) in connection with permissible uses of the 763–768 MHz and 793–798 MHz public safety broadband spectrum, which is now a portion of the spectrum licensed to FirstNet.[30] This Order provided ''guidance on the scope of permissible operations under Section 337 of the Communications Act as undertaken by state, local, and other governmental entities.'' [31] The Commission provided several specific examples of potential permissible uses by personnel of governmental entities that are informative for purposes of defining ''public safety entity'' under the Act. These include:

(1) Entities supporting airport operations when ''ensuring the routine safety of airline passengers, crews, and airport personnel and property in a complex air transportation environment.'' [32]

(2) Transportation departments in the design and maintenance of roadways, the installation and maintenance of traffic signals and signs, and other activities that affect the safety of motorists and passengers.[33]

(3) City planning departments to ensure compliance with building and zoning codes intended to protect the safety of life and property.[34]

(4) Entities protecting the safety of animals, homes, and city infrastructure, particularly in crisis situations.[35]

We give deference to the conclusions reached by the Commission in its interpretation of Section 337(f)(1) to inform our interpretation of ''public safety services'' as defined in the Act. Thus, we preliminarily conclude that entities providing the services described in the Commission's Order, above, would qualify as public safety entities for purposes of the Act. We seek comment on this preliminary conclusion. We also seek comment on other entities and services that should so qualify.

Section 337(f)(1)(B)(ii) also provides that public safety services can be performed ''by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.'' [36] In its Order, the Commission did not address services performed by non-governmental organizations. We preliminarily conclude that the Commission's description with respect to services provided by governmental entities should equally apply to services provided by non-governmental entities as contemplated by Section 337(f)(1). We thus seek comments on the types of non-governmental organizations that, were they to provide the services the Commission addressed with respect to governmental entities, would qualify under Section 337(f) of the Communications Act as providing public safety services. We also seek comments on other non-governmental organizations and services that should so qualify.

In order to understand which non-governmental entities under Section 337 would qualify as public safety entities, one must first identify the types of governmental entities whose primary mission is the provision of public safety services, as these entities can, in turn, authorize non-governmental organizations to provide public safety services under Section 337(f)(1)(b)(ii). Section 337(f) of the Communications Act refers to such entities as ''a governmental entity whose primary mission is the provision of [public safety] services.'' [37] We seek comments on which governmental entities may authorize non-governmental organizations to provide public safety services based on this ''primary mission'' limitation. For example, we seek comments on whether state utility commissions, health departments, and police and fire agencies qualify as such entities. We also seek comments on what other governmental entities would so qualify.

b. HSA Section 2

Section 6001(27) of the Act states that public safety services are not only services defined in Section 337 of the Communications Act, but also are services provided by ''emergency response providers'' as that term is

[28] 47 U.S.C. 1401(27) (emphasis added).

[29] 47 U.S.C. 337(f)(1).

[30] *See* Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Fourth Report and Order, 26 FCC Rcd. 10799 (F.C.C. July 21, 2011) *(Fourth Report and Order).*

[31] *Id.*

[32] *Id.* at 10808.

[33] *See id.*

[34] *See id.* at 10809.

[35] *See id.* at 10808.

[36] 47 U.S.C. 337(f)(1)(b)(ii).

[37] *Id.*

defined by HSA Section 2.[38] ''Emergency response providers'' include ''Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.''[39]

Thus, under the Act, a public safety entity is also an entity performing the services performed by ''emergency response providers.'' The inclusion in the Act of the HSA definition arguably expands the list of potential public safety services beyond that provided in the definition in Section 337 of the Communications Act, in that the HSA definition does not include a ''primary mission'' limitation and specifically identifies ''personnel'' in addition to agencies and authorities as emergency response providers. The HSA definition thus raises the question as to whether a public safety ''entity'' under the Act can be a person in addition to an organization.[40] While Section 337(f) of the Communications Act indicates that public safety services are services provided only by governmental entities and nongovernmental organizations, the Act's inclusion of services provided by emergency response providers per HSA Section 2 could reasonably be interpreted to mean that personnel should be considered public safety entities under the Act when providing services that would otherwise be considered public safety services. Thus, we preliminarily conclude individuals may fall within the definition of ''public safety entity'' so long as they are serving in their official capacity.[41] Given this preliminary conclusion, both volunteer firefighters and the fire departments for which they serve, for example, would qualify as a public safety entity. FirstNet seeks comment on this preliminary conclusion.

In reaching this preliminary conclusion, we also note that while the definition of public safety services under Section 337(f) of the Communications Act is limited to those services ''the sole or principal purpose of which is to protect the safety of life, health, or property,'' such a limitation is not present in the HSA definition, or in the definition of public safety entity in the Act itself. Thus, when read in totality, the Act does not limit the definition of public safety entity to those entities that solely, or even primarily, provide such services, given the HSA Section 2 component of the definition. Congress limited the definition of public safety entity in the Communications Act, but, given the incorporation of HSA Section 2 into the Act, we preliminarily conclude that Congress imposed no such limitation here. As a result, the Act does not appear to require any minimum amount of time that an entity must provide public safety services in order to qualify as a public safety entity under the Act. We thus preliminarily conclude that, so long as an entity performs a non-*de minimis* amount of public safety services, even if it provides other services, it will qualify as a public safety entity under the Act.[42]

Finally, HSA Section 2 indicates that ''emergency response providers'' include not only ''Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities) . . . personnel, agencies, and authorities'' but also ''*related* personnel, agencies, and authorities.''[43] We preliminarily interpret the term ''related personnel, agencies, and authorities'' as personnel, agencies, and authorities providing support to public safety entities in their mission as it would further the public safety goals of the Act to facilitate interoperable communications between public safety entities and the personnel, agencies, and authorities supporting them. Therefore, we preliminarily conclude that the Act identifies public safety entities under the HSA Section 2 prong as:

(1) Any Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, and emergency medical (including hospital emergency facilities) personnel, agencies, and authorities; and

(2) Personnel, agencies, and authorities providing support to Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities) personnel, agencies, and authorities.

We seek comments on these preliminary conclusions and on which specific personnel, agencies, and authorities might then qualify as ''related'' or providing support to the Federal, State, and local governmental and nongovernmental personnel, agencies, and authorities listed in the HSA definition.

ii. Secondary Users

As discussed above, the term ''secondary user'' is also expressly used in the Act to describe a particular category of FirstNet user. Although there is no express definition of secondary user in the Act, Section 6208(a)(2), which addresses covered leasing agreements with ''secondary users,'' could be interpreted to implicitly define a secondary user as one that ''access[es] . . . network capacity on a secondary basis,'' or, as Section 6208(a)(2) goes on to provide, ''access[es] . . . network capacity on a secondary basis *for non-public safety services.''*[44]

In the context of the Act, the ''secondary basis'' is presumably ''secondary'' to use by public safety entities, which would be considered primary users. Because FirstNet believes certain public safety users will themselves ultimately be subject to prioritization and/or preemption by other public safety users, FirstNet does not believe the ''secondary basis'' referenced in the Act can be defined solely as those users subject to such prioritization or preemption. Indeed, certain public safety entities may, at times, be performing preemptable public safety services or preemptable non-public safety services.

The references to secondary users provided in Sections 6212 and 6302(g) also do not appear to be conclusive as to whether secondary users include users other than those that enter into covered leasing agreements, which is the only explicit arrangement identified within the Act describing a secondary use of the NPSBN.[45] Section 6208(a)(2) sets out very specific criteria for covered leasing agreements with secondary users.[46] The Act defines a covered leasing agreement as a written agreement resulting from a public-private arrangement to construct,

[38] *See* 47 U.S.C. 1401(27)(B).

[39] 6 U.S.C. 101(6).

[40] We note that the Supreme Court has interpreted the word 'entity' to typically refer to an organization, rather than an individual. *Samantar* v. *Yousuf,* 560 U.S. 305, 315 (2010). However, the Court noted that the analysis of whether an entity should include an individual must be made by reference to the underlying statutory definition, terms and components. In *Samantar,* the Court noted in reaching its conclusion that the statutory terms of the Foreign Sovereign Immunities Act of 1976, as drafted, would have to be awkwardly applied in order to include individuals within the meaning of entity in that context. *See id.*

[41] 47 U.S.C. 337(f)(1)(A).

[42] This does not mean that as a policy matter, rather than a legal matter, FirstNet may not further restrict an entity's use of the network, for example, to only those times it is providing public safety services or restrict access to the network to only those entities who have public safety as a primary mission.

[43] 6 U.S.C. 101(6) (emphasis added).

[44] 47 U.S.C. 1428(a)(2) (emphasis added).

[45] 47 U.S.C. 1432, 1442(g).

[46] 47 U.S.C. 1428(a)(2).

manage, and operate the public safety broadband network between FirstNet and a secondary user to permit: ''(1) access to network capacity on a secondary basis for non-public safety services; and (2) the spectrum allocated to such entity to be used for commercial transmissions along the dark fiber of the long-haul network of such entity.'' [47] Given the specificity with which Congress set out conditions for non-public safety use of network capacity, we seek comments on a preliminary definition of secondary user as a user that accesses network capacity on a secondary basis for its own, or the provision of, non-public safety services only. We also seek comments on whether, notwithstanding the language in Section 6208(a)(1) permitting FirstNet to charge network user fees to secondary users, the definition should be constrained further to limit secondary users to those entering into covered leasing agreements.[48]

A definition limiting secondary users to non-public safety use would be consistent with our preliminary approach, discussed in the previous section, regarding the definition of public safety user, whereby the definition of that term includes any entity that performs public safety services at any time in any non-*de minimis* amount. Thus, for example, an electric utility could come within the definition of public safety entity (and could also be a party to a covered leasing agreement), but FirstNet policies and procedures, along with local public safety control of prioritization and preemption, would likely regulate its use of the NPSBN.

We also note that, in addition to the fee for leasing network capacity under a covered leasing agreement which can be charged under Section 6208(a)(2), the Act, under section 6208(a)(1), permits FirstNet to charge secondary users a network user fee for using or accessing the NPSBN.[49] Although in and of itself this provision would not necessarily require a change to the definition of secondary user proposed above, we seek comments on whether the inclusion of the term in subsection (a)(1) should affect the definition of secondary user.

iii. Entities Other Than Public Safety Entities and Secondary Users Seeking Access to or Use of the NPSBN

As discussed above, we preliminarily conclude that Section 6208(a)(1) permits FirstNet to charge a fee to a category of user beyond public safety entities and secondary users. We seek comments on which potential users could fall into this category.[50] In addition, we seek comments on whether users identified in Section 6208(a)(3) (those seeking access to or use of any equipment or infrastructure constructed or otherwise owned by FirstNet) and Section 6302(f) (opt-out States seeking use of the core network) fall within this third category of user, constitute their own unique category of users, or fall within the definition of public safety entity or secondary user for purposes of Section 6208(a)(1).[51]

3. Services

As previously discussed, FirstNet is permitted to assess or collect certain fees related to the services that it offers. Sections 6208 and 6302 specifically permit us to assess and collect: (1) Network user fees from users seeking access to or use of the NPSBN; (2) fees associated with covered leasing agreements; (3) fees related to the leasing of our network equipment and infrastructure; and (4) user fees from opt-out States that seek use of elements of our core network.[52] Section 6212(a), however, specifies that FirstNet ''shall not offer, provide, or market commercial telecommunications or information services directly to consumers.'' [53]

The Act does not define the word ''consumer'' or indicate whether the word is limited to individuals or includes organizations and businesses. In contrast, the Act does provide a specific, multi-pronged definition of public safety entity, as noted above. As a result of this contrast, we preliminarily conclude that regardless how ''consumer'' is defined, Section 6212 was not intended to limit potential types of public safety entities that may use or access the NPSBN for commercial telecommunications or information services.

In addition, under the rule of construction outlined in subsection 6212(b), nothing in Section 6212 is intended to prohibit FirstNet from entering into covered leasing agreements with secondary users, and thus we preliminarily conclude that Section 6212 at the very least does not act as a limitation on secondary users in the context of covered leasing agreements. We also preliminarily conclude that, given the definition of secondary user discussed above, Section 6212 was not intended to limit the pool of secondary users seeking access to or use of the network on a secondary basis. We seek comments on these preliminary conclusions.

Thus, we preliminarily conclude that a ''consumer'' under the Act is neither a public safety entity nor a secondary user. Further, given the express authorizations in Section 6302(f) for FirstNet to impose user fees on opt-out States, and in Section 6208(a)(3) to impose lease fees on entities that seek access to or use of equipment or infrastructure, we also preliminarily conclude that such States and entities are not intended to qualify as a consumer (which would otherwise disqualify them as a user subject to fee assessments) when seeking access to or use of the core network, and equipment and infrastructure, respectively. We also seek comments on the kinds of services that this provision is intended to preclude FirstNet from otherwise offering and the scope of the limitations imposed by the provision. For example, we note that we are expressly authorized to enter into covered leasing agreements that would presumably permit the secondary user involved to provide commercial services, including potentially telecommunications or information services, directly to consumers.[54] Finally, we seek comment on whether this provision implicitly outlines additional services that FirstNet may offer.

For purposes of interpreting the Act with respect to FirstNet's potential service offerings,[55] we note that the Act also provides guidance concerning the services that may be offered by a State that chooses to build its own radio access network. Specifically, Section 6302(g)(1) precludes opt-out States from ''provid[ing] commercial service to consumers or offer[ing] wholesale leasing capacity of the network within the State except directly through public-private partnerships for construction, maintenance, operation, and improvement of the network within the State.'' [56]

FirstNet interprets Section 6302(g)(1) to mean that States cannot offer commercial services to consumers and can only lease network capacity through a public-private partnership for the purposes of in-state construction, maintenance, operation and

[47] *Id.*

[48] 47 U.S.C. 1428(a)(1).

[49] 47 U.S.C. 1428(a)(1).

[50] *Id.* We note that Section 6212 of the Act, discussed more fully in the section of this *Notice* on Services below, places limitations on the services that we can provide to this third category of user.

[51] 47 U.S.C. 1428(a)(3), 1422(f), 1428(a)(1).

[52] 47 U.S.C. 1428, 1442.

[53] 47 U.S.C. 1432(a).

[54] *See* 47 U.S.C. 1428(a)(2)(B).

[55] We may address the interpretation of opt-out related provisions and process in subsequent notices or rulemakings.

[56] 47 U.S.C. 1442(g)(1).

improvement. We seek comment on this preliminary conclusion.

B. Requests for Proposals

1. Requests for Proposals Process

Section 6206(b)(1)(B) requires FirstNet to issue ''open, transparent, and competitive'' RFPs.[57] The procedural requirements for issuing such RFPs are not defined in the Act itself.

FirstNet, however, is not expressly excluded from the applicability of the Federal Acquisition Regulation (''FAR''), codified in 48 CFR Parts 1–99. The FAR is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. Assuming application of the FAR, we preliminarily conclude that in complying with the FAR in such instances, FirstNet will satisfy the requirements of Section 6206(b)(1)(B). The FAR provides that ''the Federal Acquisition System will . . . promote competition . . . [and] conduct business with integrity, fairness, and openness.'' [58] We believe the standards established in the FAR that promote a competitive, fair, and open process for acquiring goods and services fall within the ''open, transparent, and competitive'' standard of Section 6206(b)(1)(B). We seek comments on this preliminary conclusion.

We also seek comments more generally on the appropriate interpretation of the ''open, transparent, and competitive'' standard of Section 6206(b)(1)(B) in this context, including how that standard should be interpreted in light of the Act's use of a ''fair, transparent, and objective'' standard in Section 6205(b)(1).[59]

2. Minimum Technical Requirements

Section 6206(b)(1)(B) requires FirstNet to issue RFPs for the purposes of building, operating, and maintaining the network that use, without materially changing, the minimum technical requirements developed by the Interoperability Board.[60] We interpret this provision to permit FirstNet to make non-material changes or additions/subtractions to the minimal technical requirements developed by the Interoperability Board.[61] We seek comments on how to delineate such non-material changes from those that are material. In addition, we seek comments on how to reconcile this provision with the requirements in Sections 6202(b) and 6206(c)(4) regarding FirstNet's obligations to accommodate advancements in technology.[62]

3. Defining the Term ''Rural''

Section 6206(b)(3) directs that FirstNet ''shall require deployment phases with substantial *rural* coverage milestones as part of each phase of the construction and deployment of the network . . . [and] utilize cost-effective opportunities to speed deployment in *rural* areas.'' [63] Additionally, Section 6206(c)(1)(A)(i) states, in relevant part, that FirstNet ''shall develop . . . requests for proposals with appropriate . . . timetables for construction, including by taking into consideration the time needed to build out to *rural* areas.'' [64] Finally, Section 6206(c)(1)(A)(ii) of the Act explains that FirstNet ''shall develop . . . requests for proposals with appropriate . . . coverage areas, including coverage in *rural* and nonurban areas.'' [65]

Although the Act does not define the term ''rural,'' we believe we must define this term to fulfill our duties with regard to the important rural coverage requirements in the Act.[66] Several sources define the term ''rural,'' but we believe, for example, the Rural Electrification Act is a reasonable definition to use under the Act and may further the goals of the Act for several reasons. First, we believe the definition may be sufficiently precise and granular to guide potential vendors and FirstNet and ensure due consideration of such areas. Secondly, the Rural Electrification Act's definition of ''rural area'' is widely known and familiar to rural telecommunications providers, rural communities, and other stakeholders that will be impacted by FirstNet's mandate to carefully consider rural areas. Adoption of this definition would obviate the need for FirstNet to take additional, time-consuming steps to educate itself and the stakeholder community on the parameters of a novel or less familiar definition of ''rural'' or ''rural area.'' Finally, the USDA bases its definition of ''rural area'' upon the definition in the Rural Electrification Act for purposes of implementing its Rural Broadband Access Loan and Loan Guarantee Program. This USDA program funds the costs of construction, improvement, and acquisition of facilities and equipment to provide broadband service to eligible rural areas, and thus we believe the definition may be suitable for our related purposes.[67] Accordingly, we seek comments on using this interpretation.[68]

Therefore, we preliminarily conclude that we should define ''rural'' as having the same meaning as ''rural area'' in Section 601(b)(3) of the Rural Electrification Act of 1936, as amended (''Rural Electrification Act'').[69] Section 601(b)(3) of the Rural Electrification Act provides that ''[t]he term 'rural area' means any area other than—(i) an area described in clause (i) or (ii) of Section 1991(a)(13)(A) of this title [section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act]; and (ii) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.'' [70] In turn, the relevant portion of Section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act explains that the ''terms 'rural' and 'rural area' mean any

[57] 47 U.S.C. 1426(b)(1)(B).

[58] 48 CFR 1.102, 2.101.

[59] *See* 47 U.S.C. 1425(b)(1) (describing the standard FirstNet must follow when selecting agents, consultants, or experts).

[60] 47 U.S.C. 1426(b)(1)(B); 47 U.S.C. 1423.

[61] Interoperability Board Report, *supra* n. 10.

[62] *See* 47 U.S.C. 1422(b), 1426(c)(4). Note that the Interoperability Board Report states that ''[g]iven that technology evolves rapidly, the network components and associated interfaces identified in the [Interoperability Board Report] . . . are also expected to evolve over time. As such, these aspects of the present document are intended to represent a state-of-the-art snapshot at the time of writing. In this context, the standards, functions, and interfaces referenced in the present document are intended to prescribe statements of intent. Variations or substitutions are expected to accommodate technological evolution consistent with the evolution of 3GPP and other applicable standards.'' Interoperability Board Report at 27.

[63] 47 U.S.C. 1426(b)(3) (emphasis added).

[64] 47 U.S.C. 1426(c)(1)(A)(i) (emphasis added).

[65] 47 U.S.C. 1426(c)(1)(A)(ii) (emphasis added).

[66] We appreciate the position the Commission has taken in this regard, and we are committed to fulfill our duties in a way that will meet these rural coverage requirements. *See* Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 et al., PS Docket 12–94 et al., Notice of Proposed Rulemaking, 28 FCC Rcd 2715, 2728–29 ¶ 46 (2013) (Band 14 NPRM) (noting that, ''We do not believe the Commission should specify rural milestones as a condition of FirstNet's license at this time. Rather, we recognize that at this early stage, the success of FirstNet requires flexibility with respect to deployment and planning, including deployment in rural areas. Moreover, FirstNet has an independent legal obligation under the Act to develop requests for proposals with appropriate timetables for construction, taking into account the time needed to build out in rural areas, and coverage areas, including coverage in rural and nonurban areas. In addition, in light of the Congressional oversight that will be exercised over FirstNet and its other transparency, reporting and consultation obligations, we do not believe it is necessary for the Commission to set specific benchmarks in this regard in these rules.'').

[67] *See* About the Farm Bill Loan Program, USDA, *available at http://www.rurdev.usda.gov/utp_farmbill.html* (last visited May 27, 2014).

[68] We also considered similar definitions of ''rural'' and ''rural area'' utilized by other federal sources, including the U.S. Bureau of the Census, Office of Management and Budget (OMB), and the Commission.

[69] 7 U.S.C. 950bb(b)(3), *amended by* the Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649.

[70] *Id.*

area other than—(i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i).'' [71] Taken collectively, the Rural Electrification Act defines the term ''rural area'' as a city, town, or incorporated area that has a population of less than 20,000 inhabitants and is not adjacent and contiguous to an urbanized area that has a population of greater than 50,000 inhabitants. We also seek comments on whether the adjacency prong of the definition will pose any difficulties in applying the definition under the Act.

Further, FirstNet intends to use the proposed definition of ''rural'' for purposes of implementing the ''substantial rural coverage milestones'' as set forth in Section 6206(b)(3). We seek comments on how to interpret the terms ''substantial rural coverage milestones'' and how to implement this requirement. For example, we seek comments regarding whether the terms ''substantial rural coverage'' should be defined only in terms of geographic coverage, or whether other factors, such as population or the frequency of first responder activity in an area, should be included. In addition, we seek comments on whether we should define a separate term for a frontier or wilderness area that would bound the term rural in connection with provisions of the Act. For example, we seek comment on whether a population density below a five person per square mile or lower standard should be considered frontier, rather than rural, for purposes of the Act.

Finally, Section 6206(c)(1)(A)(ii), as discussed above, explains that FirstNet ''shall develop . . . requests for proposals with appropriate . . . coverage areas, including coverage in rural and *nonurban areas.*'' [72] We seek comments on the distinction between the terms rural and nonurban areas and how to define the term ''nonurban'' under the Act.

4. Existing Infrastructure

The Act encourages FirstNet to consider leveraging existing infrastructure when ''economically desirable.'' [73] Section 6206(b)(1)(C) of the Act requires FirstNet in issuing RFPs to ''encourag[e] that such requests leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network.'' [74] Section 6206(b)(3), which addresses rural coverage and issuing RFPs, directs that ''[t]o the maximum extent economically desirable, such proposals shall include partnerships with existing commercial mobile providers to utilize cost-effective opportunities to speed deployments in rural areas.'' [75] Section 6206(c)(3) additionally requires that ''[i]n carrying out the requirements under subsection (b), the First Responder Network Authority shall enter into agreements to utilize, to the maximum extent economically desirable, existing (A) commercial or other communications infrastructure; and (B) Federal, State, tribal, or local infrastructure.'' [76]

Section 6206(b)(1)(C) appears to relate to issuing RFPs referenced in 6206(b)(1)(B) and requires FirstNet to ''*encourag*[*e*] that such requests leverage, to the maximum extent economically desirable,'' existing infrastructure.[77] The use of the term ''encourage,'' however, implies that FirstNet may not be in direct control of these requests. Alternatively, this provision could be intended to require FirstNet to encourage the *proposals* provided in response to FirstNet's requests to leverage existing infrastructure. Because the ''requests'' referenced in subsection (b)(1)(C) appear to be those required of FirstNet in subsection (b)(1)(B), we preliminarily conclude that subsection (b)(1)(C) is intended to require FirstNet to encourage, through its requests, that responsive *proposals* leverage existing infrastructure in accordance with the provision. We seek comments on this preliminary conclusion.

Section 6206(b)(3) states that with regard to FirstNet's issuing requests for proposals, ''such *proposals* shall include partnerships with existing commercial mobile providers'' to the maximum extent economically desirable to utilize cost-effective opportunities to speed deployment in rural areas.[78] Unlike subsection (b)(1)(C), this provision addresses ''proposals,'' but does so without directly requiring FirstNet to act in some way. We nevertheless preliminarily interpret this provision as requiring FirstNet to include in its requests that such proposals leverage such partnerships where economically desirable. We seek comments on this preliminary conclusion, and also on whether FirstNet or the supplier responding to a FirstNet request is intended to make the actual economic desirability assessment under the provision. We preliminarily conclude that FirstNet is to make that determination, but could do so through, for example, requiring and evaluating competitive proposals from carriers with facilities in rural areas. We also seek comment on whether FirstNet or a supplier responding to a FirstNet request or both are required to enter into the referenced partnerships, and the nature of such partnerships.

Section 6206(c)(3) states that FirstNet, in carrying out the requirements of subsection (b), which include, but are not limited to, issuing RFPs, ''shall *enter into agreements* to utilize, to the maximum extent economically desirable'' certain existing infrastructure.[79] Thus, unlike the provisions discussed above, this provision expressly references neither requests nor proposals.

We note, however, that, as discussed above in this *Notice*, FirstNet is not expressly excluded from the applicability of the FAR, and thus when FirstNet itself enters into agreements to utilize the infrastructure described in Section 6206(c)(3), such agreements would likely be subject to the competitive processes of the FAR. FirstNet could also enter into an agreement, via such competitive process, with a private sector entity, which in turn contracts for use of State, tribal, or local infrastructure (whether or not through a competitive process). We seek comments on this interpretation.

Each of these sections, as stated above, requires FirstNet to leverage existing infrastructure to the extent it is ''economically desirable.'' We seek comments on an appropriate definition of and approach to assessing what is ''economically desirable,'' and the factors that should be considered, and by whom, in each of the sections imposing the standard. For example, in weighing economic desirability with respect to the speed of rural deployment, we seek comments on how to balance costs with speed.

In addition, we seek comments on the distinctions between the various types of existing infrastructure referenced in the three sections: Commercial wireless infrastructure; commercial mobile providers; commercial infrastructure; other communications infrastructure; and Federal, State, tribal, or local infrastructure. For example, we seek comments on whether the term ''commercial mobile provider'' should exclude resellers or other non-facilities-

[71] 7 U.S.C. 1991(a)(13)(A), *amended by* the Agricultural Act of 2014, Public Law 113–79, 128 Stat. 649.

[72] 47 U.S.C. 1426(c)(1)(A)(ii) (emphasis added).

[73] *See* 47 U.S.C. 1426(b)(1)(C), (b)(3), (c)(3).

[74] 47 U.S.C. 1426(b)(1)(C).

[75] 47 U.S.C. 1426(b)(3).

[76] 47 U.S.C. 1426(c)(3).

[77] 47 U.S.C. 1426(b)(1)(C) (emphasis added).

[78] 47 U.S.C. 1426(b)(3) (emphasis added).

[79] 47 U.S.C. 1426(c)(3) (emphasis added).

based providers. Finally, we seek comments on how to factor in the transaction costs of collecting, analyzing, establishing terms and conditions for, and potentially leveraging the millions of ''pieces'' of infrastructure covered by the literal terms of the Act into our assessment of ''economic desirability.'' For example, we seek comments on the extent to which such assessments of economic desirability are simply embedded in a competitive RFP process.

C. Fees

Section 6208(a) authorizes FirstNet to assess and collect three sets of fees notwithstanding Section 337 of the Communications Act.[80] We first seek comments on whether the list of fees in Section 6208(a), which we interpret below to also include the fee for core network use from Section 6302(f), are exclusive and thus the only fees FirstNet may assess and collect, at least under the authority of the Act.[81]

User Fees

Sections 6208(a)(1) and 6302(f) provide the authority and describe the circumstances under which FirstNet may assess and collect network user fees for access to and use of the NPSBN.[82] FirstNet interprets the network user fees described in Section 6302(f) as being a specifically authorized subset of fees under Section 6208(a)(1) for ''use of'' the core network. We believe user fees authorized by Section 6208(a)(1) are distinct from covered leasing fees authorized by 6208(a)(2) and lease fees related to network equipment and infrastructure authorized by 6208(a)(3), which are discussed separately in the sections below. Thus, FirstNet initially concludes that each of the fees authorized by the Act may be assessed individually, and cumulatively as applicable, and we seek comments on this preliminary conclusion, and on whether FirstNet has authority to impose fees under other authorities.

i. Network User Fees

As previously discussed, Section 6208(a)(1) of the Act authorizes FirstNet to assess and collect a network user or subscription fee from each entity, including public safety entities and secondary users, that seeks access to or use of the NPSBN.[83] Thus, the Act contemplates that a network user fee could be collected from, at minimum, a public safety user or a secondary user. As previously discussed in this *Notice*, however, use of the term ''including'' rather than ''consisting'' when describing the scope of entities that may be charged a network user fee indicates that this group is not limited to only public safety entities or secondary users, but could potentially include other entities. Thus, we preliminarily conclude that FirstNet may charge a user fee to any eligible customer, including secondary users who may have already entered into a covered leasing agreement with FirstNet, and seek comments on this preliminary interpretation. In addition, we seek comments on the difference between the terms ''access to'' and ''use of'' the NPSBN in this section, including for example, whether the term ''access to'' would include access to databases without use of other network infrastructure.

ii. State Core Network User Fees

Section 6302(f) requires that a State choosing to build its own radio access network rather than participating in the FirstNet proposed network for that State, must pay any user fees associated with state use of elements of the core network.[84] The Act states that this fee applies specifically to the use of the core network by an opt-out State, and therefore we preliminarily conclude that it is separate and distinct from any other fees authorized by the Act. We seek comments on this preliminary conclusion.

2. Lease Fees Related to Network Capacity and Covered Leasing Agreements

In addition to user fees, FirstNet is able to charge fees for secondary use of network capacity. Section 6208(a)(2) provides for ''lease fees'' resulting from a public-private arrangement between FirstNet and a secondary user, which permits access to network capacity on a secondary basis for non-public safety services, including through ''spectrum allocated to such'' secondary user.[85] This public-private arrangement is termed a covered leasing agreement (''CLA'') under the Act.

With regard to the specific definition of a CLA, we first note that the Act contemplates a ''public-private arrangement,'' and thus preliminarily conclude that the arrangement must be between FirstNet and a ''private'' entity, with that entity being the ''secondary user'' provided in the preamble to Section 6208(a)(2)(B).[86]

The ''arrangement'' described in Section 6208(a)(2)(B) is one ''to construct, manage, and operate the [NSPBN].''[87] The provision does not specify whether either party must perform all or a part of the constructing, managing, and operating under the arrangement. We thus preliminarily conclude that the arrangement does not require a secondary user to ''construct, manage, and operate'' the entire FirstNet network, either from a coverage perspective or exclusively within a specific location. Thus, for example, one secondary user could construct, manage, and operate the FirstNet network in several states, and another secondary user could do so in several other states. Similarly, a secondary user could construct, manage, and operate a portion of the network in Akron, Ohio and at the same time FirstNet or other secondary users could be constructing, managing, and operating elements of the network in Akron in conjunction with the first secondary user. And thus, we preliminarily conclude that it is theoretically possible for multiple CLA lessees to coexist and utilize FirstNet spectrum in a particular geographic area.

Therefore, FirstNet's preliminary conclusion is that there is no minimum amount, other than a *de minimis* amount, of constructing, managing, and operating that a CLA lessee must do in order to satisfy the definition. We believe this interpretation provides us with the ability to leverage our excess network capacity to the maximum extent the market will bear, ultimately benefitting public safety by helping us achieve additional efficiencies of scale and increasing revenues for further investment in the network. Any alternative interpretation requiring more than this would artificially constrain the potential pool of purchasers of excess capacity, such as to those who could partner with FirstNet only on a national basis, potentially constraining additional funding. We also preliminarily conclude that if the highest value is created by leveraging a partner on a national basis, this portion of the definition of CLA would not constrain FirstNet in entering into such an arrangement. We seek comments on these preliminary conclusions, including on whether a secondary user is required to even perform a *de minimis* amount of constructing, managing, and operating, as discussed above, beyond paying lease fees.

For the same reasons as stated above, we preliminarily conclude that a secondary user is not required to

[80] 47 U.S.C. 1428(a).

[81] *Id.*

[82] *See* 47 U.S.C. 1428(a); *See also* 47 U.S.C. 1442(f).

[83] 47 U.S.C. 1428(a)(1).

[84] 47 U.S.C. 1442(f).

[85] *See* 47 U.S.C. 1428(a)(2).

[86] 47 U.S.C. 1428(a)(2)(B).

[87] *Id.*

perform all three functions of constructing, managing, and operating a portion of the network, so long as one of the three is performed as part of the CLA. For example, a secondary user could agree to construct a radio access network in a particular location, and FirstNet could manage and operate that radio access network, assuming the other elements of the definition were satisfied.

We preliminarily conclude that use of the word ''permit'' in the definition of CLA indicates that an absolute requirement, such as through use of the term ''requires,'' is not contemplated. Thus, we preliminarily conclude that the technical architecture of a CLA would, at a minimum, have to allow use as described in Section 6208(a)(2)(B)(i) and (B)(ii). For example, with respect to (B)(ii) and as discussed more fully below, local traffic of a secondary user not requiring long-haul transmission could be communicated locally without satisfying (B)(ii), and without violating the definition of a CLA overall.

We also preliminarily conclude that the reference to ''network capacity'' in item (B)(i) of the definition of CLA is a generic statement referring to the combination of spectrum and network elements, as defined by the Act and discussed in this *Notice*, which could include the core network as well as the radio access network of either FirstNet alone or that of the secondary user under a CLA whereby the core and radio access network are used for serving both FirstNet public safety entities and the secondary user's commercial customers.

Section 6208(a)(2)(B)(i) permits private entities that enter into CLAs with FirstNet access to such network capacity ''on a secondary basis for non-public safety services.'' [88] FirstNet interprets the term ''secondary basis'' to mean that the network capacity will be available to the secondary user unless it is needed for public safety services in accordance with the discussion of ''secondary users'' in this *Notice*. FirstNet seeks comments on this preliminary conclusion.

With respect to item (B)(ii) of the definition, we preliminarily conclude that all or a portion of the FirstNet Band 14 spectrum can be allocated for secondary use by a CLA lessee because the phrase, ''the spectrum allocated to such entity'' does not appear to require any minimum amount of such spectrum to be allocated. This interpretation would provide FirstNet with maximum flexibility in marketing excess network capacity.

Further, according to item (B)(ii), the CLA lessee can use that spectrum to originate or terminate to or from a ''long-haul'' network utilized by the CLA lessee. Because the term ''long-haul'' network has less meaning in the context of information services, rather than regulated voice services, we preliminarily conclude that, without limitation, a ''long-haul'' network could be one that traverses traditional Local Access Transport Area boundaries, but other interpretations and more expansive boundaries are possible. We seek comments on this preliminary conclusion.

We also preliminarily conclude that the reference to ''dark fiber'' cannot literally be interpreted as such because, once transporting traffic, the fiber would no longer be ''dark.'' Thus, FirstNet preliminarily concludes that the reference should be interpreted to allow the covered lessee to transport such traffic on otherwise previously dark fiber facilities. We seek comments on this preliminary conclusion, and on any alternative interpretations requiring the use of dark fiber of a long network, or previously unused capacity on lit fiber of a long haul network.

Given the complexity of this provision, we seek comments on both our specific preliminary conclusions above as well as the provision generally, including any alternative interpretations, the potential policy goals underlying the provision's inclusion in the Act, the ramifications of alternative interpretations to the value of CLAs, and any technical impediments to implementing the above preliminary or alternative interpretations.

3. Network Equipment and Infrastructure Fee

Section 6208(a)(3) provides for lease fees related to network equipment and infrastructure.[89] As contrasted with lease fees related to network capacity in subsection (a)(2), or user fees in subsection (a)(1), FirstNet interprets this provision as being limited to the imposition of a fee for the use of static or isolated equipment or infrastructure, such as antennas or towers, rather than for use of FirstNet spectrum or access to network capacity. We seek comments on where use under subsection (a)(1) or (a)(2) would end, and use under (a)(3) would begin for equipment such as antennas.

Section 6208(a)(3) defines the scope of eligible equipment or infrastructure for which FirstNet may charge a fee to include ''*any* equipment or infrastructure, including antennas or towers, constructed or otherwise owned by [FirstNet] resulting from a public-private partnership arrangement to construct, manage, and operate the [NPSBN].'' [90] We interpret ''constructed or otherwise owned by [FirstNet]'' as requiring that FirstNet ordered or required the construction of such equipment or infrastructure, paid for such construction, or simply owns such equipment or infrastructure. We seek comments on the above preliminary conclusions and whether this provision would also include equipment or infrastructure that FirstNet does not own but, through a contract, such as one resulting from a public-private partnership arrangement to construct, manage, and operate the NPSBN, has rights to sublease access to, or use of, such equipment or infrastructure.

III. Ex Parte Communications

Any non-public oral presentation to FirstNet regarding the substance of this *Notice* will be considered an *ex parte* presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to FirstNet summarizing the substance of the communication. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such *ex parte* communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an *ex parte* presentation. Federal entities are not subject to these procedures.

Dated: September 17, 2014.

Stuart Kupinsky,

Chief Counsel, First Responder Network Authority.

[FR Doc. 2014–22536 Filed 9–23–14; 8:45 am]

BILLING CODE 3510–60–P

[88] 47 U.S.C. 1428(a)(2)(B)(i).

[89] 47 U.S.C. 1428(a)(3).

[90] 47 U.S.C. 1428(a)(3) (emphasis added).

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an

open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). This meeting will be open to the public.

DATES: Tuesday, October 21, 2014, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: 901 N. Stuart Street, Suite 200, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Andrews, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350–3605; or by telephone at (571) 372–6565.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the October 21, 2014 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

8:30 a.m.	Convene/Opening Remarks	Mr. Joseph Francis, Chair.
8:40 a.m.	Program Update	Dr. Anne Andrews, Acting Executive Director.
8:55 a.m.	Resource Conservation and Climate Change Overview	Dr. John Hall, Resource Conservation and Climate Change, Program Manager.
9:05 a.m.	15 RC02–060 (RC–2516): Climate-Informed Estimation of Hydrologic Extremes for Robust Adaptation to Non-Stationary Climate (FY15 New Start).	Dr. Casey Brown, University of Massachusetts Amherst, Amherst, MA.
9:50 a.m.	Break.	
10:05 a.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration, Program Manager.
10:15 a.m.	15 ER01–106 (ER–2536): Long-Term Laboratory Studies for Assimilation of Contaminants in Low k Zones (FY15 New Start).	Dr. Thomas Sale, Colorado State University, Fort Collins, CO.
11:00 a.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration, Program Manager.
11:10 a.m.	15 ER03–001 (ER–2305): Microbially Driven Fenton Reaction: Development of Alternative Ex Situ and In Situ Remediation Technologies For 1,4-Dioxane, Tetrachloroethene, Trichloroethene, and Perfluoroalkyl Substances (FY15 Follow-On).	Dr. Thomas DiChristina, Georgia Institute of Technology, Atlanta, GA.
11:55 a.m.	Lunch.	
12:55 p.m.	Munitions Response Overview	Dr. Herb Nelson, Munitions Response, Program Manager.
1:05 p.m.	15 MR01–005 (MR–2502): Quantitative Sediment Mapping: Surveys of Geoacoustic Properties Affecting Munitions Burial, Mobility and Detection (FY15 New Start).	Dr. Charles Holland, The Pennsylvania State University, State College, PA.
1:50 p.m.	15 MR01–007 (MR–2503): Quantification of Hydrodynamic Forcing and Burial, Exposure and Mobility of Munitions on the Beach Face (FY15 New Start).	Dr. Jack Puleo, University of Delaware, Newark, DE.
2:35 p.m.	Break.	
2:50 p.m.	15 MR01–045 (MR–2505): Acoustic Response of Underwater Munitions near a Water-Sediment Boundary (FY15 New Start).	Dr. Steven Kargl, University of Washington, Seattle, WA.
3:35 p.m.	Weapons Systems and Platforms Overview	Dr. Robin Nissan, Weapons Systems and Platforms, Program Manager.
3:45 p.m.	15 WP02–005 (WP–2521): Standardized Test Methodologies for Low Observable Coating Durability (FY15 New Start).	Dr. Joseph Osborne, Boeing Research and Technology, Seattle, WA.
4:30 p.m.	Strategy Session	Dr. Anne Andrews, Acting Executive Director.
5:00 p.m.	Public Comments/Adjourn.	

Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at *http://www.facadatabase.gov/*.

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: September 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–22699 Filed 9–23–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel (''the Judicial Proceedings Panel'' or ''the Panel''). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, October 10, 2014. The Public Session will begin at 8:45 a.m. and end at 5:00 p.m.

ADDRESSES: The Holiday Inn Arlington at Ballston, Glebe and Fairfax Ballrooms, 4610 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *whs.pentagon.em.mbx.judicial-panel@mail.mil.* Phone: (703) 693–3849. Web site: *http://jpp.whs.mil.*

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: At this meeting, the Judicial Proceedings Panel will deliberate on the National Defense Authorization Act for Fiscal Year 2013 (Pub. Law 112–239), Section 576(a)(2) requirement to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to this tasking.

Agenda

- 8:30 a.m.–8:45 a.m.: Administrative Session (41 CFR 102–3.160, not subject to notice & open meeting requirements)
- 8:45 a.m.–10:00 a.m.: Deliberations on Article 120
- 10:00 a.m.–11:00 a.m.: Sexual Assault Victims' Privacy at Article 32 and Court-Martial Proceedings
  —*Speakers: Department of Defense and Service subject matter experts*
- 11:00 a.m.–12:00 p.m.: Victim Privacy in Sexual Assault Prosecutions: Past Sexual Conduct
  —*Speakers: Civilian and academic experts*
- 12:00 p.m.–12:45 p.m.: Lunch
- 12:45 p.m.–1:45 p.m.: Victim Privacy in Sexual Assault Prosecutions: Mental Health Records
  —*Speakers: Civilian and academic experts*
- 1:45 p.m.–2:45 p.m.: Victim Advocacy Perspectives
- 2:45 p.m.–3:45 p.m.: Perspectives of Military Trial Counsel
- 3:45 p.m.–4:45 p.m.: Perspectives of Military Defense Counsel
- 4:45 p.m.–5:00 p.m.: Public Comment

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the October 10, 2014 meeting, as well as other materials presented in the meeting, may be obtained at the meeting or from the Panel's Web site at *http://jpp.whs.mil.*

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at *whs.pentagon.em.mbx.judicial-panel@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on October 10, 2014, in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Board's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: September 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–22653 Filed 9–23–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0136]

Privacy Act of 1974; System of Records

AGENCY: U.S. Strategic Command, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The U.S. Strategic Command is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system notice is FSTRATCOM 02, entitled ''Joint Satellite Communications (SATCOM) Management Enterprise (JSME).'' This system collects and maintains authorized users and points of contact for account management, internal housekeeping, access control, need-to-know determinations, and operational requirements for satellite communications.

DATES: Comments will be accepted on or before October 24, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Vance, U.S. Strategic Command (USSTRATCOM) J663, 901 SAC Boulevard, Suite 3J11, Offutt Air Force Base, NE 68113–6020; telephone (402) 232–5527.

SUPPLEMENTARY INFORMATION: The U.S. Strategic Command systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov.* The U.S. Strategic Command proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FSTRATCOM 02

SYSTEM NAME:

Joint Satellite Communications (SATCOM) Management Enterprise (JSME) (June 20, 2012, 77 FR 37006)

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''PERMANENT. Transfer physical custody of electronic records to the National Archives for pre-accessioning 5 years after cutoff. Transfer legal custody of electronic records to the National Archives 25 years after cutoff, after declassification review.''

* * * * *

[FR Doc. 2014–22642 Filed 9–23–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0136]

Agency Information Collection Activities; Comment Request; PROGRAM IMPROVEMENT PLAN (PIP)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 24, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0136 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ed West, 202–245–6145.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program Improvement Plan (PIP).

OMB Control Number: 1820–0693.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 125.

Abstract: Pursuant to Section 106 of the Rehabilitation Act of 1973, as amended, Vocational Rehabilitation (VR) agencies found to be out of compliance with federal requirements as a result of failing to meet established performance standards must develop for Rehabilitation Service Administration (RSA) approval a Program Improvement Plan (PIP) using the on-line form located on the RSA management information system (MIS). The PIP must contain goals established by the agency, including measurable targets, by which it will assess its progress toward meeting the required minimum performance levels, along with strategies for the achievement of the goals. In accordance with regulations at 34 CFR 361.89(c), RSA reviews an agency's progress toward achieving the goals established in the PIP. For this

purpose, it requires that the agency report its progress on a quarterly basis.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–22605 Filed 9–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0135]

Agency Information Collection Activities; Comment Request; Freedom of Information Act (FOIA) Third Party Perjury Form

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 24, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0135 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elise Cook, 202–401–3769.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Freedom of Information Act (FOIA) Third Party Perjury Form.

OMB Control Number: 1880—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 62,000.

Total Estimated Number of Annual Burden Hours: 31,000.

Abstract: This collection is necessary to certify the identity of individuals requesting information under the Freedom of Information Act (FOIA) and Privacy Act (PA). This certification is required under 5 U.S.C. Section 552a(b). The form is used by Privacy Act requesters to obtain personal records via regular mail, fax or email. The department will use the information to help identify first-party or third party requesters with same or similar name when requesting retrieval of their own documents.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–22606 Filed 9–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of the time and location of a meeting.

SUMMARY: This meeting notice is an update to the previous notice published in the **Federal Register** (79 FR 50888) on August 26, 2014, and sets forth the time and location for the December 11, 2014 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The notice of this meeting is required under § 10(a)(2) of the Federal Advisory Committee Act (FACA) and § 114(d)(1)(B) of the Higher Education Act of 1965, as amended (HEA).

DATES: The NACIQI meeting will be held on December 11, 2014, from 8 a.m. to 5:30 p.m. at the Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006–8129, telephone: (202) 219–7035, fax: (202) 502–7874, or email: *Carol.Griffiths@ed.gov.*

SUPPLEMENTARY INFORMATION: *NACIQI's Statutory Authority and Function:* The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and

eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

• Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street NW., Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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.

Authority: 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–22725 Filed 9–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–546–000]

Gulf Coast Synthetic Energy Center, LLC; Notice of Application

Take notice that on September 2, 2014, Gulf Coast Synthetic Energy Center (Gulf Coast), LLC, 10877 Wilshire Boulevard, Suite 1000, Los Angeles, California 90024, filed in Docket No. CP14–546–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon its pipeline facilities located in Tensas and Concordia Parishes, Louisiana; and Adams County, Mississippi and its Part 157, Subpart F blanket certificate issued under Docket No. CP08–415–000, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to M. Benjamin Machlis, Attorney, Holland & Hart LLP, 222 South Main St., Suite 2200, Salt Lake City, UT 84101 at (801) 799–5800.

Specifically, Gulf Coast proposes to abandon approximately 17.83 miles of 6⅝ inch diameter pipeline, a 1,000 feet of 6 inch diameter pipeline lateral, a 200 horsepower compressor station, and appurtenant facilities, including a crossing of the Mississippi River.

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 original and 7 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.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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: October 7, 2014.

Dated: September 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22649 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–113–000]

Dominion Cove Point LNG, LP; Notice of Designation of Commission Staff as Non-Decisional

With respect to the proceeding in the above-captioned docket, the staff listed below from the Office of External Affairs are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2013), they will not serve as advisors to the Commission. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2013), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Non-decisional employees:

Sarah McKinley, Angela Washington, Janeen Said.

Dated: September 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22646 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5669–000]

San Diego County Water Authority; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Surrender of Exemption.

b. *Project No.:* 5669–000.

c. *Date Filed:* June 16, 2014, and supplemented on September 9, 2014.

d. Licensee: San Diego County Water Authority.

e. *Name of Project:* Miramar Power Plant Small Conduit Hydroelectric Project.

f. *Location:* The project is located on San Diego County Water Authority Second Aqueduct Pipelines to the Miramar Filtration Plant, San Diego, San Diego County, California.

g. *Filed Pursuant to:* 18 CFR 4.102 and 4.95.

h. Licensee Contact: Mr. Carson Struthers, Contracts Manager, San Diego County Water Authority, 610 West 5th Avenue, Escondido, CA 92025, Telephone: 760–233–3224, Email: *cstruthers@sdcwa.org.*

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments and protests is 30 days from the issuance of this notice by the Commission. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii). To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf.* In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf.* You must include your name and contact information at the end of your comments. Please include the project number (P–5669–000) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of any submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426.

k. *Description of Project Facilities:* The project consists of: (1) An existing 48-inch diameter raw water conduit; (2) a new 48-inch diameter inlet pipeline; (3) a powerplant with three generating units and a total installed capacity of 1,200 kW.

l. *Description of Proceeding:* On June 16, 2014, and supplemented on September 9, 2014, San Diego County Water Authority filed an application stating that due to reconfigurations in the exemptee's water supply system that decreased the pressure gradient, the project has been offline since May 2002. The following actions have been taken to inactivate and secure the project: (1) The units were disabled and outlet values closed; and (2) lockout/tagouts were also installed. Therefore, exemptee requests to surrender the exemption for the Miramar Project.

m. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–5669–000) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title

''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22651 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–18–000]

Joint Technical Conference on New York Markets & Infrastructure; Notice of Joint Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission), jointly with New York Public Service Commission, will hold a Commissioner-led technical conference on New York markets and infrastructure. The technical conference will take place on November 5, 2014 from approximately 9:30 a.m. to approximately 5:00 p.m. The conference will be held in the New York Institute of Technology Auditorium located at 1871 Broadway, between 61st and 62nd Streets, New York, NY 10023.

The purpose of the technical conference is to discuss issues of mutual interest and concern regarding the installed capacity market and energy infrastructure in New York. Specifically, this technical conference will provide an opportunity to review the role of New York's centralized capacity market in attracting investment and ensuring resource adequacy and reliability.

A supplemental notice will be issued prior to the technical conference with further details regarding the agenda and organization of the technical conference. Those interested in attending the technical conference are encouraged to register at the following Web page: *https://www.ferc.gov/whats-new/registration/11-05-14-form.asp.*

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about the technical conference, please contact:

Kathleen Schnorf (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8547, *Kathleen.Schnorf@ferc.gov.*

Betty Watson (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8552, *Betty.Watson@ferc.gov.*

Kate Hoke (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8404, *Katheryn.Hoke@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov.*

Dated: September 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22645 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14633–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 5, 2014, the New England Hydropower Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Albion Dam Hydroelectric Project (Albion Project or project) to be located on Blackstone River, near Cumberland and Lincoln, Providence County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 25-foot-high, 400-foot-long granite and stone masonry dam with a 300-foot-long stone masonry spillway; (2) an existing 55-acre impoundment with a normal storage capacity of 235 acre-feet at an operating elevation of about 87.5 feet national geodetic vertical datum; (3) a new 35-foot-long, 11.3-foot-wide, and 4-foot-deep intake canal; (4) two new 6-foot-high, 8-foot-wide hydraulically-powered sluice gates, with a new 6-foot-high, 9-foot-wide trashrack with 6-inch bar spacing; (5) a new 56-foot-long, 7.7-foot-wide Archimedes screw generator unit, with an installed capacity of 200 kilowatts; (6) a new 10-foot-high, 12-foot-long, 18-foot-wide concrete powerhouse containing the generator and a new gearbox and electrical controls; (7) a new above ground 480-foot-long, 13.8-kilovolt transmission line connecting the powerhouse to the distribution system owned by Narragansett Electric Company; and (8) appurtenant facilities. The estimated annual generation of the proposed Albion Project would be about 1,226 megawatt-hours. The existing Albion Dam and appurtenant works are owned by Rhode Island Department of Transportation.

Applicant Contact: Mr. Michael C. Kerr, P.O. Box 5524, Beverly Farms, MA 01915; phone: (978) 360–2547.

FERC Contact: John Ramer; phone: (202) 502–8969 or email: *john.ramer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14633–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14633) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22648 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14634–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 5, 2014, the New England Hydropower Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Ashton Dam Hydroelectric Project (Ashton Project or project) to be located on Blackstone River, near Cumberland, Providence County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 20-foot-high, 400-foot-long masonry dam with a 250-foot-long main spillway and a 150-foot-long auxiliary spillway; (2) an existing 35-acre impoundment with a normal storage capacity of 112 acre-feet at an operating elevation of about 74.0 feet national geodetic vertical datum; (3) a new 100-foot-long, 28-foot-wide, and 6.5-foot-deep intake canal; (4) a new 7-foot-high, 13-foot-wide hydraulically-powered sluice gate, with a new 7-foot-high, 41-foot-wide trashrack with 6-inch bar spacing; (5) two new 32-foot-long, 13-foot-wide Archimedes screw generator units, with an installed capacity of 300 kilowatts; (6) a new 10-foot-high, 25.4-foot-long, 39-foot-wide concrete powerhouse containing the generator and a new gearbox and electrical controls; (7) a new above ground 830-foot-long, 13.8-kilovolt transmission line connecting the powerhouse to the distribution system owned by Narragansett Electric Company; and (8) appurtenant facilities. The estimated annual generation of the proposed Ashton Project would be about 1,613 megawatt-hours. The existing Ashton Dam and appurtenant works is owned by Rhode Island Department of Environmental Management.

Applicant Contact: Mr. Michael C. Kerr, P.O. Box 5524, Beverly Farms, MA 01915; phone: (978) 360–2547.

FERC Contact: John Ramer; phone: (202) 502–8969 or email: *john.ramer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14634–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14634) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22644 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–99–000]

ISO New England Inc.; Notice of Initiation of Proceeding and Refund Effective Date

On September 16, 2014, the Commission issued an Order to Show Cause in Docket No. EL14–99–000, initiating a proceeding pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), directing ISO New England Inc. to either submit Tariff revisions providing for the review and potential mitigation of importers' offers prior to each annual Forward Capacity Auction or show cause why it should not be required to do so. *ISO New England Inc.,* 148 FERC ¶ 61,201 (2014).

The refund effective date in Docket No. EL14–99–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: September 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22647 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL14–22–000; EL14–25–000; EL14–26–000; EL14–27–000]

California Independent System Operator Corporation, Midcontinent Independent System Operator, Inc., New York Independent System Operator, Inc. , Southwest Power Pool, Inc.; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that, pursuant to the November 15, 2012 Order Directing Further Conferences and Reports in Docket No. AD12–12–000,[1] members of its staff may continue to listen to conference calls on regional progress in addressing gas-electric coordination issues conducted by: Midcontinent Independent System Operator, Inc. Electric and Natural Gas Coordination Task Force, New York Independent System Operator, Inc. Electric Gas Coordination Working Group, Pacific Northwest Utilities Conference Committee Power and Natural Gas Taskforce, and Southwest Power Pool, Inc. Gas Electric Coordination Task Force. The agenda and other documents for these conference calls are available on the relevant regional Web sites, including:

https://www.misoenergy.org/StakeholderCenter/CommitteesWorkGroupsTaskForces/ENGCTF/Pages/home.aspx

http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_egcwg

http://www.pnucc.org/system-planning/power-natural-gas-taskforce

http://www.spp.org/committee_detail.asp?commID=123.

According to the organizers of these meetings, they are open to all interested parties. Commission staff, consistent with the Commission's November 15, 2012 Order, plans to listen to these meetings as part of monitoring the progress being made within each region on natural gas and electric coordination activities. The meetings may discuss matters at issue in the above-captioned dockets.

For Further Information Contact: Caroline Wozniak at caroline.wozniak@ferc.gov or (202) 502–8931.

Dated: September 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22643 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

[1] *Coordination Between Natural Gas and Electricity Markets,* 141 FERC ¶ 61,125 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff will attend the following meeting related to the Northern Tier Transmission Group's (NTTG) 2014–2015 regional transmission plan development:

NTTG Quarter 3 Stakeholder Meeting

September 23, 2014 (12:30–3:30 p.m. Mountain Time)

The above-referenced meeting will be held at:

La Quinta Inn & Suites, 620 Nikles Drive, Bozeman, MT 59715.

The above-referenced meeting is open to the public.

Further information may be found at: *http://nttg.biz.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–1448–000, NorthWestern Corporation

Docket No. ER13–1457–000, Deseret Generation & Transmission Cooperative

Docket No. ER13–1463–000, Portland General Electric Company

Docket No. ER13–1467–000, Idaho Power Company

Docket No. ER13–1473–000, PacifiCorp

For more information, contact Michael Herbert, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission at (202) 502–8929 or *michael.herbert@ferc.gov.*

Dated: September 16, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22650 Filed 9–23–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0202; FRL–9916–87]

Pentachloronitrobenzene (PCNB); Cancellation Order for Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for amendments to terminate uses, voluntarily requested by the registrant and accepted by the Agency, of products containing pentachloronitrobenzene (PCNB), pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a June 6, 2014 **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II. to voluntarily amend to terminate certain uses of these product registrations. These are not the last products containing this pesticide registered for use in the United States. In the June 6, 2014 notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew its requests. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw its requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The amendments are effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; email address: *bloom.jill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2004–0202, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency

Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

II. What action is the agency taking?

This notice announces the amendments to terminate uses, as requested by the registrant, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PCNB PRODUCT REGISTRATION AMENDMENTS TO DELETE USES

EPA registration No.	Product name	Uses deleted
5481–197	Technical Grade PCNB	African violet; azaleas; bedding plants; begonias; calendula; camellia; carnation; chrysanthemum; larkspur; ornamental flowering plants; poinsettia; roses; snapdragon; and sweet peas. Seed treatments on barley, beans, corn, cotton (acid-delinted, fuzzy, reginned, or mechanically-delinted seed), oats, peanuts, peas, rice, safflower, sorghum, soybeans, sugar beets, and wheat.
5481–8988	Turfcide 10% Granular	Bedding plants, flowering plants, foliage plants, and bulb crops.
5481–8992	Turfcide 4F	Bedding plants, flowering plants, foliage plants, azaleas, camellias, gladiolus (broadcast), and cut flowers.

Table 2 of this unit includes the name and address for the registrant of the products in Table 1. The company number corresponds to the first part of the EPA registration numbers of the products listed above in Table 1 of this unit.

TABLE 2—REGISTRANT OF THE AMENDED PRODUCTS

EPA company No.	Company name and address
5481	Amvac Chemical Corporation, 4695 MacArthur Ct., Suite 1200, Newport Beach, CA 92660.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the June 6, 2014 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary amendments to terminate uses of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of the PCNB registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are amended to terminate the affected uses. The effective date of the amendments that are the subject of this notice is September 24, 2014. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of June 6, 2014 (79 FR 32730) (FRL–9911–37). The comment period closed on July 7, 2014.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

Upon publication of this order, the registrant is no longer permitted to sell or distribute the products listed in Table 1 of Unit II. of this Notice under the previously approved labeling (that is, labeling that includes the use sites for which the registrant has requested termination), except for export consistent with FIFRA section 17 or for proper disposal. The registrant will be permitted to relabel the products listed in Table 1 of Unit II. to conform with the requested use deletions as long as the registrant has verified that the products have been formulated from Technical PCNB that complies with the certified limits as amended on November 23, 2011 and June 13, 2012, and the registrant retains records demonstrating such compliance.

Use of existing stocks of products whose labels include the deleted uses is permitted until supplies are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, those products.

Authority: 7 U.S.C. 136 *et. seq.*

Dated: September 16, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22748 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–99–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of New York's request to revise its EPA Administered Permit Programs: The National Pollutant

Discharge Elimination System EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On July 11, 2014, the New York State Department of Environmental Conservation (NYSDEC) submitted an application titled ''New York DEC Network Discharge Monitoring Report System (National NetDMR)'' for revision/modification of its EPA-authorized Part 123 program under title 40 CFR. EPA reviewed NYSDEC's request to revise its EPA-authorized Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this document of EPA's decision to approve New York's request to revise its Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System program to allow electronic reporting under 40 CFR part 123 is being published in the **Federal Register**.

NYSDEC was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Dated: September 10, 2014.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–22750 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2014–0112; FRL–9917–05–OARM]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency.

ACTION: Notice of Advisory Committee Meeting Teleconference Call.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 14 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 15 members representing state, local, and Tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of this meeting is to provide advice on the Operational Plan of the Commission for Environmental Cooperation, traditional ecological knowledge, and to discuss other trade and environment issues in North America. The meeting will also include a public comment session. The agenda, meeting materials, and general information about NAC and GAC will be available at *http://www2.epa.gov/faca/nac-gac.*

DATES: The NAC/GAC will hold a public teleconference on October 23, 2014, from 1:00 p.m. to 5:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. EPA East Building, 1201 Constitution Avenue NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov,* 202–564–0347, U.S. EPA, Office of Diversity, Advisory Committee Management and Outreach (1601–M), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NAC/GAC should be sent to Oscar Carrillo at *carrillo.oscar@epa.gov* by Wednesday, October 15, 2014. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to participate in the teleconference should contact Oscar Carrillo at *carrillo.oscar@epa.gov* or (202) 564–0347 by October 15, 2014.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or *carrillo.oscar@epa.gov.* To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 15, 2014.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 2014–22751 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9917–06–OA]

Meetings of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee (SCAS)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee (SCAS) will meet via teleconference on Friday, October 10, 2014 at 11:00 a.m.–12:00 p.m. (ET). The Subcommittee will discuss recommendations regarding environmental issues affecting small communities, specifically agricultural issues and recommendations on Clean Water Act Waters of the U.S. Proposed Rule, as well as other environmental issues such as Clean Air Act Section 111(d), and other air quality issues. This is an open meeting and all interested persons are invited to participate. The Subcommittee will hear comments from the public between 11:05 a.m.–11:15 a.m. on October 10, 2014. Individuals or organizations wishing to address the Subcommittee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for presentations requires it.

The Local Government Advisory Committee (LGAC) will meet via teleconference on Friday, October 10, 2014, 12:00 p.m.–1:30 p.m. (ET). The Committee will discuss recommendations of the subcommittee and LGAC workgroups including recommendations on Clean Water Act Waters of the U.S. and Clean Air Act Section 111(d) recommendations, as well as other issues important to local governments. This is an open meeting and all interested persons are invited to participate. The Committee will hear comments from the public between 12:00 p.m.–12:15 p.m. (ET) on Friday, October 10, 2014. Individuals or organizations wishing to address the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *eargle.frances@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for presentations requires it.

ADDRESSES: EPA's Local Government Advisory Committee meetings will be held via teleconference. Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) contact Frances Eargle at (202) 564–3115 or email at *eargle.frances@epa.gov.*

Information Services for Those with Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 15, 2014.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2014–22761 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9917–11–Region 5]

Final Decision To Grant Warner-Lambert Company a Modification of Its Land-Ban Exemption

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision.

SUMMARY: Notice is hereby given by the U.S. Environmental Protection Agency (EPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Warner-Lambert Company (Warner-Lambert), a wholly-owned subsidiary of Pfizer, Inc., of Holland, Michigan.

DATES: This action is effective as of September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Roy, Lead Petition Reviewer, EPA, Region 5, Water Division, Underground Injection Control Branch, WU–16J, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604–3590; telephone number: (312) 886–6556; fax number (312) 692–2951; email address: *roy.stephen@epa.gov.* Copies of the petition and all pertinent information are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

SUPPLEMENTARY INFORMATION: On April 30, 1998, EPA granted Warner-Lambert (owned by Parke-Davis Division of Warner-Lambert Company at the time) an exemption from the land disposal restrictions of the 1984 Hazardous and Solid Waste Amendments (63 FR 23786, April 30, 1998). In August 2008, Warner-Lambert submitted a request to modify the exemption to include wastes bearing four additional wastes codes. EPA received additional information on this topic in 2014.

After careful review of the material submitted, EPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically similarly to wastes for which Warner-Lambert was granted an exemption, and will not migrate from the injection zone within 10,000 years.

A public notice of the proposed decision was issued on June 30, 2014. The public comment period expired on July 31, 2014. No comments were received. Therefore, EPA is issuing the final exemption modification as proposed.

As a result of this action and the April 30, 1998 exemption, Warner-Lambert may inject wastes bearing the RCRA waste codes D023, D024, D025 and D037 into its three injection wells in Holland, Michigan. This decision constitutes a final Agency action for which there is no administrative appeal. General conditions of this exemption are found at 40 CFR Part 148. The exemption granted to Warner-Lambert on April 30, 1998 included three conditions, all of which remain unchanged and in force.

Electronic Access. You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

Dated: September 4, 2014.

Tinka G. Hyde,

Director, Water Division.

[FR Doc. 2014–22735 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0594; FRL–9915–54]

Pesticide Chemicals; Registration Review; Draft Human Health and Ecological Risk Assessment; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and ecological risk assessments for the registration review of 2–EEEBC (debacarb) and isoxaben, and opens a public comment period on these documents. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed draft human health and ecological risk assessments, including an endangered species assessment, for all uses of the previously listed pesticide chemicals. After reviewing comments received during the public comment period, EPA will issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments and may request public input on risk mitigation before completing proposed registration review decisions for the previously listed pesticide chemicals. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 24, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or 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:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of 2–EEEBC (debacarb), acephate, allethrins, chlorethoxyfos, coumaphos, daminozide, dimethoate, isoxaben, picaridin, and propoxur pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must

perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for 2–EEEBC (debacarb) and isoxaben, to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessments for 2–EEEBC (debacarb) and isoxaben. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health and ecological risk assessments. EPA will then issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessments, if the revised risk assessments indicate risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessments. At present, EPA is releasing registration review draft risk assessments for the pesticide cases identified in the following table and further described after the table.

TABLE 1—REGISTRATION REVIEW DRAFT RISK ASSESSMENTS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone No., and email address
2–EEEBC (Debacarb) (Case 4031)	EPA–HQ–OPP–2008–0802	Roy Johnson (703) 347–0492, *johnson.roy@epa.gov.*
Isoxaben (Case 7219)	EPA–HQ–OPP–2007–1038	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov.*

1. *2–EEEBC (debacarb).* Debacarb is a fungicide registered for use to control certain diseases in ornamental trees. The fungicide is applied to mature trees by injection through the trunk. EPA has completed a draft ecological risk assessment, including a screening-level listed species assessment. A human health risk assessment is not needed because the method of application limits the possibility for applicator or other human exposure. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on any aspect of the ecological risk assessment, particularly any information on the disposition of the fungicide within the plant after application, the extent of use of the registered products, or any data available on adverse effects to potentially exposed non-target species.

2. *Isoxaben.* Isoxaben is a broad spectrum pre-emergent herbicide used to control broadleaf weeds, grasses, and vines. Isoxaben is used around non-bearing food crops, ornamental trees, and shrubs in agriculture nurseries, rights-of-way, and urban areas. It is also used on bearing nut trees and grape vineyards. EPA has completed draft human health and ecological risk assessments, including a screening-level listed species assessment, for all isoxaben uses. EPA acknowledges that further refinements to the listed species assessment will be completed in future revisions and requests public comment on specific areas that will reduce the uncertainties associated with the characterization of risk to listed species identified in the current assessment.

3. *Other related information.* Additional information on chemicals 2–EEEBC (debacarb) and isoxaben, is available for each pesticide, at *http://www.epa.gov/pesticides/chemicalsearch* and in each chemical's individual docket listed in the table in Unit III.A. Information on the Agency's registration review program and its implementing regulation is available at *http://www2.epa.gov/pesticide-reevaluation.*

4. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 12, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22584 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0335; FRL–9916–40]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as

listed in this notice. The exemptions were granted during the period April 1, 2014 to June 30, 2014 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0335, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.
2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.
3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption.

III. Emergency Exemptions

A. U.S. States and Territories

Arkansas

State Plant Board

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 17, 2014 to December 31, 2014.

Arizona

Department of Agriculture

Specific Exemption: EPA authorized the use of flutriafol on cotton to control cotton root rot; April 14, 2014 to June 15, 2014.

Delaware

Department of Agriculture

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; April 29, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

Florida

Department of Agriculture and Consumer Services

Crisis Exemption: On April 8, 2014, for use of clothianidin on young citrus trees to control transmission of Huanglongbing disease caused by Asian Citrus Psyllid. Florida Department of Agriculture and Consumer Services has also submitted a specific exemption request which allows the use to continue beyond the 15 days allowed under a crisis exemption, because the use is needed until November 1, 2014. EPA is currently evaluating that request. Since this use is for a neonicotinoid, EPA published a notice of receipt for the specific exemption request in the **Federal Register** on May 21, 2014 (79 FR 29185) (FRL–9909–94) with the public comment period closing on May 28, 2014.

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; May 16, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of streptomycin on grapefruit to control citrus canker; June 12, 2014 to June 12, 2015. EPA authorized the use because available alternative controls are not adequate to effectively control this disease, since they cause phytotoxic effects to the citrus when used during higher temperatures. Significant economic losses are occurring without control of this pathogen, which has become a serious threat to the fresh-market grapefruit industry in Florida. Since this request proposed the use of a material also used in humans and animals as an antibiotic drug, a notice of receipt published in the **Federal Register** on May 21, 2014 (79 FR 29185) (FRL–9909–94) with the public comment period closing on May 28, 2014.

Georgia

Department of Agriculture

Specific Exemption: EPA authorized the use of terbufos on cotton to control southern root knot nematodes; May 20, 2014 to July 1, 2014. EPA authorized the use because the loss of the industry standard tool resulted in a critical and urgent emergency situation and alternative controls were not adequate to effectively control this disease. Since this request proposed the use of an active ingredient which belongs to the organophosphate class of pesticides, a

notice of receipt published in the **Federal Register** on May 21, 2014 (79 FR 29185) (FRL–9909–94) with the public comment period closing on May 28, 2014.

Kentucky

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; May 22, 2014 to December 31, 2014.

Louisiana

Department of Agriculture and Forestry

Quarantine Exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; April 23, 2014 to November 1, 2015.

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 18, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; April 30, 2014 to October 31, 2014.

Maine

Department of Agriculture, Conservation and Forestry

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 23, 2014 to December 31, 2014.

Maryland

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 23, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; April 29, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

Massachusetts

Department of Agricultural Resources

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 17, 2014 to December 31, 2014.

Michigan

Department of Agriculture and Rural Development

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; April 29, 2014 to November 30, 2014.

Mississippi

Department of Agriculture and Commerce

Quarantine Exemption: EPA authorized the use of fipronil as an expansion of the registered use, to control an invasive crazy ant species (commonly referred to as the tawny crazy ant) around the outside of manmade structures in counties where the ant has been confirmed; May 22, 2014 to November 1, 2015.

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 29, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; June 12, 2014 to October 31, 2014.

Missouri

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 18, 2014 to December 31, 2014.

Nebraska

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; May 16, 2014 to December 31, 2014.

Nevada

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 17, 2014 to December 31, 2014.

New York

Department of Environmental Conservation

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

North Carolina

Department of Agriculture and Consumer Services

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; May 28, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

North Dakota

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 17, 2014 to December 31, 2014.

Ohio

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 18, 2014 to December 31, 2014.

Oklahoma

Department of Agriculture, Food, and Forestry

Specific Exemption: EPA authorized the use of flutriafol on cotton to control cotton root rot; April 14, 2014 to June 30, 2014.

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 17, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; April 30, 2014 to October 31, 2014.

Pennsylvania

Department of Agriculture

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; May 28, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

South Carolina

Department of Agriculture

Specific Exemption: EPA authorized the use of terbufos on cotton to control southern root knot nematodes; May 30, 2014 to July 1, 2014.

South Dakota

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; May 16, 2014 to December 31, 2014.

Texas

Department of Agriculture

Specific Exemption: EPA authorized the use of sulfoxaflor on sorghum to control sugarcane aphid; April 24, 2014 to October 31, 2014.

Virginia

Department of Agriculture and Consumer Services

Specific Exemptions: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; April 29, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

Washington State

Department of Agriculture

Specific Exemption: EPA authorized the use of lambda-cyhalothrin on asparagus to control European asparagus aphid; May 22, 2014 to September 30, 2014.

West Virginia

Department of Agriculture

Specific Exemption: EPA authorized the use of potassium salt of hop beta acids in beehives to control varroa mite; April 23, 2014 to December 31, 2014.

Specific Exemption: EPA authorized the use of dinotefuran on pome fruit and stone fruit to control the brown marmorated stinkbug; April 29, 2014 to October 15, 2014.

Specific Exemption: EPA authorized the use of bifenthrin on apple, peach, and nectarine to control the brown marmorated stinkbug; June 20, 2014 to October 15, 2014.

Wyoming

Department of Agriculture

Specific Exemption: EPA authorized the use of diflubenzuron on alfalfa to control the Mormon cricket and grasshoppers; June 6, 2014 to October 31, 2014. EPA authorized the use because projected levels of grasshoppers are very high for 2014 and the available alternatives are not expected to avert significant economic losses under outbreak conditions. Since this use has been requested for more than 5 years and an application for registration has not yet been received by EPA, a Notice of Receipt with opportunity for public comment published in the **Federal Register**, as required by 40 CFR 166.24, on April 30, 2014 (79 FR 24418) (FRL–9908–39) with public comment period closing on May 15, 2014.

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspection Service

Quarantine Exemption: EPA authorized a quarantine exemption to permit cotton growers to plant up to 100% of cotton acreage to transgenic (Bt) cotton, in conjunction with sterile insect release, as a Pink Bollworm (PBW) eradication strategy, in the PBW eradication area in California; April 23, 2014 to April 23, 2017.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 17, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–22746 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0628; FRL–9916–39]

Registration Review Proposed Interim Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions for public comment. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 24, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A., by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

For general information on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or 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:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in the table in this unit, and opens a 60-day public comment period on the proposed interim decisions.

TABLE—REGISTRATION REVIEW PROPOSED INTERIM DECISIONS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone No., email address
4–CPA (Case 2115)	EPA–HQ–OPP–2014–0544	Miguel Zavala, (703) 347–0504, *zavala.miguel@epa.gov*.
Allethrins (Case 0437)	EPA–HQ–OPP–2010–0022	Marianne Mannix, (703) 347–0275, *mannix.marianne@epa.gov*.
Fluazinam (Case 7013)	EPA–HQ–OPP–2009–0039	Avivah Jakob, (703) 305–3328, *jakob.avivah@epa.gov*.
Flumetsulam (Case 7229)	EPA–HQ–OPP–2008–0625	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov*.
Flutolanil (Case 7010)	EPA–HQ–OPP–2008–0148	Garland Waleko, (703) 308–8049, *waleko.garland@epa.gov*.
Hexaflumuron (Case 7413)	EPA–HQ–OPP–2009–0568	Ricardo Jones, (703) 347–0493, *jones.ricardo@epa.gov*.
Iron Salts (Case 4058)	EPA–HQ–OPP–2008–0626	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov*.
Piperalin (Case 3114)	EPA–HQ–OPP–2009–0483	Matthew Manupella, (703) 347–0411, *manupella.matthew@epa.gov*.
Quinclorac (Case 7222)	EPA–HQ–OPP–2007–1135	Margaret Hathaway, (703) 305–5076, *hathaway.margaret@epa.gov*.
Triflumizole (Case 7003)	EPA–HQ–OPP–2006–0115	Steven Snyderman, (703) 347–0249 *snyderman.steven@epa.gov*.

4–CPA (Proposed Interim Decision). The registration review docket for 4–CPA (EPA–HQ–OPP–2014–0544) is opening for public comment on a combined Work Plan, Summary Document, and Proposed Interim Registration Review Decision. 4–CPA is a plant growth regulator registered for use exclusively as a soaking agent for mung bean sprouts in greenhouse operations to prevent root formation. EPA conducted a qualitative assessment for both human health and environmental fate and ecological risks. No risks of concern were identified and the Agency has made a ''no effect'' determination for federally listed endangered and threatened (listed) species as well as a ''no habitat modification'' determination for all designated critical habitat. In this Proposed Interim Registration Review Decision, EPA is not making human health or environmental safety findings associated with the Endocrine Disrupter Screening Program (EDSP) for 4–CPA. Before completing this Registration Review, the Agency will make an EDSP Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(p) determination.

Allethrins (Proposed Interim Decision). The registration review docket for the allethrin stereoisomers (EPA–HQ–OPP–2010–0022) opened in a notice published in the **Federal Register** of March 31, 2010 (75 FR 16117) (FRL–8814–4). The allethrin stereoisomers include bioallethrin, esbiol, esbiothrin, and pynamin forte. All allethrins registrations, with the exception of three products (71910–2, 71910–3, and 71910–4) were cancelled effective December 2016. The only remaining registered uses of allethrins are impregnated mats for control of flying pests such as mosquitoes. There are no occupational, food or feed uses of allethrins. EPA conducted draft assessments for human health risks and ecological risks for the purposes of registration review. No risks of concern were identified in the human health risk assessment. The ecological risk assessment indicated that there was no reasonable expectation for the remaining registered uses of allethrins stereoisomers to cause direct or indirect adverse effects to threatened and endangered species. A ''no effect'' determination was made for all federally listed species as well as a ''no habitat modification'' determination made for all designated critical habitat. The allethrins stereoisomers have not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk. Pending the outcome of this action, EPA is planning to issue an interim registration review decision for allethrins.

Fluazinam (Proposed Interim Decision). The registration review docket for fluazinam (EPA–HQ–OPP–2009–0039) opened in a notice published in the **Federal Register** of September 23, 2009 (74 FR 48559) (FRL–8434–6). Fluazinam is a contact fungicide of the pyridinamine class registered for agricultural use on a variety of crops, including peanuts, potatoes, and beans. EPA conducted a human health risk assessment and did not identify any risks of concern. In addition, EPA conducted an environmental fate and effects risk assessment. Based on low-risk estimates, and the conservative nature of the risk assessment, the Agency has determined that fluazinam use does not pose unreasonable risks to the environment from currently registered uses of fluazinam. The Agency is not proposing mitigation changes at this time. The risk assessment for fluazinam did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) on the potential risk of fluazinam to listed species will be necessary. Fluazinam has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent on the result of consultation under Endangered Species Act (ESA)

Section 7 with the Services, and the evaluation of potential endocrine disrupter risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for fluazinam.

Flumetsulam (Proposed Interim Decision). The registration review docket for flumetsulam (EPA–HQ–OPP–2008–0625) opened in September 2008. Flumetsulam is a sulfonanilide herbicide in the triazolopyrimidine chemical class registered to control broadleaf weeds in field corn, soybeans, kidney beans, navy beans and pinto beans. There are no residential or public recreational uses of flumetsulam. EPA completed a draft human health risk assessment for all flumetsulam uses and did not identify any risks of concern. The ecological risk assessment indicated potential risks to non-target terrestrial and aquatic plants. The Agency is proposing mitigation to reduce spray drift to non-target plants. The ecological risk assessment did not come to a conclusion of ''no effect'' to all listed species. Therefore, a consultation with the Services on the potential risk of flumetsulam to listed species will be necessary. Flumetsulam has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of Section 7 Endangered Species consultation with the Services, and the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for flumetsulam.

Flutolanil (Proposed Interim Decision). The registration review docket for flutolanil (EPA–HQ–OPP–2008–0148) opened in a notice published in the **Federal Register** of September 15, 2008 (73 FR 53244) (FRL–8381–3). Flutolanil is a systemic benzanilide fungicide first registered by EPA in 1993, used to control fungal diseases in both food crops (peanuts, potatoes, rice,) and non-food sites (turf, greenhouse, field-grown and potted ornamentals). Flutolanil has both protective and curative activity. EPA completed a qualitative draft human health risk assessment for all flutolanil uses and for proposed label amendments for *Brassica* (cole) leafy vegetables (crop group 5), turnip greens, rice, turf, and peanuts. No risks of concern were identified. The Agency also conducted an ecological risk assessment for existing and proposed uses listed above. For existing uses, risks of concern were identified for freshwater fish and estuarine/marine invertebrates in the water column and sediment, and for terrestrial dicots and aquatic non-vascular plants for some uses. The risk assessment for flutolanil did not come to a conclusion of ''no effect'' to listed species. Flutolanil has also not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of Section 7 Endangered Species consultation with the Services and the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for flutolanil.

Hexaflumuron (Proposed Interim Decision). The registration review docket for hexaflumuron (EPA–HQ–OPP–2009–0568) opened on September 23, 2009 (74 FR 48559) (FRL–8343–6). Hexaflumuron is an insecticide/termiticide applied in above- and below-ground termite bait systems, and is intended to be used near commercial, recreational or residential structures. EPA completed a qualitative human health risk assessment and no risks of concern were identified. The Agency also conducted an ecological risk assessment and determined that hexaflumuron does not pose unreasonable risk to the environment. The Agency has made an endangered species effects determination of ''no effects'' for aquatic organisms and a determination of ''no habitat modification'' to all designated critical habitats under ESA. Hexaflumuron has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the result of the Section 7 Endangered Species consultation with the Fish and Wildlife Service, and the potential endocrine disruptor risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for hexaflumuron.

Iron Salts (Proposed Interim Decision) The registration review docket for iron salts (EPA–HQ–OPP–2008–0626) opened in December 2008. There are two active chemicals in this case, ferric sulfate and ferrous sulfate monohydrate, which are collectively referred to as the iron salts. Iron salts are registered as herbicides to control moss on a variety of non-agricultural sites. Due to the ubiquitous nature of the iron salts, the lack of human health hazard and risk concern, EPA's review of this case did not require a new human health risk assessment to support the existing uses. The ecological risk assessment came to a conclusion of ''no effect'' to all listed species. Therefore, a consultation with the Services on the potential risk of iron salts to listed species will not be necessary. Iron salts has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk. Pending the outcome of this action, EPA is planning to issue an interim registration review decision for iron salts.

Piperalin (Proposed Interim Decision). The registration review docket for piperalin (EPA–HQ–OPP–2009–0483) opened in September 2009. Piperalin is registered to treat powdery mildew fungal infections of ornamental plants, shrubs, vines, and trees grown in commercial greenhouses. There are no registered outdoor or residential uses. EPA completed a qualitative draft human health risk assessment for all piperalin uses. No risks of concern were identified. The Agency did not conduct a comprehensive ecological risk assessment since the use pattern does not likely result in outdoor exposures. However, the Agency completed a qualitative endangered species assessment for the greenhouse use. No risks of concern were identified and the Agency has made a ''no effect'' determination for federally listed species as well as a ''no habitat modification'' determination for all designated critical habitat. Piperalin has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk. Pending the outcome of this action, EPA is planning to issue an interim registration review decision for piperalin.

Quinclorac (Proposed Interim Decision). The registration review docket for quinclorac (EPA–HQ–OPP–2007–1135) opened in December 2007. Quinclorac is a systemic herbicide used to control broadleaf and grass weeds via ground spray or aerial application. Currently registered uses of quinclorac include turf grasses, sorghum, wheat, rangeland/pasture, rights-of way/fencerow/hedgerow, grass grown for seed, fallow land, grass forage/fodder/hay, rice, rhubarb, and low growing berry (except strawberry) subgroup 13–07H. EPA conducted a quantitative assessment for both human health and ecological risks. No risks of concern were identified in the human health risk assessment. The ecological risk assessment identified possible risks to both listed and non-listed non-target terrestrial plants. Therefore a ''no effect'' determination could not be made for all federally listed species and designated critical habitat. The proposed interim decision document outlines labeling

changes to reduce the risk from spray drift to non-target terrestrial plants. Quinclorac has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of Section 7 Endangered Species consultation with the Services, and the result of the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for quinclorac.

Triflumizole (Proposed Interim Decision). The registration review docket for triflumizole (EPA–HQ–OPP–2006–0115) opened in March 2007. Triflumizole is a broad spectrum, imidazole fungicide (group 3) that inhibits ergosterol biosynthesis in fungi, acting as a systemic fungicide. Triflumizole is registered for application to a number of food and non-food crops, including ornamentals in greenhouses/shade houses, interior scapes, and Christmas trees/conifers on nurseries and plantations. It is also used as a pre-plant seed piece treatment on pineapples. EPA conducted a qualitative human health risk assessment and identified occupational handler and post-application exposure risks of concern for several use scenarios. EPA is proposing additional personal protective equipment of a chemical-resistant hat to address occupational handler risks of concern when applying triflumizole with open cab air blast equipment to apple, pear, and cherry. To address post-application risks of concern, EPA is proposing to increase re-entry intervals (REIs) for grapes (table and raisin) to 1-day and hops to 3 days. The ecological risk assessment identified potential risks to listed mammals, birds, herpatofauna, freshwater fish, and aquatic estuarine-marine invertebrates; however, the only non-listed taxa of concern was chronic risk to mammals. To mitigate potential chronic risk to non-listed mammals, the registrant agreed to label changes reducing the number of applications per year for certain crops and increasing the retreatment interval (RTI) to reflect typical usage. The risk assessment for triflumizole did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with the Services on the potential risk of triflumizole to listed species will be necessary. Triflumizole has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of Section 7 Endangered Species consultation with the Services and the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for triflumizole.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review typically opens with a summary document, containing a Preliminary Work Plan, for public comment. A final Work Plan is placed in the docket following public comment on the initial docket. The documents in the dockets describe EPA's rationales for conducting additional risk assessments, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. A proposed registration review decision will be supported by the rationales included in those documents. Following public comment on a proposed decision, the Agency will issue an interim registration review decision.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of FIFRA (7 U.S.C. 136a(g)) required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in Unit II.A. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket as appropriate. The final registration review decision will explain the effect that any comments had on the decision.

Background on the registration review program is provided at: *http://www2.epa.gov/pesticide-reevaluation.* Information regarding earlier documents related to the registration review of these pesticides can be found at: *http://www2.epa.gov/pesticide-reevaluation/individual-pesticides-registration-review.*

B. What is the Agency's authority for taking this action?

Section 3(g) of FIFRA (7 U.S.C. 136a(g)) and 40 CFR part 155, subpart C, provide authority for this action.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 17, 2014.

Patricia L. Parrott,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22739 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9916–69]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an August 6, 2014 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the August 6, 2014 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the

requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000100–00729	Primo® Liquid	Trinexapac-ethyl.
000100–00752	Primo® WSB	Trinexapac-ethyl.
000279–09556	Intruder Residual Cylinder with Cyfluthrin	Piperonyl butoxide, pyrethrins (No inert use), and cyfluthrin.
003546–00041	Shoo-fly Flying Insect Killer	Permethrin, piperonyl butoxide, and pyrethrins (No inert use).
010807–00127	Misty Insect Repellent II	MGK 264, MGK326, and diethyl toluamide.
046386–00002	Prometrex Technical	Prometryn.
053883–00241	CSI Wipe & Spray Insecticide	Stabilene, piperonyl butoxide, and pyrethrins (No inert use).
053883–00295	CSI Folpet Technical	Folpet.
053883–00301	CSI Folpet MUP	Folpet.
062719–00601	Acetochlor Technical	Acetochlor.
071711–00022	AC 801,757 Miticide-Insecticide	Tebufenpyrad.
071711–00023	AC 801,757 3EC Miticide-Insecticide	Tebufenpyrad.
ME–080001	Nexter	Pyridaben.
PR–130002	IMI 1% G Insecticide	Imidacloprid.
PR–140001	Quali-pro Imidacloprid 1G Nursery & Greenhouse Insecticide.	Imidacloprid.
WA–860025	Drexel Dimethoate 2.67 EC	Dimethoate.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–8300.
279	FMC Corp. Agricultural Products Group, 1735 Market St., Rm. 1978, Philadelphia, PA 19103.
3546	Lynwood Labs, Inc., 945 Great Plain Ave., Needham, MA 02492–3004.
10807	Amrep, Inc., Agent: Zep, Inc. c/o Compliance Services, 1259 Seaboard Industrial Blvd. NW., Atlanta, GA 30318.
46386	Verolit Chemical Manufacturers, LTD, c/o/Makhteshim-Agan of North America, Inc., Agent: Makhteshim-Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
53883, PR–130002	Control Solutions, Inc., 5903 Genoa Red Bluff Rd., Pasadena, TX 77507–1041.
62719	Dow Agrosciences, LLC, 9339 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
PR–140001	Makhteshim Agan of North America, Inc., d/b/a ADAMA, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
71711	Nichino America, Inc., Agent: Exponent, Inc., 1150 Connecticut Ave., NW., Suite 1100, Washington, DC 20036.
ME–080001	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
WA–860025	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 6, 2014 **Federal Register** notice (79 FR 45803) (FRL–9914–36) announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is September 24, 2014. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of August 6, 2014. The comment period closed on September 5, 2014.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until September 24, 2015, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 12, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22579 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9916–41]

Product Cancellation Order for Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of August 13, 2014, and June 4, 2014, concerning receipt of requests to voluntarily cancel certain pesticide registrations and its follow-up cancellation order, respectively. In both notices, EPA inadvertently listed the incorrect existing stocks language for products Ronilan Manufacturer's Concentrate (EPA Reg. No. 007969–00057), Ronilan EG Fungicide (EPA Reg. No. 007969–00085), and Curalan EG Fungicide (EPA Reg. No. 007969–00224). This document corrects the existing stocks language listed in both the August 13, 2014, and June 4, 2014, **Federal Register** notices.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the **Federal Register** notices of August 13, 2014 (79 FR 47454) (FRL 9914–00) and June 4, 2014 (79 FR 32288) (FRL 9910–97) a list of those who may be potentially affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What does this correction do?

FR Docs. 2014–18961 and 2014–12922 published in the **Federal Register** of August 13, 2014 (79 FR 47454) (FRL 9914–00) and June 4, 2014 (79 FR 32288) (FRL 9910–97), respectively, are corrected as follows:

1. On pages 47456 and 32290, respectively, second column, under the heading B. For Products (007969–00057, 007969–00085, and 007969–00224), paragraph 1, sentences 3 and 4, correct ''Thereafter, registrants, and persons other than registrants, are prohibited from selling or distributing existing stocks of products containing vinclozolin identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Existing stocks of products containing vinclozolin already in the hands of users can be used legally until such stocks are exhausted, provided that the use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products'' to read ''Thereafter, registrants are prohibited from selling and distributing existing stocks of products containing vinclozolin identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.''

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 15, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22583 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0651; FRL–9916–79]

Registration Review Final and Interim Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

For general information on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0651, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's final registration review decision for dioctyl sodium sulfosuccinate (Case 4029), polybutene resins (Case 4076), and undecylenic acid (Case 4095) and interim decisions for ancymidol (Case 3017), DEET (Case 0002), denatonium saccharide (Case 7625), and metofluthrin (Case 7445).

In addition to the final and interim registration review decision document, the registration review dockets for ancymidol, DEET, denatonium saccharide, dioctyl sodium sulfosuccinate, metofluthrin, polybutene resins, and undecylenic acid also include other relevant documents related to the registration review of these cases. The proposed registration review decisions or interim decisions were posted to the respective dockets and the public was invited to submit any comments or new information. EPA is addressing the comments or information received during the 60-day comment period in the discussion for each pesticide listed in this document, see Unit II. for the discussions.

TABLE—REGISTRATION REVIEW FINAL AND INTERIM DECISIONS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone No., email address
Ancymidol (Case 3017)	EPA–HQ–OPP–2011–0482	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov.*
DEET (*N,N*-diethyl-meta-toulamide) (Case 0002).	EPA–HQ–OPP–2012–0162	Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov.*
Denatonium saccharide (Case 7625).	EPA–HQ–OPP–2008–0441	Cathryn Britton, (703) 308–0136, *britton.cathryn@epa.gov.*
Dioctyl sodium sulfosuccinate (Case 4029).	EPA–HQ–OPP–2010–1006	Garland Waleko, (703) 308–8049, *waleko.garland@epa.gov.*
Metofluthrin (Case 7445)	EPA–HQ–OPP–2012–0105	Veronica Dutch, (703) 308–8585, *dutch.veronica@epa.gov.*
Polybutene resins (Case 4076)	EPA–HQ–OPP–2009–0649	Joel Wolf, (703) 347–0228, *wolf.joel@epa.gov.*
Undecylenic acid (Case 4095)	EPA–HQ–OPP–2011–0910	Garland Waleko, (703) 308–8049, *waleko.garland@epa.gov.*

Ancymidol (Interim Decision). The registration review docket for ancymidol (EPA–HQ–OPP–2011–0482) opened in June 2011. EPA issued the Proposed Interim Registration Review Decision for ancymidol on June 4, 2014 and took comments for 60 days. The Agency received one comment from the Center for Biological Diversity, which supported the Proposed Interim Registration Review Decision. Therefore, EPA is issuing the Interim Registration Review Decision for ancymidol. Ancymidol is a plant growth regulator registered for treating container-grown herbaceous plants, ornamental woody shrubs, and bedding plants grown in greenhouses and in outdoor plant bedding areas. It is also registered for use as a seed treatment for ornamental plants, and treated seeds are used to start plants. Use of ancymidol is limited to nursery-grown ornamentals. There are no food, feed, or residential uses registered for ancymidol. No pesticide tolerances have been established. EPA conducted a

qualitative assessment for both human health, and environmental fate, and ecological risks. No risks of concern were identified in the human health risk assessment. The environmental fate and ecological risk assessment indicated that there was no reasonable expectation for any registered use of ancymidol to cause direct or indirect adverse effects to threatened and endangered species or designated critical habitat. EPA made a ''no effect'' determination was all federally listed species and designated critical habitat. Ancymidol has not been evaluated under the endocrine disruptor screening program (EDSP). Therefore, the Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk.

DEET (Interim Decision). EPA has completed an interim registration review decision for DEET (*N,N*-diethyl-meta-toulamide). The registration review docket for DEET opened in June 2014 (EPA–HQ–OPP–2012–0162). EPA issued a combined Work Plan and Proposed Interim Decision for DEET on June 4, 2014 and took comment for 60 days. The public comments received did not affect the Agency's interim decision. DEET is a broad-spectrum insect repellent registered for use against biting flies, biting midges, black flies, chiggers, deer flies, fleas, gnats, horse flies, mosquitoes, no-see-ums, sand flies, stable flies, and ticks. It is currently registered for non-food uses and residential uses. It can be directly used on clothing, applied to the skin, and used on horses. EPA conducted a qualitative assessment for both human health and ecological risks. No risks of concern were identified. The ecological risk assessment made a ''no effect'' determination for federally listed species and designated critical habitat. DEET has not been evaluated under the EDSP. Therefore, the Agency's registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk.

Denatonium saccharide (Interim Decision). EPA has completed an interim registration review decision for denatonium saccharide. The registration review docket for denatonium saccharide (EPA–HQ–OPP–2008–0441) opened in June 2008. EPA issued the proposed interim decision for denatonium saccharide on June 4, 2014 and took comment for 60 days. The Agency received one comment from the Center for Biological Diversity, which supported the Proposed Interim Registration Review Decision. Denatonium saccharide is a bittering agent in squirrel, vole, dog, and cat repellents used on outdoor surfaces and structures such as trees, fences, poles, decks, planters, siding, garbage cans, furniture, seeds, and bulbs. EPA conducted a qualitative human health risk assessment and did not identify any risks of concern. The ecological risk assessment identified potential risks for birds and listed mammals. However, due to the number of conservative assumptions included in the assessment, there are no labeling changes at this time. The risk assessment for denatonium saccharide did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with the U.S. Fish and Wildlife Service (USFWS) on the potential risk of denatonium saccharide to listed species will be necessary. Denatonium saccharide has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the result of Section 7 Endangered Species consultation with the USFWS and the evaluation of potential endocrine disruptor risk.

Dioctyl sodium sulfosuccinate (Registration Review Decision). EPA has completed a registration review decision for dioctyl sodium sulfosuccinate (DSS). The registration review docket for DSS (EPA–HQ–OPP–2010–1006) opened in December 2010. EPA issued the proposed decision for DSS on June 4, 2014 and took comment for 60 days. The Agency received one comment from the Center for Biological Diversity, which supported the proposed registration review decision. DSS is registered as an insecticide and miticide in pet shampoos and spray products in combination with Undecylenic Acid (UDA). As a pesticidal active ingredient, there are no food uses and, thus, no tolerances are established. DSS is used as an active ingredient in over the counter stool-softener and laxative products for infants, children, and adults; it is also used in pharmaceutical, cosmetic, and food products. EPA has conducted a qualitative assessment for both human health and ecological risks, including listed species for DSS. The human health risk assessment did not identify any risks of concern for DSS. The ecological risk assessment made a ''no effect'' determination for federally listed species and designated critical habitat. Pursuant to section 408(p)(4) of the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA has exempted DSS from the requirements of the EDSP in an Administrative Order entitled ''Exemption of Dioctyl Sodium Sulfosuccinate (DSS) and Undecylenic Acid (UDA) from the Requirements of the Endocrine Disruptor Screening Program'' which is available in the registration review docket.

Metofluthrin (Interim Decision). EPA has completed an interim registration review decision for metofluthrin. The registration review docket for metofluthrin (EPA–HQ–OPP–2012–0105) opened in June 2013. EPA opened a 60-day comment period on the proposed interim decision for metofluthrin in June 2014. Three comments were received during that period. The Center for Biological Diversity commented that it agreed with the Agency's proposed decision. Two other comments, from California Water Board representatives, expressed the view that metofluthrin should undergo a comprehensive ecological assessment, like the other pyrethroids. The commenters also expressed concern that metofluthrin (particularly the bed bug use and the tabletop mister) had the potential to contaminate urban waters. These comments have been addressed in a new response to comments document available on the docket. None of the comments resulted in changes to the interim decision. Metofluthrin is a Type 1 synthetic pyrethroid insect repellent and insecticide with products registered for use in residential and commercial areas, including barns, stables, and kennels. There are no registered food/feed uses. Metofluthrin has minimal potential for human health and ecological exposure. No risks of concern were identified. In addition, the Agency made a ''no effect'' determination for federally listed species and designated critical habitat. No additional data or changes to the affected registrations or their labeling are needed at this time. Metofluthrin has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision will be dependent on evaluation of potential endocrine disruptor risk.

Polybutene resins (Registration Review Decision). EPA has completed a registration review decision for polybutene resins. The registration review docket for polybutene resins (EPA–HQ–OPP–2009–0649) opened in June 2010. EPA issued the proposed decision for polybutene resins on June 4, 2014 and took comment for 60 days. The Agency received one comment from the Center for Biological Diversity, which supported the proposed registration review decision. Polybutene is a sticky polymer registered for use as a bird and small mammal repellent. It is used to prevent house sparrows, pigeons, and starlings from roosting inside and outside of buildings, as well as to prevent beavers from attacking

trees and shrubs. There are no food/feed uses and, it is exempt from a tolerance requirement when used as a sticker agent in packaging of insect control products used on food crops. Polybutene is approved by the U.S. Food and Drug Administration (FDA) as an indirect food additive and is used as an ingredient in cosmetic products that are applied directly to the skin such as sun block or moisturizer, and that may be incidentally ingested, such as lipstick. EPA conducted a qualitative assessment for both human health and ecological risks. No risks of concern were identified in the human health risk assessment. The ecological risk assessment indicated that there was no reasonable expectation for any registered use of polybutene to cause direct or indirect adverse effects to threatened and endangered species. A ''no effect'' determination was made for all federally listed species and designated critical habitat. Pursuant to FFDCA section 408(p)(4), EPA has exempted polybutene from the requirements of the EDSP in an Administrative Order (AO) entitled ''Exemption of Polybutene from the Requirements of the Endocrine Disruptor Screening Program'' which is available in the registration review docket.

Undecylenic acid (Registration Review Decision). EPA has completed a registration review decision for undecylenic acid (UDA). The registration review docket for UDA (EPA–HQ–OPP–2011–0910) opened in December 2011. EPA issued the proposed decision for UDA on June 4, 2014 and took comment for 60 days. The Agency received one comment from the Center for Biological Diversity, which supported the proposed registration review decision. UDA is registered as an insecticide and miticide in pet shampoos and spray products in combination with dioctyl sodium sulfosuccinate (DSS). As a pesticidal active ingredient, there are no food uses and, thus, no tolerances are established. UDA is approved by the FDA as an active ingredient in over the counter anti-fungal products, and it is also used as a flavoring agent. EPA has conducted a qualitative assessment for both human health and ecological risks, including listed species for UDA. The human health risk assessment did not identify any risks of concern for UDA. The ecological risk assessment made a ''no effect'' determination for federally listed species and designated critical habitat. Pursuant to FFDCA section 408(p)(4), EPA has exempted UDA from the requirements of the EDSP in an AO entitled ''Exemption of Dioctyl Sodium Sulfosuccinate (DSS) and Undecylenic Acid (UDA) from the Requirements of the Endocrine Disruptor Screening Program'' which is available in the registration review docket.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered Ancymidol, DEET, Denatonium Saccharide, Dioctyl Sodium Sulfosuccinate, Metofluthrin, Polybutene Resins, and Undecylenic Acid in light of the FIFRA standard for registration. The Ancymidol, DEET, Denatonium Saccharide, Dioctyl Sodium Sulfosuccinate, Metofluthrin, Polybutene Resins, and Undecylenic Acid Final or Interim Decision documents in the respective dockets describe the Agency's rationale for issuing a registration review final or interim decision for these pesticides.

Pursuant to 40 CFR 155.58(c), the registration review case docket for Ancymidol, DEET, Denatonium Saccharide, Dioctyl Sodium Sulfosuccinate, Metofluthrin, Polybutene Resins, and Undecylenic Acid will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of this pesticide are provided at: *http://www2.epa.gov/pesticide-reevaluation/individual-pesticides-registration-review.*

B. What is the Agency's authority for taking this action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 16, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22740 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0565; FRL–9915–03]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces registration review case closures for 3 H–1,2 Dithiol-3-one,4,5,-dichloro- (RHY–86) (case 5033) and tepraloxydim (case 7257). In addition, this document announces the Agency's intent not to open registration review cases for mepanipyrim (case 7042) and vinclozolin (case 2740) because there are no longer any active registrations containing either of these chemicals. The two case closures and the Agency's intent not to open two registration review cases being announced herein are not open for public comment.

DATES: Comments must be received on or before November 24, 2014.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager

for the pesticide of interest identified in the table in Unit III.A.

For general information contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; fax number: (703) 308–8005; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or 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:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE 1—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Chemical review manager or regulatory action leader, telephone No., email Address
2-(thiocyanomethylthio) benzothiazole (TCMTB (Case 2625).	EPA–HQ–OPP–2014–0405	Sandra O'Neill, (703) 347–0141, *oneill.sandra@epa.gov.*
1,3-Propanediamine, N-(3-aminopropyl)-*N*-dodecyl- (PAD) (Case 5109).	EPA–HQ–OPP–2014–0406	Tina Pham, (703) 308–0125, *pham.tina@epa.gov.*
3(2H)-Isothiazolone, 4,5-dichloro-2-octyl- (DCOIT) (Case 5023).	EPA–HQ–OPP–2014–0403	SanYvette Williams, (703) 305–7702, *williams.sanyvette@epa.gov.*
Bacillus thuringiensis (Case 0247).	EPA–HQ–OPP–2011–0705	Jeannine Kausch, (703) 347–8920, *kausch.jeannine@epa.gov.*
Cyhalofop-butyl (Case 7255)	EPA–HQ–OPP–2014–0115	Jolene Trujillo, (703) 347–0103, *trujillo.jolene@epa.gov.*
Diclofop-methyl (Case 2160)	EPA–HQ–OPP–2014–0577	Marianne Mannix, (703) 347–0275, *mannix.marianne@epa.gov.*

TABLE 1—REGISTRATION REVIEW DOCKETS OPENING—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager or regulatory action leader, telephone No., email Address
Etoxazole (Case 7616)	EPA–HQ–OPP–2014–0133	Julia Stokes, (703) 347–8966, *stokes.julia@epa.gov.*
Fenpropimorph (Case 5112)	EPA–HQ–OPP–2014–0404	Donna Kamarei, (703) 347–0443, *kamarei.donna@epa.gov.*
Fluroxypyr,1-methylheptylester (Case 7248).	EPA–HQ–OPP–2014–0570	Benjamin Askin, (703) 347–0503, *askin.benjamin@epa.gov.*
GABA & LGA (Case 6025)	EPA–HQ–OPP–2014–0109	Menyon Adams, (703) 347–8496, *adams.menyon@epa.gov.*
Imazapic (Case 7234)	EPA–HQ–OPP–2014–0279	Ricardo Jones, (703) 347–0493, *jones.ricardo@epa.gov.*
Imazaquin (Case 7204)	EPA–HQ–OPP–2014–0224	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Polyoxin D Zinc Salt (Case 6076).	EPA–HQ–OPP–2014–0108	Manying Xue, (703) 305–6198, *xue.manying@epa.gov.*
Noviflumuron (Case 7434)	EPA–HQ–OPP–2014–0566	Dana Friedman, (703) 347–8827, *friedman.dana@epa.gov.*
Streptomyces lydicus WYEC (Case 6088).	EPA–HQ–OPP–2014–0608	Kathleen Martin, (703) 308–2857, *martin.kathleen@epa.gov.*
Tebufenpyrad (Case 7435)	EPA–HQ–OPP–2014–0218	Susan Bartow, (703) 603–0065, *bartow.susan@epa.gov.*
Triallate (Case 2695)	EPA–HQ–OPP–2014–0573	Katherine St. Clair, (703) 347–8778, *stclair.katherine@epa.gov.*
Zinc pyrithione (Case 2480)	EPA–HQ–OPP–2004–0147	Sandra O'Neill, (703) 347–0141, *oneill.sandra@epa.gov.*

This notice also announces two case closures and the Agency's intent not to open a registration review case for two additional chemicals. The registration review case for 3 H–1,2 Dithiol-3-one,4,5-dichloro- (RYH–86) (case 5033) is being closed for non-payment of maintenance fees for the last two remaining registrations. The tepraloxydim (case 7257) registration review case is being closed because the last products were canceled in the **Federal Register** notice on August 6, 2014 (79 FR 45798) (FRL–9914–09). The ''Notice of Registration Review Case Closure for Tepraloxydim'' is available in the docket EPA–HQ–OPP–2014–0246 *at http://www.regulations.gov.* The Agency intends not to open registration review cases for vinclozolin (case 2740) and mepanipyrim (case 7042) because there are no longer any products registered containing these active ingredients. The cancellation order for the last vinclozolin registrations was issued in the **Federal Register** notice on August 13, 2014 (79 FR 47454) (FRL–9914–00). There are no longer any products registered containing mepanipyrim. The two cases closures and the Agency's intent not to open two registration review cases being announced herein are not open for public comment.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency

should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 18, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–22747 Filed 9–23–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 18,498 respondents; 36,996 responses.

Estimated Time per Response: 0.166–26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 484,019 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station License, FCC Form 327.

Form Number: FCC Form 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Time per Response: 3.166 hours.

Frequency of Response: On occasion reporting requirement; Every 5 years reporting requirement.

Total Annual Burden: 1,266 hours.

Total Annual Costs: $98,000.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 308 and 309 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: This filing is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (e.g., on one side of a river or mountain) to another point (e.g., the other side of the river or mountain) or many points (''multipoint'') via microwave. The filing is done for an initial license, for modification of an

existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with Sections 78.11 to 78.40 of the Commission's Rules. The form consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete, and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

OMB Control Number: 3060–0213.

Title: Section 73.3525, Agreements for Removing Application Conflicts.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 38 respondents; 40 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 39 hours.

Total Annual Costs: $91,953.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 311 of the Communications Act of 1934, as amended.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3525 states (a) except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; Provided That this provision shall not apply to bona fide merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to § 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–22680 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 18,498 respondents; 36,996 responses.

Estimated Time per Response: 0.166—26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 484,019 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–22679 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–1015.

Title: Section 15.525—Ultra Wideband Transmission Systems Operating Under Part 15.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 50 respondents; 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time, on occasion reporting requirements; and Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 50 hours.

Total Estimated Cost: $2,500.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements), after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Commission rules in 47 CFR Part 15, 15.525 requires operators of the Ultra Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC and to obtain approval before the UWB equipment may be used. Initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra Wideband transmission systems in order to avoid interference with sensitive U.S. government radio systems. The UWB operators will be required to provide name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA) under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require approval from the FCC to operate the equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–22726 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 61 respondents; 61 responses.

Estimated Time per Response: 190 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 303(r) and 403.

Total Annual Burden: 11,590 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system. For these reasons, the information requested in (b) (Terrestrial Route Map) and (c) (Undersea Location Spreadsheet) above is presumptively exempt from public disclosure under Freedom of Information Act (FOIA) Exemption 3, 5 U.S.C. 552(b)(3), and section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), as implemented in 47 CFR 0.457(c)(1)(i) (exempting disclosure of ''maps showing the exact location of submarine cables''). The information requested in (a) (System Status and Restoration Messages) and (d) (Restoration Capability) described above will be considered exempt under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). If a FOIA request is filed for information submitted in response to this request, the respondent whose records are the subject of the request will be notified of the FOIA request and given the opportunity to oppose release of the records. See 47 CFR 0.461(d)(3). We note that the information provided in response to this request will be shared with the Department of Homeland Security's National Communications System (NCS) and relevant Executive Branch agencies on a confidential basis. See 44 U.S.C. 3510.

Needs and Uses: This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purposes of providing situational awareness of submarine cable system

performance as well as a greater understanding of potential physical threats to the submarine cable systems. This information will provide situational awareness regarding the operational status of submarine cable systems to the Federal government, and allow the Executive Branch to assess potential risks and threats to these critical communications systems in the context of other available information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–22678 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–1336]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the ''Committee''). The purpose of the Committee is to make recommendations to the Commission regarding matters within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: October 20, 2014, 9:00 a.m. to 4:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Commission Meeting Room, TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or Relay), or email *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 14–1336, released September 17, 2014, announcing the agenda, date, and time of the Committee's next meeting.

Meeting Agenda

At its October 20, 2014 meeting, the Committee is expected to consider a recommendation from its Disability Working Group regarding accessibility of the Lifeline program, and a recommendation from its Consumer Protection Working Group regarding mobile device security and privacy. The Committee may also consider other recommendations from its working groups, and may receive briefings from FCC staff and outside speakers on matters of interest to the Committee. A limited amount of time will be available on the agenda for comments from the public. The public may ask questions of presenters via the email address *livequestions@fcc.gov* or via Twitter using the hashtag #fcclive. In addition, the public may also follow the meeting on Twitter@fcc or via the Commission's Facebook page at *www.facebook.com/fcc.* Alternatively, members of the public may send written comments to Scott Marshall, Designated Federal Officer of the Committee at the address provided above. The meeting is open to the public, and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live/.*

Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may not be possible to fill. To request an accommodation, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2014–22771 Filed 9–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission (Commission) is giving public notice that the agency has submitted to the Office of Management and Budget (OMB) for approval the continuing information collections (extensions with no changes) described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted at the addresses below on or before October 24, 2014 to be assured of consideration.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Patrick Fuchs, Desk Officer for Federal Maritime Commission, 725—17th Street NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV,* Fax (202) 395–5167 and to:

Vern W. Hill, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov.*

Please send separate comments for each specific information collection listed below, and reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Donna Lee on 202–523–5800 or email: *dlee@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Commission invites the general public and other Federal agencies to comment on proposed information collections. On June 18, 2014, the Commission published a notice and request for comments in the **Federal Register** (79 FR 34748) regarding the agency's request for continued approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. The Commission received no comments on any of the requests for extensions of OMB clearance. The Commission has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collections Open for Comment

Title: 46 CFR Part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires September 30, 2014).

Abstract: Section 9 of the Shipping Act of 1984, 46 U.S.C. 40701–40706, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: It is estimated that 4 of the currently classified controlled carriers may respond in any given year. Classifications are reviewed periodically to determine current status of respondents and to increase or decrease the number of controlled carriers based on new circumstances. The Commission cannot anticipate when a new carrier may enter the United States trade; therefore, the number of annual respondents may fluctuate from year to year and could increase to 10 or more at any time.

Estimated Time per Response: The estimated time for compliance is 7 person-hours per year.

Total Annual Burden: The Commission estimates the person-hour burden required to make such notifications at 28 person-hours per year.

Title: 46 CFR part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires September 30, 2014).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. 40501(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 29, of which 15 opt to make their schedules available to the public.

Estimated Time per Response: The time per response for completing Form FMC–1 averages 0.5 person hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total person-hour burden at 90 person-hours.

Title: 46 CFR part 520—Carrier Automated Tariffs and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires September 30, 2014).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. 40501(a)–(c), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. 40502. The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates there are 4,900 Carrier Automated Tariffs. It is estimated that the number of annual respondents will be 1,882.

Estimated Time Per Response: The time per response ranges from 0.1 to 2 person-hours for reporting and recordkeeping requirements contained in the rules, and 0.5 person-hours for completing Form FMC–1.

Total Annual Burden: The Commission estimates the total person-hour burden at 2,735 person-hours.

Title: 46 CFR part 530—Service Contracts and Related Form FMC–83.

OMB Approval Number: 3072–0065 (Expires September 30, 2014).

Abstract: Section 8(c) of the Shipping Act of 1984, 46 U.S.C. 40502, requires service contracts, except those dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper

waste, and their related amendments and notices to be filed confidentially with the Commission.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract, it must be filed with the Commission.

Type of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 103.

Estimated Time per Response: The time per response ranges from 0.1 to 1 person-hours for reporting and recordkeeping requirements contained in the rules, and 0.1 person-hours for completing Form FMC–83.

Total Annual Burden: The Commission estimates the total person-hour burden at 74,517 person-hours.

Title: 46 CFR part 531—NVOCC Service Arrangements and Related Form FMC–78.

OMB Approval Number: 3072–0070 (Expires September 30, 2014).

Abstract: Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by rule ''any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.'' 46 CFR part 531 allows non-vessel-operating common carriers (NVOCCs) and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of the Shipping Act provided the carriage in question is done pursuant to an NSA filed with the Commission and the essential terms are published in the NVOCC's tariff.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses filed NSAs and associated data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties. When parties enter into an NSA, it must be filed with the Commission.

Type of Respondents: Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 79.

Estimated Time per Response: The time per response ranges from 0.1 to 1 person-hours for reporting and recordkeeping requirements contained in the rules, and 1 person-hour for completing Form FMC–78.

Total Annual Burden: The Commission estimates the total person-hour burden at 895 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–22684 Filed 9–23–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at 202/523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012293–001.

Title: Maersk/MSC Vessel Sharing Agreement.

Parties: A.P. Moller-Maersk A/S trading under the name of Maersk Line; and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment would expand the geographic scope in include France, ports on the Black Sea, and Indonesia.

Agreement No.: 201160–004.

Title: Marine Terminal Lease and Operating Agreement Between Broward County and Mediterranean Shipping Company S.A.

Parties: Broward County and MSC Mediterranean Shipping Company S.A.

Filing Party: Candace J. Running; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502, Fort Lauderdale, FL 33316.

Synopsis: The amendment updates various rates and charges and updates the insurance clause of the agreement.

By Order of the Federal Maritime Commission.

Dated: September 19, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–22727 Filed 9–23–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 24, 2014.

ADDRESSES: You may submit comments, identified by FR 2004, FR 2320, FR 2644, FR H–6, FR K–1, FR K–2, FR Y–3, FR Y–3N, FR Y–4, or FR Y–3F by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at

http://www.federalreserve.gov/apps/foia/proposedregs.aspx.

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

• Email: *regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• FAX: (202) 452–3819 or (202) 452–3102.

• Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer — Shagufta Ahmed — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 202–452–3829. Telecommunications Device for the Deaf (TDD) users may contact 202–263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Proposals to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report title:* The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), Supplement to the Daily Report of Specific Issues (FR 2004SD ad hoc), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI), Settlement Cycle Report of Dealer Fails and Transaction Volumes Class A (FR 2004FA), Settlement Cycle Report of Dealer Fails and Transaction Volumes Class B (FR 2004FB), Settlement Cycle Report of Dealer Fails and Transaction Volumes Class C (FR 2004FC), Settlement Cycle Report of Dealer Fails and Transaction Volumes Class A, B, and C (FR 2004FM).

Agency form number: FR 2004.

OMB control number: 7100–0003.

Frequency: Weekly, daily, monthly.

Reporters: Dealers in the U.S. government securities market.

Estimated annual reporting hours: FR 2004A, 3,432 hours; FR 2004B, 4,233 hours; FR 2004C, 3,546 hours; FR 2004SI, 2,517 hours; FR 2004SD, 1,210 hours; FR 2004SD ad hoc, 528 hours; FR 2004WI, 3,520 hours; FR 2004FA, 264 hours; FR 2004FB, 264 hours; FR 2004FC, 264 hours; FR 2004FM, 396 hours.

Estimated average hours per response: FR 2004A, 3.0 hours; FR 2004B, 3.7 hours; FR 2004C, 3.1 hours; FR 2004SI, 2.2 hours; FR 2004SD, 2.2 hours; FR 2004SD ad hoc, 2.0 hours; FR 2004WI, 1.0 hour; FR 2004FA, 1.0 hour; FR 2004FB, 1.0 hour; FR 2004FC, 1.0 hour; FR 2004FM, 1.5 hours.

Number of respondents: 22.

General description of report: This information collection is authorized by sections 2A, 12A(c), 14, and 15 of the Federal Reserve Act (12 U.S.C. 225a, 263c, 353–359, and 391) and is required to obtain or retain the benefit of dealer status. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on position, transaction, financing, and fails for the most recently issued on-the-run Treasury securities (the most recently issued Treasury securities for each maturity class). When unusual trading practices occur for a specific security, this information can be collected on a daily basis on the FR 2004SD for either on-the-run Treasury securities or off-the-run Treasury securities. The FR 2004SD ad hoc collects up to 10 ad hoc data items for instances when critical information for additional Treasury market surveillance is required. The FR 2004WI collects daily data on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis.

Current Actions: The Federal Reserve proposes to revise the FR 2004 effective for the January 7, 2015, as of date. Provided below is a list of the proposed revisions to each reporting form followed by a more detailed discussion of the justification for each of the proposed revisions.

FR 2004A and B

1. Collect data on gross positions for floating rate Treasury securities.

2. Expand reporting of corporate securities data with additional maturity groupings for both investment grade and below investment grade debt securities.

3. Expand reporting of state and municipal government obligations data with additional maturity groupings.

FR 2004C

Add a separate row in the securities financing section of the report form to cover financing activity for asset-backed securities (ABS) collateral.

FR 2004SI, SD, and WI

Collect data on gross positions for floating rate Treasury securities.

Treasury Floating Rate Notes (FRNs)

Collecting data on gross positions for nominal Treasury securities on the FR 2004A and B is proposed to capture position and transaction data on the newly-issued floating rate Treasury notes. The FR 2004SI, SD, and WI would be modified to capture data on new issue and on-the-run floating rate Treasury notes. Separately capturing and disseminating these data would help promote transparency in this market. In an effort to minimize burden, all Treasury FRN activity, regardless of maturity, would be combined and reported on a single line on the FR 2004A, B, SI, SD, and WI.

Additional Maturity Information on Corporate and State and Local Government Obligations

Expanding the maturity categories on the FR 2004A and B for both investment grade and non-investment grade corporate bonds as well as for state and local government obligations is proposed to assist market participants and other data users in better understanding the shifts in holdings and transaction volumes across the investment-grade, high-yield, and municipal credit markets, as well as the inter-market dynamics between these asset classes.

Asset-Backed Securities in the Securities Financing Section

A small expansion of securities financing data through the broadening of collateral asset classes to include asset-backed securities (previously reported under the classification ''other'') is proposed on the FR 2004C. The changes in financing reporting, when used in conjunction with existing tri-party and general collateral financing (GCF) repurchase agreement data, would allow for a clearer understanding of activity in the repurchase agreement markets and how holding of these securities are financed by dealers.

Proposed FR 2004FA, FB, FC, and FM

Proposed Monthly Reporting Forms on Mortgage-Backed Securities (MBS) Settlement Fails

The Federal Reserve proposes to add four new reporting forms to the FR 2004 series (FR 2004FA, FR 2004FB, FR 2004FC, and FR 2004FM) to collect detailed data on settlement fails to receive and fails to deliver as well as accumulated outright transaction and dollar roll volume in the Federal Agency and government sponsored enterprise (GSE) MBS to-be-announced (TBA) markets. Three of these new reporting forms would focus specifically on outstanding settlement fails monthly on the specific class settlement date across the full coupon stack for each of the respective TBA and pool settlement classes as follows:

(1) FR 2004FA—Class A, 30-year Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) MBS TBA for coupons:

- <2.5%
- 2.5%
- 3.0%
- 3.5%
- 4.0%
- 4.5%
- 5.0%
- 5.5%
- 6.0%
- >6.0%

(2) FR 2004FB—Class B, 15-year FNMA and FHLMC MBS TBA for coupons:

- <2.0%
- 2.0%
- 2.5%
- 3.0%
- 3.5%
- 4.0%
- 4.5%
- 5.0%
- 5.5%
- >5.5%

(3) FR 2004FC—Class C, 30-year Government National Mortgage Association (GNMA) for coupons:

- <2.5%
- 2.5%
- 3.0%
- 3.5%
- 4.0%
- 4.5%
- 5.0%
- 5.5%
- 6.0%
- >6.0%

The FR 2004FM would collect as of the last business day of each month detailed data on outstanding settlement fails across the full coupon stack for all three of the respective TBA settlement classes for that month's settlement cycle.

All four proposed forms would also collect total accumulated outright TBA and specified pool transaction and dollar roll volumes separately for each of the same MBS TBA and specified pool securities and across all respective coupon rates covered in the settlement fails section of the forms.

- Class A—30-year FNMA and 30-year FHLMC
- Class B—15-year FNMA and 15-year FHLMC
- Class C—30-year GNMA

Given the unique forward trading and settlement characteristics of the MBS TBA markets, settlement fails would continue to be a focus of concern for market participants, as a high level of settlement fails can lead to increases in operational costs due to financing and settlement fail charges, as well as raise counterparty credit risk. It also absorbs capital through regulatory charges, leads to overall market inefficiencies, and increases overall systemic risk.

The collection and public dissemination of detailed data on settlement fails for specific Federal agency and GSE MBS benchmark securities would promote increased transparency to the public by providing sufficient granularity to identify those securities contributing most significantly to elevated or persistent levels of settlement fails. Collecting outstanding fails data at two separate dates each month offers several benefits including an ability to distinguish between fails due to operational issues such as miscommunication of pool terms, pool substitutions, and daisy chain fails due to pool sorting delays, from more persistent fails still outstanding at month end and unlikely to be settled until the next monthly class settlement date. Persistent fails are often the result of insufficient incentives for a dealer that is short securities to borrow the securities required to satisfy its obligations. Prior episodes of higher and protracted settlement fails seem to be closely related to low interest rate environments. These new data would allow market participants and the broader public to more precisely monitor the settlement dynamics of this important market, allowing for a broader understanding of market functioning and trading conditions, and more generally, about the formulation and implementation of monetary policy. It would also provide information on the critical role of primary dealers in intermediating dollar roll transactions and agency MBS financing to market

participants. The expansion of collected data would allow for a greater understanding of critical markets that directly affect the System Open Market Account, where agency MBS holdings currently account for over 40% of total securities holdings.

Publication of Aggregate Data

Publication of aggregate data of all new data items from the FR 2004A, B, C, and SI is proposed. The expansion of published aggregate statistics would improve market transparency across the affected markets. Publication of summary aggregate statistics on MBS TBA settlement fails from the FR 2004FA, FB, FC, and FM is also proposed with the format still to be determined.

Clarifications to the Instructions

The instructions for all report series would be revised to (1) cover all new proposed data items and maturity groupings, (2) to indicate the reporting rules for Treasury FRNs on the FR 2004C report and (3) cover the reporting rules and deadlines for the new monthly report forms on MBS TBA settlement fails and transaction volumes.

2. *Report title:* Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2644.

OMB control number: 7100–0075.

Frequency: Weekly.

Reporters: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 127,400 hours.

Estimated average hours per response: 2.80 hours.

Number of respondents: 875.

General description of report: The FR 2644 is authorized by section 2A and 11(a)(2) of the Federal Reserve Act (12 U.S.C. 225(a) and 248(a)(2)) and by section 7(c)(2) of the International Banking Act (12 U.S.C. 3105(c)(2)) and is voluntary. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2644 is the only source of high-frequency data used in the analysis of current banking developments. The FR 2644 collects sample data that are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Reports). Data from the FR 2644, together with data from other sources, are used to construct weekly estimates of bank credit, balance sheet data for the U.S. banking industry, sources and uses of banks' funds, and to analyze banking and monetary developments.

Current Actions: The Federal Reserve proposes to subdivide several loan categories and add two new memoranda items. The Federal Reserve also recommends deleting several data items that are no longer useful or only have material amounts at a few banks. The item count for the revised FR 2644 reporting form would be 33 balance-sheet items and four memoranda items, an overall increase of three data items. The Federal Reserve proposes to revise the FR 2644 effective for the January 7, 2015, as of date.

Split Data Item 4.a(2) Into Four Data Items

The Federal Reserve proposes to split current data item 4.a(2), commercial real estate loans, into four data items and renumber current data items 4.a(1) and 4.a(3) as follows:

4.a(1) Construction, land development and other land loans,

4.a(2) Secured by farmland,

4.a(3)(a) Revolving, open-end loans secured by 1–4 residential properties and extended under lines of credit,

4.a(3)(b) Closed-end loans secured by 1–4 family residential properties,

4.a(4) Secured by multifamily (5 or more) residential properties, and

4.a(5) Secured by nonfarm nonresidential properties.

Commercial real estate loans have been collected from the largest banks since 1996 and from smaller institutions starting in 2004. While the total amount of commercial real estate loans (CRE) loans has been useful, experience during the financial crisis indicated that more timely information on the subcomponents of CRE loans is necessary. According to the H.8 data, CRE loans declined about $360 billion between early 2009 and mid-2012. Such loans started to recover during the second half of 2012; however not all CRE loan segments were improving at the same pace, as Call Report data later revealed. Specifically, construction and land development loans, generally considered to be the riskiest type of CRE loans, began declining a year earlier relative to other types of CRE loans and growth in this sector also picked up a year later. More timely data in these subcategories of CRE loans would help the Federal Reserve to closely monitor changes in CRE loans trends more quickly.

Split Data Item 4.d(2) Into Two Data Items

The Federal Reserve proposes to split item 4.d(2), other consumer loans, into the following data items:

4.d(2) Automobile loans and

4.d(3) Other consumer loans.

Automobile loans were added to the domestic Call Reports in March 2011 as a component of other consumer loans. According to Call Report data, automobile loans have accounted for over 60 percent of the other consumer loans category, with the remainder comprised of student loans and other loans for personal expenditures. Isolating automobile loans would help the Federal Reserve ascertain movements in consumer loans other than credit cards and would provide more timely information on the availability of credit in the automobile loan market.

Subdivide Data Item 4.e Into Two Data Items

The Federal Reserve proposes dividing data item 4.e, all other loans and leases, into the following two data items:

4.e Loans to nondepository financial institutions and

4.f All other loans and leases.

Current data item 4.f, allowance for loan and lease losses, would be renumbered as data item 4.g.

Loans to nondepository financial institutions were added to the domestic Call Reports in March 2010 in response to an increase in the number of transactions between banks and nonbank financial institutions. Although loans to nondepository financial institutions are only a small part of total loans—about 3.5 percent as of the fourth quarter of 2013—its share has been steadily increasing since 2010 and is the fastest-growing component of other loans. Specifically, according to the Call Reports, loans to nondepository financial institutions at commercial banks increased at an annual rate of 12 and 24 percent in 2012 and 2013, respectively. Collecting this subcomponent of all other loans would provide a measure of the degree of interconnectedness between banks and nonbanks and how it evolves over time. Banks' exposures to counterparties with whom they borrow and lend funds are potential conduits for the transmission of the effects resulting from nonbanks' financial distress or activities. Thus, this data item would be useful for the Financial Stability Oversight Council as well, as this group would be monitoring on an on-going basis the interconnectedness within the financial system.

Create a Component of Current Memorandum Item M.1

The Federal Reserve proposes to add a subcomponent of memorandum item M.1, net unrealized gains (losses) on available-for-sale securities:

M.1 Net unrealized gains (losses) on available-for-sale securities;

M.1.a Net unrealized gains (losses) on available-for-sale U.S. Treasury securities and U.S. government agency obligations, mortgage-backed securities (included in item 2.a(1) and memoranda item 1 above).

Banks are instructed to report their held-to-maturity securities at amortized cost and their available-for-sale securities at fair value on the FR 2644 reporting form. Item M.1, net unrealized gains (losses) on available-for-sale securities, had been added to the FR 2416 reporting form as of October 2, 1996 and was retained on the single reporting form in July 2009. This data item allows the Federal Reserve to estimate the book value of banks' securities. Since the FR 2644 collects four categories of securities, internal estimates of growth in securities subcomponents allocate the unrealized gains (losses) adjustment only to the largest subcomponent of securities, namely item 2.a(1), U.S. Treasury and U.S. government agency securities, mortgage-backed securities. This approach worked fairly well as a way of estimating the book value of banks' securities before the last financial crisis, because up to that point the swings in fair value largely reflected interest rate changes that moved the value of all securities in the same direction. During the financial crisis period, some of the large changes in unrealized gains (losses) on available-for-sale securities were attributable to credit impairment rather than interest rate changes and observed in the subcomponents of other securities, ''mortgage-backed securities (MBS) and non-MBS.'' While efforts have been made to allocate the net unrealized gains (losses) across the four categories of securities collected, no entirely satisfactory method for the allocation of net unrealized gains (losses) across all types of securities currently exists. The addition of the unrealized gains (losses) on U.S. Treasury and agency securities, MBS on the revised FR 2644 form would improve the allocation of net gains (losses) on available-for-sale securities across the remaining three securities' categories, because changes in those categories are almost always related solely to interest rate changes.

Create New Memorandum Item M.2

The Federal Reserve proposes to collect subcomponents of data items 4.a(5), CRE loans secured by nonfarm nonresidential properties, and 4.c, commercial and industrial loans:

M.2.a Commercial real estate loans secured by nonfarm nonresidential properties with original amounts of $1,000,000 or less (included in data item 4.a(5)) and

M.2.b Commercial and industrial loans to U.S. addressees with original amounts of $1,000,000 or less (included in data item 4.c above).

There are no timely sources of information for loans made to small businesses. Small business lending (CRE loans secured by nonfarm nonresidential properties and commercial and industrial loans to U.S. addressees with original amounts of $1,000,000 or less) accounted for approximately 8 percent of total loans as of December 2013. There has been an increasing interest in the health of small business lending and the weekly collection of this data would help the Federal Reserve more closely monitor developments in this sector.

Proposed Elimination of Data Items

The Federal Reserve recommends deleting the following data items from the FR 2644 report:

5.a Derivatives with a positive fair value and

10.a Derivatives with a negative fair value.

In addition, the Federal Reserve proposes to stop collecting the following three memoranda items:

Outstanding principle balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements:

M.2.a Real estate loans,

M.2.b Credit card loans and other revolving credit plans, and

M.2.c Other consumer loans.

Data item 5.a, derivatives with a positive fair value, is a subcomponent of item 5, trading assets. In addition to derivatives, trading assets include other, non-security items such as certificates of deposit held for trading and gold bullion and silver. However, derivatives with a positive fair value account for 90 percent of total trading assets for domestically chartered commercial banks and 95 percent for foreign-related institutions. Total trading assets can be safely used as a proxy for derivatives, as the preponderance of the movement in this item can be attributed to derivatives. Therefore, the Federal Reserve recommends deleting this data item from the FR 2644 report.

Data item 10.a, derivatives with a negative fair value, is a subcomponent of item 10, trading liabilities. Similar to item 5.a above, these derivatives account for a high percentage of trading liabilities: 70 percent for domestically chartered banks and 88 percent for foreign-related institutions. Since item 10.a. comprises such a large portion of the total, weekly changes are typically driven by changes in derivatives with a negative fair value. Therefore, the Federal Reserve recommends deleting this data item from the FR 2644 report.

Memorandum item 2.a, outstanding principle balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements: real estate loans, was added on July 4, 2007, in an attempt to capture mortgage loans sold and securitized with servicing retained by weekly reporters. However, there have been several factors leading to a substantial decline in this item:

(1) Based on the Call Report instructions, sales to the government sponsored entities (GSEs) are not included in this item, even if the GSEs later securitize the loans. This peculiarity in the instructions understates the actual amount of real estate loans that have been sold and securitized.

(2) Upcoming changes to the regulatory capital treatment of mortgage servicing rights (MSRs) under Basel III have encouraged banks to sell their MSRs to nonbanks. The sale of the MSRs reduces securitized real estate loans since it voids the link that banks have to their off-balance sheet real estate loans. Thus, the off-balance-sheet loans have been declining in volume.

(3) Due to the virtually complete shutdown of private mortgage securitization markets, banks have been selling their newly originated loans only to the GSEs, leading to a run-off in the off-balance sheet loans through pay downs and maturities.

Securitized real estate loans were about $1.46 trillion at the time of the single report form, with 93 banks on the December 2009 Call Report submitting nonzero values for this item. As of the first quarter of 2014, data corrections, sales of MSRs, and pay downs have all lowered the level of securitized real estate loans more than one-half, to about $663 billion. Moreover, only 53 banks reported positive values for this line item at the end of the last quarter. In addition, the holdings of securitized real estate loans are heavily concentrated in a few banks which update their outstanding securitized amounts quarterly based on their Call Reports.

Therefore, a quarterly frequency for this much smaller amount of lending activity is now appropriate. Therefore, the Federal Reserve recommends deleting this data item from the FR 2644 report.

Memoranda items 2.b and 2.c, which correspond to outstanding principle balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller-provided credit enhancements: credit cards and other revolving credit plans and other consumer loans, respectively, were greatly affected by banks' implementation of Financial Accounting Standards (FAS) 166/167. Under these new accounting rules, banks brought most of their off-balance sheet consumer loans onto their books. In 2009, 20 banks with off-balance sheet credit card balances and 14 with off-balance sheet other consumer loans were reporting this item. As of March 2014, just four banks were reporting off-balance sheet credit card balances and ten banks holding off-balance sheet exposures for other consumer loans. In addition, these data are available from the Call Reports and a quarterly frequency for this much smaller amount of lending activity is now appropriate. Therefore, the Federal Reserve recommends deleting these data items from the FR 2644 report.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Quarterly Savings and Loan Holding Company Report.

Agency form number: FR 2320.

OMB control number: 7100–0345.

Frequency: Quarterly.

Reporters: Top and lower-tier savings and loan holding companies (SLHCs).

Estimated annual reporting hours: 180 hours.

Estimated average hours per response: 2.5 hours.

Number of respondents: 18.

General description of report: This information collection is mandatory pursuant to section 10 of the Home Owners' Loan Act (HOLA), (12 U.S.C. 1467a(b)(2)) as amended by Public Law 111–201, § 369(8). Data items C572, C573, and C574 on Schedule H may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). With regard to the remaining data items on Schedule HC, the Federal Reserve has determined that institutions may request confidential treatment for any FR 2320 data item or for all FR 2320 data items, and confidential treatment will be reviewed on a case-by-case basis.

Abstract: The FR 2320 collects select parent only and consolidated balance sheet and income statement financial data and organizational structure data from savings and loan holding companies (SLHCs) exempt from initially filing Federal Reserve regulatory reports. The FR 2320 is used by the Federal Reserve to analyze the overall financial condition of exempt SLHCs to ensure safe and sound operations. These data assist the Federal Reserve in the evaluation of a diversified holding company and in determining whether an institution is in compliance with applicable laws and regulations.

2. *Report title:* Notifications Related to Community Development and Public Welfare Investments of State Member Banks.

Agency form number: FR H–6.

OMB control number: 7100–0278.

Frequency: Event-generated.

Reporters: State member banks.

Estimated annual reporting hours: 182.

Estimated average hours per response: Post Notification, 2 hours; Application (Prior Approval) 5 hours; and Extension of divestiture period, 5 hours.

Number of respondents: Post Notification, 16; Application (Prior Approval), 29; and Extension of divestiture period, 1.

General description of report: This information collection is authorized by the Federal Reserve Act, 12 U.S.C. 338a, and by the Board's Regulation H, 12 CFR 208.22. The obligation of state member banks to make public welfare investments under both the Reserve Bank post-notice and the Board's prior approval procedure is mandatory. The request for extension of the divestiture period is required to obtain a benefit. Individual respondent data generally are not regarded as confidential. However, a bank that submits confidential proprietary information may request confidential treatment of that information pursuant to section (b)(4) of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and the information will be accorded confidential treatment if the institution can establish the potential for substantial competitive harm under the standards set forth in *National Park & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir.1974). Such a determination would be made on a case-by-case in response to a specific request for disclosure. If examination rations are included in a submission, those will be considered confidential under exemption 8 of the FOIA, 5 U.S.C. 552(b)(8).

Abstract: Regulation H requires state member banks planning to make community development or public welfare investments to comply with the Regulation H notification requirements: (1) If the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank; (2) if certain criteria are not met, and requires prior Board approval, a request for approval must be sent to the appropriate Federal Reserve Bank; and, (3) if the Board orders divestiture, but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank.

3. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.

Agency form number: FR K–1.

OMB control number: 7100–0107.

Frequency: Event-generated.

Reporters: State member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations.

Annual reporting hours: 1,013 hours.

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours.

Number of respondents: 35.

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The information submitted in the FR K–1 is considered to be public unless an institution requests confidential treatment for portions of the particular application or notification. Applicants may rely on any Freedom of Information Act (FOIA) exemption, but such requests for confidentiality must contain detailed justifications corresponding to the claimed FOIA exemption. Requests for confidentiality must be evaluated on a case-by-case basis.

Abstract: Subpart A of Regulation K governs the foreign investments and activities of member banks, Edge and agreement corporations, bank holding companies (BHCs), and certain investments by foreign organizations. Subpart C of Regulation K governs investments in export trading companies. The FR K–1 information collection contains eleven attachments for the application and notification requirements embodied in Subparts A and C of Regulation K. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to

fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956. The applications are event-generated and provide the Federal Reserve with information necessary to evaluate each of the proposed transactions.

4. *Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.

Agency form number: FR K–2.

OMB control number: 7100–0284.

Frequency: On occasion.

Reporters: Foreign banks.

Annual reporting hours: 490 hours.

Estimated average hours per response: 35 hours.

Number of respondents: 14.

General description of report: This information collection is mandatory (12 U.S.C. 3105, 3107, and 3108). The applying or notifying organization may request that portions of the information contained in the FR K–2 be afforded confidential treatment. To do so, applicants must demonstrate how the information for which confidentiality is requested would fall within the scope of one or more of the exemptions contained in the Freedom of Information Act. Any such request would have to be evaluated on a case-by-case basis.

Abstract: Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office; to acquire ownership or control of a commercial lending company in the United States; or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

5. *Report title:* Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.

Agency form numbers: FR Y–3, FR Y–3N, and FR Y–4.

OMB control number: 7100–0121.

Frequency: Event-generated.

Reporters: Corporations seeking to become bank holding companies (BHCs), or BHCs and state chartered banks that are members of the Federal Reserve System

Annual reporting hours: 11,924 hours.

Estimated average hours per response:

FR Y–3, Section 3(a)(1): 49 hours;

FR Y–3, Section 3(a)(3) and 3(a)(5): 59.5 hours;

FR Y–3N, Sections 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours;

FR Y–4, complete notification: 12 hours;

FR Y–4, expedited notification: 5 hours; and

FR Y–4, post-consummation: 0.5 hours.

Number of respondents: 279.

General description of reports: The FR Y–3 application and FR Y–3N notification are mandatory (12 U.S.C. 1842(a), 1844(b), and 1843(j)(1)(b)). The FR Y–4 notification is mandatory (12 U.S.C. 1843(j)(1)(b)). These information collections are not given confidential treatment. Applicants may rely on any Freedom of Information Act (FOIA) exemption, but such requests for confidentiality must contain detailed justifications corresponding to the claimed FOIA exemption. Requests for confidentiality must be evaluated on a case-by-case basis.

Abstract: The Federal Reserve requires the submission of these filings for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956 (the BHC Act). These filings collect information on proposals by BHCs involving formations, acquisitions, mergers, and nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to financial and managerial factors, permissibility, competitive effects, net public benefits, and the impact on the convenience and needs of affected communities.

6. *Report title:* Application for a Foreign Organization to Acquire a Bank Holding Company.

Agency form number: FR Y–3F.

OMB control number: 7100–0119.

Frequency: On occasion.

Reporters: Any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or bank holding company.

Annual reporting hours: 440 hours.

Estimated average hours per response: Initial application, 90 hours; subsequent application, 70 hours.

Number of respondents: Initial application, 1; subsequent application, 5.

General description of report: This information collection is required to obtain or retain a benefit under sections 3(a), 3(c), and 5(a) through 5(c) of the Bank Holding Company Act (12 U.S.C. 1842(a) and (c) and 1844(a) through (c)). The information provided in the application is not confidential unless the applicant specifically requests confidentiality and the Federal Reserve approves the request. The instructions convey the confidentiality requirements to applicants.

Abstract: Under the Bank Holding Company Act (BHCA), submission of this application is required for any company organized under the laws of a foreign country seeking to acquire a U.S. subsidiary bank or bank holding company. Applicants must provide financial and managerial information, discuss the competitive effects of the proposed transaction, and discuss how the proposed transaction would enhance the convenience and needs of the community to be served. The Federal Reserve uses the information, in part, to fulfill its supervisory responsibilities with respect to foreign banking organizations in the United States.

Board of Governors of the Federal Reserve System, September 19, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–22687 Filed 9–23–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 9, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Tyrone A. Burroughs, individually and as part of a family control group consisting of Tyrone A. Burroughs, Nelda F. Burroughs, and Burroughs Investment Group, all of Germantown, Tennessee; and Melanie B. Cole,* Williamsburg, Virginia; to retain voting

shares of First Alliance Bancshares, Inc., and thereby indirectly retain voting shares of First Alliance Bank, both in Cordova, Tennessee.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *P. Mark Graff, McCook, Nebraska; and Mary C. Graff, Clarendon Heights, Illinois; individually and as co-trustees; and Scott A. Thomas, Mendota Heights, Minnesota, as co-trustee of the Peter M. Graff Qualified Marital Trust; and the Peter M. Graff Qualified Marital Trust,* McCook, Nebraska; to acquire voting shares of Graff Family, Inc., and thereby indirectly acquire voting shares of MNB Financial Group, Inc., and McCook National Bank, both in McCook, Nebraska.

Board of Governors of the Federal Reserve System, September 19, 2014.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2014–22721 Filed 9–23–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0300; Docket No. 2014–0001; Sequence 5]

Information Collection; General Services Administration Acquisition Regulation; Implementation of Information Technology Security Provision; Correction

AGENCY: General Services Administration (GSA).

ACTION: Notice; Correction.

SUMMARY: GSA is issuing a correction to Information Collection 3090–0300; Implementation of Information Technology Security Provision, which was published in the **Federal Register** on September 12, 2014.

DATES: *Effective:* September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, Office of Acquisition Policy, at (202) 357–9652 or via email at *dana.munson@gsa.gov.* Please cite OMB Control No: 3090–0300; Correction.

SUPPLEMENTARY INFORMATION: GSA, published a document in the **Federal Register** at 79 FR 54722, on September 12, 2014, inadvertently, GSAR clause 552.237–71 is incorrectly stated.

Correction

In rule FR Doc. 2014–21706 published in the **Federal Register** at 79 FR 54723, September 12, 2014 make the following correction:

On page 54723, in the first column, under the heading ''A. Purpose'', correct ''Clause 552.237–71'' with ''Clause 552.239–71''

Dated: September 18, 2014.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–22737 Filed 9–23–14; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Justification of a Single Source Cooperative Agreement Award for the World Health Organization

AGENCY: Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS), Office of the Assistant Secretary for Preparedness and Response (ASPR) intends to fund an unsolicited proposal submitted by the World Health Organization (WHO) to support work towards establishing a regulatory pathway at WHO for prequalification of medical countermeasures to be deployed internationally in an emergency, which includes supporting WHO and potential recipient countries to build regulatory capacity for the import, registration, and emergency use of medical countermeasures. The goals of this Cooperative Agreement are to: (1) Using smallpox vaccines as a case study, complete product review and prequalification of smallpox vaccines included in or pledged to the WHO Smallpox Vaccine Emergency Stockpile for emergency use; (2) Establish general regulatory pathways for emergency use authorization and/or a process for emergency prequalification of emergency medical countermeasures and; (3) Support potential recipient WHO member states in building capacities for the import, registration, and emergency use of medical countermeasures.

This Cooperative Agreement directly supports several federal initiatives focused on strengthening national and international health security, including HHS's ongoing work within the Global Health Security Initiative (GHSI) to develop an operational framework for the international deployment of medical countermeasures which contemplates the legal, regulatory, and logistical issues to be considered during such a deployment as noted in the 2013 GHSI Ministerial communique.[1] Additionally, it supports Objective 9 of the Global Health Security Agenda[2] which calls for improving global access to medical and non-medical countermeasures during health emergencies and the improvement of international deployment capabilities. It also aligns with the HHS Global Health Strategy priority to ''develop policy frameworks, agreements and operational plans to facilitate HHS decision-making in response to both single and multiple international requests for emergency assistance, including for the deployment of medical countermeasures and HHS personnel.''[3]

Period of Performance: October 1, 2014 to September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the ASPR Division of Grants Management at *asprgrants@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Division of International Health Security within the Office of Policy and Planning in ASPR is the program office for this award.

Procedures for Providing Public Input: All written comments must be submitted no later than 15 days after posting of this announcement. Please submit comments to *asprgrants@hhs.gov.*

Authority: 301 42 U.S.C. 241.

Dated: September 18, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014–22773 Filed 9–23–14; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30-Day 14–14AEH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the following information collection request to the Office of Management and

[1] 2013 Global Health Security Initiative Ministerial Meeting Communique [online]. Available from: *http://www.ghsi.ca/english/statements.asp.*

[2] The Global Health Security Agenda. Available from: *http://www.globalhealth.gov/global-health-topics/global-health-security/ghsagenda.html.*

[3] HHS Global Health Strategy Objectives [online]. Available from: *http://www.globalhealth.gov/global-programs-and-initiatives/global-health-strategy/strategy-objectives/.*

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

Assessment of Chemical Exposures (ACE) Investigations—New—Agency for Toxic Substances and Disease Registry (ATSDR)

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year generic clearance for the Assessment of Chemical Exposures (ACE) Investigations to assist state, regional, local, or tribal health departments after toxic substance spills or chemical incidents. ACE investigations are a component of the National Toxic Substance Incidents Program (NTSIP). The NTSIP was introduced in 2010 as a comprehensive agency approach to toxic substance incident surveillance, prevention, and response. This three-part program includes a proposal for state-based surveillance for toxic substance releases, a national database of toxic substance incidents combining data from many sources, and the ACE investigations.

The ACE Investigations focus on performing rapid epidemiological assessments to assist state, regional, local, or tribal health departments (the requesting agencies) to respond to or prepare for acute chemical releases. The main objectives for performing these rapid assessments are to:

1. Characterize exposure and acute health effects of respondents exposed to toxic substances from discrete, chemical releases and determine their health statuses;
2. identify needs (i.e. medical and basic) of those exposed during the releases to aid in planning interventions in the community;
3. assess the impact of the incidents on health services use and share lessons learned for use in hospital, local, and state planning for chemical incidents; and
4. identify cohorts that may be followed and assessed for persistent health effects resulting from acute releases.

Because each chemical incident is different, it is not possible to predict in advance exactly what type of and how many respondents will need to be consented and interviewed to effectively evaluate the incident. Respondents typically include, but are not limited to emergency responders such as police, fire, hazardous material technicians, emergency medical services, and personnel at hospitals where patients from the incident were treated. Incidents may occur at businesses or in the community setting; therefore, respondents may also include business owners, managers, workers, customers, community residents, pet owners, and those passing through the affected area.

Data will be collected by the multi-disciplinary ACE team consisting of staff from ATSDR, the Centers for Disease Control and Prevention (CDC), and the requesting agencies. ATSDR has developed a series of sample survey forms that can be quickly tailored in the field to collect data that will meet the goals of the investigation. They will be administered based on time permitted and urgency. For example, it is preferable to administer the general survey to as many respondents as possible. However, if there are time constraints, the shorter Rapid Response Registry form or the household survey may be administered instead. The individual surveys collect information about exposure, acute health effects, health services use, medical history, needs resulting from the incident, communication during the release, health impact on children and pets, and demographic data. Hospital personnel are asked about the surge, response and communication, decontamination, and lessons learned. Medical chart abstractions may also be done to collect more detailed patient information. Similarly, veterinary chart abstractions may be performed if data about the health effects experienced by pets is needed to supplement human data.

Depending on the situation, respondents may incur reporting burden during face-to-face interviews, telephone interviews, written surveys, mailed surveys, or on-line surveys. For ACE Investigations, respondents to surveys and interviews will incur reporting burden; the staff from state, local, or tribal health agencies, will incur recordkeeping burden if they work with ATSDR and CDC staff on medical and veterinary chart abstractions. In rare situations, an investigation might involve the collection and laboratory analysis of clinical specimens.

In the past, ACE investigations have been performed in response to requests for assistance from state, regional, local, or tribal health departments under OMB No. 0920–0008, which expired July 31, 2014. The number of participants surveyed ranged from 30–715, averaging about 250 participants per investigation. In the future, ATSDR anticipates up to four ACE investigations per year. Therefore, the total annualized estimated burden will be 589 hours per year.

Participation in ACE investigations is voluntary and there are no anticipated 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 hrs.)
Residents, first responders, business owners, employees, customers.	General Survey	800	1	30/60
	Rapid Response Registry Form	50	1	7/60
Residents	Household Survey	110	1	15/60
Hospital staff	Hospital Survey	40	1	30/60
Staff from state, local, or tribal health agencies.	Medical Chart Abstraction Form	250	1	30/60
	Veterinary Chart Abstraction Form	30	1	20/60

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. 2014–22691 Filed 9–23–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) is publishing the names of the Performance Review Board Members who are reviewing performance for Fiscal Year 2014.

FOR FURTHER INFORMATION CONTACT: Sharon O'Brien, Deputy Director, Executive and Scientific Resources Office, Human Capital and Resources Management Office, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop K–15, Atlanta, Georgia 30341, Telephone (770) 488–1781.

SUPPLEMENTARY INFORMATION: Title 5, U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following persons will serve on the CDC Performance Review Boards or Panels, which will oversee the evaluation of performance appraisals of Senior Executive Service members for the Fiscal Year 2014 review period:

Christine Branche, Co-Chair
James Seligman, Co-Chair
Barbara Bowman
Janet Collins
Hazel Dean
Jane Gentleman
Joseph Henderson
Jeffrey Napier
Jennifer Parker
Tom Sinks
Kalwant Smagh
James Stephens

Dated: September 19, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–22714 Filed 9–23–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1287]

Announcement of Requirements and Registration for the 2014 Food and Drug Administration Food Safety Challenge

Authority: 15 U.S.C. 3719.

AGENCY: Food and Drug Administration, HHS.

Award Approving Official: Erik Mettler, Deputy Associate Commissioner, Food and Drug Administration/Office of Foods and Veterinary Medicine.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the 2014 FDA Food Safety Challenge, a prize competition under the America COMPETES Reauthorization Act of 2010. The 2014 FDA Food Safety Challenge is an effort to advance breakthroughs in foodborne pathogen detection, specifically with the goal of accelerating the detection of *Salmonella* in fresh produce. As FDA's food safety program incorporates preventive control measures through the implementation of the FDA Food Safety Modernization Act, quicker detection of these harmful bacteria will help to prevent foodborne illnesses.

DATES:

1. Phase I submission period: September 23 to November 9, 2014.
2. Phase II judging of submissions and selection of finalists: November 10, 2014, to January 6, 2015.
3. Phase III field accelerator, inclusive of finalist mentorship, boot camp, and demo day: January 8 to March 5, 2015.
4. Phase IV final judging: March 5 to March 11, 2015.
5. Winner(s) announced: March 12, 2015.

FOR FURTHER INFORMATION CONTACT: Chad P. Nelson, Office of Foods and Veterinary Medicine, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4643.

SUPPLEMENTARY INFORMATION:

I. Background

While the American food supply is among the safest in the world, the Centers for Disease Control and Prevention (CDC) estimates that 1 in 6 Americans is sickened by foodborne illness annually, resulting in about 3,000 deaths each year. It is estimated that the overall negative economic impact of foodborne illness in the United States, including medical costs, quality-of-life losses, lost productivity, and lost-life expectancy, may be as high as $77 billion per year. *Salmonella* represents the leading cause of deaths and of hospitalizations related to foodborne illness. Contaminated produce is responsible for nearly half of foodborne illnesses and almost a quarter of foodborne-related deaths.

The 2014 FDA Food Safety Challenge is a call to scientists, academics, entrepreneurs, and innovators from all disciplines to submit concepts applying novel and/or advanced methodologies to foster revolutionary improvements in foodborne pathogen detection.

Specifically, concepts should apply cutting-edge techniques to achieve significant improvements in the speed of the FDA's detection methods for *Salmonella* with identification to the subtype/serovar level in minimally processed fresh produce. FDA is most interested in concepts that explore the acceleration or elimination of sample preparation and/or enrichment in the testing process, and/or those that employ novel or revolutionary techniques to achieve pathogen detection. Concepts may combine new techniques with existing methodologies, such as polymerase chain reaction, and must describe where time savings are achieved in the testing process as well as the expected time from unprepared food sample to verifiable result.

The statutory authority for this challenge competition is section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

II. Subject of the Challenge Competition

The primary goal of the challenge is to advance breakthroughs in foodborne pathogen detection, specifically to significantly accelerate detection of *Salmonella* in produce, in order to support FDA's effort to ensure the safety of America's food supply.

The secondary goals of the challenge are:

- To bring new innovators to FDA's foodborne pathogen testing processes;
- To increase public awareness about food safety, foodborne pathogen testing, and FDA's role in those areas; and
- To promote open government and citizen participation to improve innovation in the Federal Government.

This challenge is designed to solicit breakthrough solutions from advanced scientific and research areas, such as, but not limited to metagenomics (or other next-generation sequencing methods), spectroscopy, application of nanotubes/nanotechnology, quantum detection methods, and electrical detection methods. Although concepts must specifically be able to address the detection of *Salmonella,* with identification to the subtype/serovar level, in minimally processed fresh produce, the ability of the solution to address testing for other microbial pathogens and in other foods or complex matrices is encouraged. Submissions must describe how the technique would increase speed of pathogen detection efforts (starting from an unprepared food sample, through verification of pathogen(s)) without sacrificing specificity and sensitivity or comparability reference methods. FDA is most interested in methods that would accelerate or eliminate sample preparation and/or enrichment in the testing process. Submitted concepts can be targeted at any point in the food system (i.e. harvest, packaging, distribution, point of sale, etc.), however concepts should specify which point(s) they are targeting and how the technique would be implemented. Though submissions may be theoretical in terms of application to food safety, all entries must be able to demonstrate a path to practical development of their concept and a plan to move to proof of concept over the course of the challenge. Submissions should include relevant data with reference to use of the concept/technique, such as any initial verification results, any available proof of concept, or relevant data from the technique's use in adjacent industries. During the field accelerator phase, which will include a live boot camp, finalists will refine their submissions with the assistance of FDA food safety and pathogen testing experts. Feedback will focus on helping finalists to clarify their concepts and ensure they are in line with FDA's needs and capabilities, maximize impact on food safety, and can be reasonably executed. At the end of the field accelerator phase, finalists will present their refined concepts to the judges at a demo day and provide a final report describing how their submission was modified based on the feedback from FDA subject matter experts.

III. Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity:

- Must have entered a submission on *www.foodsafetychallenge.com* under the rules promulgated by FDA.
- Must have complied with all the requirements under this section.
- Must be (1) an individual or team of U.S. citizens or permanent residents of the United States each of whom are 18 years of age and over or (2) an entity incorporated in and maintaining a primary place of business in the United States. Foreign citizens can participate as employees of an entity that is properly incorporated in the United States and maintains a primary place of business in the United States.
- May not be a Federal entity or Federal employee acting within the scope of their employment. An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award. Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Employees of FDA, the U.S. Department of Agriculture's Food Safety and Inspection Service, the CDC, Luminary Labs, LLC, each of their affiliates, and/or any other individual or entity associated with the development, evaluation, or administration of the challenge as well as members of such persons' immediate families (spouses, children, siblings, parents), and persons living in the same household as such persons, whether or not related, are not eligible to participate in the challenge.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third-party claims for damages arising from or related to competition activities.

Entrants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in the challenge.

By participating in the challenge, each entrant who works with pathogenic organisms such as *Salmonella* in support of its submission agrees to follow the requirements for Biosafety Level II laboratory operations, as outlined in the 5th edition of ''Biosafety in Microbiological and Biomedical Laboratories,'' available at *http://www.cdc.gov/biosafety/publications/bmbl5/.*

IV. Registration Process for Participants

To register for the 2014 FDA Food Safety Challenge, participants can access *http://foodsafetychallenge.com/* and click on Submission Form.

V. Amount of the Prize

The total prize pool for the 2014 FDA Food Safety Challenge is $500,000. From the $500,000 prize pool, up to 5 finalists will be awarded $20,000 each following the open submission phase and judging of submissions. After the field accelerator phase and final

judging, the winner(s) will receive the remainder of the prize money.

VI. Payment of the Prize

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. FDA will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

VII. Basis Upon Which Winner(s) Will Be Selected

A panel of expert judges will select up to five finalist teams from the pool of eligible entries. These finalists will then refine their concepts during the field accelerator phase and will present the concept at demo day. The judging will be based and scored upon the judges' own discretion as to the quality of each entry according to the following finalist evaluation criteria, with equal weighting (i.e., 20 percent for each).

A. Finalist Evaluation Criteria

• Speed: Proposed reduction in time from unprepared food sample to verified pathogen to subtype/serovar level for *Salmonella* in fresh, minimally processed produce. The ability of the solution to also address testing in other foods and other complex matrices is encouraged. The ability of the technique to also address additional pathogens such as Shiga toxin-producing *Escherichia coli* is encouraged.

• Improved detection and path to impact: Strength of evidence, data, and/or argumentation regarding the application of submission's technique to create impactful acceleration and improvement of foodborne pathogen detection, inclusive of improvements in specificity and sensitivity for *Salmonella* and possibly other pathogens.

• Applicability: Applicability of solution to FDA testing processes.

• Revolutionary: Whether the concept would be a revolutionary improvement over the FDA's current testing procedures with potential to make a major impact on food testing.

• Execution: Perceived ability of submitting team or individual to execute and develop their concept.

B. Winner Selection Criteria

Winner selection criteria will include finalist evaluation criteria plus the following criterion: Demonstration of team's/individual's ability to effectively iterate and improve their concept over the course of the field accelerator phase.

VIII. Additional Information

FDA reserves the right to suspend, postpone, terminate, or otherwise modify the challenge, or any entrant's participation in the challenge, at any time at FDA's discretion.

IX. Intellectual Property

Entrants retain ownership of their concepts, including any software, research, or other intellectual property that they develop in connection therewith, subject to the license granted to FDA to use publicly posted materials as set forth herein. By participating in the challenge, each entrant hereby irrevocably grants to FDA and Luminary Labs, LLC, a limited, non-exclusive, royalty free, worldwide license and right to reproduce, publicly perform, publicly display, and use the submission to the extent necessary to administer the challenge, and to publicly perform and publicly display the submission abstract, including, without limitation, for advertising and promotional purposes relating to the challenge.

Entrants retain all rights in the submission and any invention or work, including any software, submitted as part of the submission, subject to the following:

• A nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such invention or work throughout the world, should the submission win; and

• A license in the submission or work submitted as part of the submission for the United States to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so, should the submission win.

Dated: September 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22682 Filed 9–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1601]

Custom Device Exemption; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Custom Device Exemption.'' FDA has developed this document to provide guidance to industry and FDA staff about implementation of the custom device exemption contained in the Food, Drug, and Cosmetic Act (the FD&C Act). The intent of this guidance is to define terms used in the custom device exemption, explain how to interpret the ''five units per year of a particular device type'' language contained in the FD&C Act, describe information that FDA proposes manufacturers should submit in the custom device annual report, and provide recommendations on how to submit an annual report for devices distributed under the custom device exemption.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Custom Device Exemption'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Division of Premarket and Labeling Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993–0002, 301–796–5770, *CustomDevices@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The custom device exemption is set forth at section 520(b) of the FD&C Act (21 U.S.C. 360j(b)). A custom device is in a narrow category of devices for which, because of the rarity of a patient's medical condition or a physician's special need, compliance

with premarket review regulations and performance standards under sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) would be impractical.

Effective on July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) implemented changes to the custom device exemption contained in section 520(b) of the FD&C Act. The new provision amended the existing custom device exemption and introduced new concepts and procedures applicable to custom devices, addressing, among other things:

- Devices created or modified in order to comply with the order of an individual physician or dentist;
- the potential for multiple units of a device type not to exceed five units per year qualifying for the custom device exemption; and
- annual reporting requirements by the manufacturer to FDA about devices manufactured and distributed under section 520(b) of the FD&C Act.

Under FDASIA, devices that qualify for the custom device exemption were clarified to include no more than ''five units per year of a particular device type'' that otherwise meet all the requirements necessary to qualify for the custom device exemption. In this guidance, FDA interprets the five units in terms of five new custom devices per year (*i.e.,* five new patients for the patient-focused custom device or five new physicians for the physician-focused custom device, assuming all other required elements for the custom device exemption are satisfied). The five-unit limitation includes all devices provided by a manufacturer to, and remaining in the possession of, the ordering physician and/or patient.

The guidance defines terms used in the custom device exemption, explains how FDA plans to interpret the term ''five units per year of a particular device type'' set forth in section 520(b)(2)(B) of the FD&C Act, describes what information manufacturers should submit in a custom device annual report to FDA, and provides guidance on how to submit an annual report for devices distributed under the custom device exemption.

On January 14, 2014, FDA issued the draft guidance entitled ''Custom Device Exemption'' (Ref. 1). The Agency has reviewed the comments submitted for the draft guidance and has incorporated many of the recommendations in this final guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on custom devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Custom Device Exemption,'' you may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1820 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This draft guidance also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by OMB under the PRA (44 U.S.C. 3501–3520). The collections of information in 21 CFR 814, subparts B and E have been approved under OMB control number 0910–0231; the collections of information in 21 part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 part 807, subpart E have been approved under OMB control number 0910–0120; and the collections of custom device annual reporting have been approved under OMB control number 0910–0767.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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.*

VI. Reference

The following reference has 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. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. The FDA draft guidance entitled ''Custom Device Exemption,'' available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM380497.pdf.*

Dated: September 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22683 Filed 9–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1352]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH GL52); Draft Guidance for Industry on Bioequivalence: Blood Level Bioequivalence Study; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (GFI #224) entitled ''Draft Guidance for Industry, Bioequivalence: Blood Level Bioequivalence Study'' (VICH GL52). This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to harmonize the data recommendations associated with in vivo blood level bioequivalence (BE) for veterinary pharmaceutical products.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 24, 2014.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marilyn Martinez, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0635, *Marilyn.Martinez@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (GFI #224) entitled ''Draft Guidance for Industry, Bioequivalence: Blood Level Bioequivalence Study'' (VICH GL52). In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Six observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, one representative from the industry of Canada, one representative from the government of South Africa, and one representative from the industry of South Africa. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Bioequivalence: Blood Level Bioequivalence Study

The VICH Steering Committee held a meeting in November 2013 and agreed that the draft guidance document entitled ''Draft Guidance for Industry, Bioequivalence: Blood Level Bioequivalence Study'' (VICH GL52) should be made available for public comment. This draft VICH guidance document is intended to harmonize the data recommendations associated with in vivo blood level BE for veterinary pharmaceutical products. To meet this objective, the draft guidance addresses the following topics: A harmonized definition of BE, factors/variables that should be considered when developing scientifically sound blood level BE study designs, and information that should be included in a blood level BE study report.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously 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 Action of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft guidance have been approved under OMB control numbers 0910–0032 and 0910–0669.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: September 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22681 Filed 9–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR 13–213: Outcome Measures for Use in Treatment Trials for Individuals with Intellectual and Developmental Disabilities (R01).
Date: October 8, 2014.
Time: 1:30 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.
Date: October 21–22, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Salt Lake Marriott Downtown at City Creek, 75 South West Temple, Salt Lake, UT 84101.
Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.
Date: October 21–22, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington, DC Hotel, 999 Ninth Street NW., Washington, DC 20001–4427.
Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Macromolecular Structure and Function.
Date: October 21, 2014.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington, DC Hotel, 999 Ninth Street NW., Washington, DC 20001–4427.
Contact Person: James W. Mack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22660 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, 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.

Name of Committee: Sickle Cell Disease Advisory Committee.
Date: October 17, 2014,
Time: 8:00 a.m. to 5:00 p.m.,
Agenda: Discussion of Programs.
Place: National Institutes of Health, 6701 Rockledge Drive, Room 9100/9104, Bethesda, MD 20892.
Contact Person: W. Keith Hoots, MD, Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Suite 9030, Bethesda, MD 20892, 301–435–0080, *hootswk@nhlbi.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22655 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.
Date: October 22, 2014.
Open: 8:00 a.m. to 1:00 p.m.
Agenda: To discuss program policies and issues.
Place: National Institutes of Health, Building 31, Room 10, 31 Center Drive, Bethesda, MD 20892.
Closed: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, Room 10, 31 Center Drive, Bethesda, MD 20892.
Contact Person: Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: September 17, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22658 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

Date: October 17, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3145, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: September 18, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22662 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, 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.

Name of Committee: Center for Scientific Review Advisory Council.

Date: October 20, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: Bethesda Marriott, Congressional Ballroom, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: René Etcheberrigaray, MD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *etcheber@csr.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.

Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(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 17, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22654 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 materials, 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 Drug Abuse Special Emphasis Panel; RFA–DA–15–005 Advancing Exceptional Research on HIV/AIDS (R01).

Date: October 7, 2014.

Time: 10:45 a.m. to 3:00 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: Nadine Rogers, PhD., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploratory Studies of Smoking Cessation Interventions for People with Schizophrenia (R21/R33).

Date: October 9, 2014.

Time: 12:00 p.m. to 3:00 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: Jagadeesh S. Rao, PhD., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4234, MSC 9550, Bethesda, MD 02892, 301–443–9511, *jrao@nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grants—Grant Review (T32).

Date: October 21, 2014.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Hiromi Ono, PhD., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Research Education Grants for Statistical and Computational Training in the Genetics of Addiction (R25) (PAR–12–199).

Date: October 21, 2014.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Hiromi Ono, PhD., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; PAR–13–084: NIDA Research Education Program for Clinical Researchers and Clinicians (R25).

Date: October 21, 2014.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, 301–402–6020, *hiromi.ono@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: October 21, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 2089, 301–402–6020, *hiromi.ono@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 17, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22656 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Out-Patient Drug Treatment Research Clinic (1154).

Date: October 7, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, NIDA E-Cigarettes- SBIR PHASE I (8921).

Date: November 4, 2014.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 17, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22657 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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, NHLBI.

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 HEART, LUNG, AND BLOOD INSTITUTE, 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, NHLBI.

Date: October 21, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Building, Building 35A, Room 640, Bethesda, MD 20892.

Contact Person: Robert S. Balaban, Ph.D., Scientific Director, Division of Intramural Research, National Institutes of Health, 10 Center Drive, Building 10, CRC, 4th Floor, Room 1581, Bethesda, MD 20892, (301) 496–2116.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one

form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 18, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22661 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Anesthesiology and Mechanisms of Pain Program Project Review.

Date: October 24, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Support of Competitive Research (SCORE).

Date: October 30, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892, 301–594–3663, *sidorova@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: September 17, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22659 Filed 9–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Multi-Site Evaluation of the Safe Schools/Healthy Students (SS/HS) State Program—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will conduct the multi-site evaluation of the Safe Schools/Healthy Students (SS/HS) state program. The data collected through the multi-site evaluation addresses three study components: (1) The planning, collaboration, and partnership study; (2) the implementation study; and (3) the workforce study.

The SS/HS state program funded grantees in seven states beginning in September 2013. Data will be collected from state/tribal administrators, Local Education Authorities (LEAs)/Districts, local program staff (e.g., school resource officers, teachers and administrators, and psychologists) and program partners (e.g., parents, representatives from the juvenile justice and mental health providers).

Data collection activities will include key informant interviews, and web-based surveys. The instruments to be used for data collection are as follows:

Planning, Collaboration and Partnership Study

- State Key Informant Interview Protocol
- District Key Informant Interview Protocol
- State Collaborator Survey
- District Collaborator Survey
- State Collaboration Indicator Data Instrument
- District Collaboration Indicator Data Instrument

Implementation Study

- State & District Key Informant Interview Protocol
- School-Level Survey

Workforce Study

- No additional instruments will be used for this study. Data will be gathered from the Planning, Collaboration and Partnership Study and the Implementation Study.

A summary table of the number of respondents and respondent burden has also been included.

Data Collection Activities for MSE Grantees

Data for all instruments will be collected annually with the exception of data for the state and District Collaboration Indicator Data Instrument which will be collected quarterly.

State Key Informant Interview (Planning, Collaboration and Partnership Study)

The key informant interview protocol will collect information on the service model, partnerships and interagency collaboration, program implementation fidelity, plan deviations, and state and local policy development at the state level. Interviews will also include questions to learn about opportunities that were provided for workforce training. Responses will be compared over time to assess positive development of the program model, emerging barriers and facilitators to implementation, and evolving solutions. On average, 14 state administrators will be interviewed annually and the duration of the interview is estimated to be one hour.

District Key Informant Interview (Planning, Collaboration and Partnership Study)

The purpose of these interviews is to identify, through the perspectives of LEA administrators and program partners their descriptions of SS/HS program activities. In particular, the degree to which critical SS/HS framework elements are operationalized, as well as the degree to which principles and strategies are acknowledged and integrated as part of the service processes. Topics include the provider's approach to service provision (sensitivity to health disparities, cultural competence), the coordination of services across the LEA and other local agencies, training of mental health workers, local policy and protocol development, and barriers/facilitators at the local level that influence the adoption, integration, and sustainability of SS/HS principles. Responses will be compared over time to assess positive development of the program model. It is anticipated that an average of 63 district administrators and program partners will participate in the interview each year and the interviews will be about one hour in duration.

State Collaborator Survey (Planning, Collaboration and Partnership Study)

The state administrator's survey will seek to understand the level of inter-professional collaboration among entities working at the state level to promote expanded school mental health. The survey will also capture perceptions of partnership functioning in terms of partner goals, resources, culture and values, and roles and responsibilities, as well as leadership and collaboration among partners as they impact (1) school and community partner engagement, (2) facilitators, (3) barriers, (4) shared decision-making, (5) partnership structure, and (6) sustainability. An average of 208 state administrators and program partners will complete the survey annually and it is estimated that completion will take 30 minutes.

District Collaborator Survey (Planning, Collaboration and Partnership Study)

The state administrator's survey will seek to understand the level of inter-professional collaboration among entities working at the district level to promote expanded school mental health. The survey will also capture perceptions of partnership functioning in terms of partner goals, resources, culture and values, and roles and responsibilities, as well as leadership and collaboration among partners as they impact (1) school and community partner engagement, (2) facilitators, (3) barriers, (4) shared decision-making, (5) partnership structure, and (6) sustainability. An average of 624 LEA district administrators and program partners will complete the survey annually and the time for completion is estimated to be 45 minutes.

State Collaboration Indicator Data Instrument (Planning, Collaboration and Partnership Study)

The State Collaboration Indicator Data Instrument will gather data about the program activities that occur at the state level. By tracking these activities, it will be possible to determine the frequency with which administrators engage in SS/HS program related activities such as holding meetings, the number of persons who attend such meetings, whether and the frequency with which trainings and other support activities occur as well as the participants in such trainings. The instrument will also track whether and what type of resources are leveraged by program partners at the state level. One instrument will be completed by each state and it is estimated that it will take on average 1.5 hours to gather the data and complete the instrument.

District Collaboration Indicator Data Instrument (Planning, Collaboration and Partnership Study)

The District Collaboration Indicator Data Instrument will gather data about the program activities that occur at the LEA/district level. By tracking these activities, it will be possible to determine the frequency with which LEA administrators and program partners at the district level hold meetings, the number of persons who attend such meetings, whether and the frequency with which trainings and other support activities occur, and the participants in such trainings. The instrument will also track whether and what type of resources are leveraged by program partners at the district level. One instrument will be completed by each of the 21 LEAs and it is estimated that it will take on average 1.5 hours to gather the data and complete the instrument.

State and District Key Informant Interview (Implementation Study)

The State and District Key Informant Interviews will be held with administrators and program partners at the state and LEA districts. The interviews will seek to gain an understanding of respondents' perspectives as these relate to the degree to which critical SS/HS framework elements are operationalized, as well as the degree to which mental health principles and strategies are acknowledged and integrated as part of the service processes. The interviews will also seek to gain an understanding of the types of services and supports that have been implemented as a result of the SS/HS program, children's access to mental health services, and the facilitators and barriers to program implementation. Interviews will also include questions to learn about the role workforce development opportunities played in program implementation. A total of 56 persons will be interviewed: 14 at the state/tribal level and 42 at the district level. Interviews will take on average one hour to complete.

School-Level Survey (Implementation Study): The school-level survey will be completed by persons who work within the schools that are participating in the SS/HS state program. The survey combines items from three surveys: The Evidence-Based Practice Attitude Scale (EBPAS) assesses mental health and social service provider attitudes toward adopting evidence-based practices. The Mental Health Service Integration Survey (MHSIS) assesses professional school mental health roles, service integration, and barriers and facilitators of mental health service integration in schools. The School Mental Health Quality Assessment Questionnaire (SMHQAQ) is a 40 item instrument divided into 10 domains that assess the integration of school mental health services delivered in schools. The 10 domains related to the 10 principles of expanded school mental health include: (1) Access to care; (2) Needs assessment; (3) Evidence-based practices; (4) Stakeholder involvement and feedback; (5) Quality assessment and improvement; (6) Continuum of care and referral processes; (7) Clinician training, support, and service delivery; (8) Competently addressing developmental, cultural, and personal differences; (9) Interdisciplinary collaboration and communication; and (10) Community coordination. The School Mental Health Capacity Instrument is a 27-item scale that assesses the capacity of schools to address the mental health needs of students. The schools can be rated along a continuum using the three individual subscales of intervention, early recognition & referral, or prevention & promotion. In addition, the total sum of all three scales provides an overall measure of capacity. The intervention subscale looks at training, protocols, and the designation of specific follow-up procedures for children referred for

mental health services. Early recognition and referral covers universal screenings for potential problems, and communication between staff members to discuss students who may be experiencing mental health concerns. Finally, prevention and promotion looks at the efforts focused on student's social-emotional development. A total of 2,100 persons will be invited to complete the survey annually and it is estimated that completion of the survey will take on average 25 minutes.

Internet-based technology will be used for collecting data via Web-based surveys, and for data entry and management. The average annual respondent burden is estimated below.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondents	Instrument	Number of respondents	Responses per respondent	Average hours per respondent	Total annual hour burden
Planning, Collaboration & Participation Study					
Key project staff at state level (e.g., project coordinators, evaluators), SMT members.	State KIIs	14	1	1	14
Key project staff at LEA level (e.g., project coordinators, evaluators), CMT members.	District KIIs	63	1	1	63
Key project staff at state level (e.g., project coordinators, evaluators), SMT members.	State Collaborator Survey	208	1	.5	104
Key project staff at LEA level (e.g., project coordinators, evaluators), CMT members.	District Collaborator Survey	624	1	.33	206
Project Evaluator	State Collaboration Indicator Data Instrument.	7	4	1.5	42
Project Evaluator	District Collaboration Indicator Data Instrument.	21	4	1.5	126
Implementation Study					
Program and school staff working at the state & district level.	KIIs	56	1	1	56
Program and school staff working at the school level.	School-Level Survey	*2,100	1	.45	945
Total		3,093			1,556

*10 respondents will participate in up to 10 schools in each of the 21 LEAs

The estimate reflects the average annual number of respondents, the average annual number of responses, the time it will take for each response, and the average annual burden. The number of grantees in each year is assumed to be constant.

Written comments and recommendations concerning the proposed information collection should be sent by October 24, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–22630 Filed 9–23–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0007]

Information Collection Request; Critical Infrastructure Private Sector Clearance Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Revision of a currently approved collection: 1670–0013.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until November 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/Cheryl Fenoli, 245 Murray Lane SW., Mail Stop 0607, Arlington, VA 20598–0609. Emailed requests should go to Cheryl Fenoli, *Cheryl.Fenoli@hq.dhs.gov.* Written comments should reach the contact person listed no later than November 24, 2014. Comments must be identified by ''DHS–2014–0007''and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* .
- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The Critical Infrastructure Private Sector Clearance Program (PSCP) sponsors

clearances for private sector partners who are responsible for critical infrastructure protection, in accordance with Executive Order 13549. The PSCP requires individuals to complete a clearance request form that initiates the clearance process. Sector Specific Agencies (SSA), IP Protective Security Advisors, Sector Liaisons, the National Infrastructure Coordinating Center, and other Federal officials designated by IP are authorized to submit nominations to the central PSCP point of contact, the PSCP Administrator. The clearance request form is signed by both the Federal official who nominated the applicant and by the Assistant Secretary for Infrastructure Protection prior to initiating the clearance process. Upon approval by the Assistant Secretary for Infrastructure Protection, IP Security Office will contact the nominee to obtain the Social Security number, date and place of birth, and will then enter this data into e-QIP—Office of Personnel Management's secure portal for investigation processing. Once the data is entered in e-QIP, the applicant can complete the online security questionnaire. An alternate mailing address is an optional field on the form and may be provided if the nominee chooses to have correspondences sent to a mailing address other than the company mailing address. IP Security Office maintains all applicants' information in the Master Roster, which contains all the information found on the clearance request form in addition to their clearance information (date granted, level of clearance, date non-disclosure agreements signed, and type/date of investigation). The Administrator of the Master Roster maintains the information so as to track clearance processing and investigation information and to have the most current contact information for the participants from each sector. The IP Security Office also provides the PSCP Administrator with applicant information to facilitate information sharing with Federal nominators and authorized DHS employees with a need to know.

OMB is particularly interested in comments that:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection.

Title: Critical Infrastructure Private Sector Clearance Program Request.

OMB Number: 1670–0013.

Frequency: Once.

Affected Public: Designated private sector employees of critical infrastructure entities or organizations.

Number of Respondents: 500 respondents (estimate).

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 83.35.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $0.

Dated: September 17, 2014.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2014–22663 Filed 9–23–14; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0013]

Agency Information Collection Activities: Submission for Review; Information Collection Extension Request for the DHS S&T First Responders Community of Practice Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP Web based tool collects profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users are required to authenticate prior to entering the site. In addition, the tool provides members the capability to create wikis, discussion threads, blogs, documents, etc., allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members are able to participate in threaded discussions and comment on other members' content. The DHS S&T FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 (Pub. L. 107–296) established this requirement. The program would like to add one more field to the registration. The new field will be titled: Country of First Responder Affiliation. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until October 24, 2014.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2012–0013, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Kathy.Higgins@hq.dhs.gov.* Please include docket number DHS–2012–0013 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Officer—Rick Stevens, 1120 Vermont Ave, Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathy Higgins (202) 254–2293 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS S&T currently has approval to collect information utilizing the User Registration Form until October 31 2013 with OMB approval number 1640–0016. The User Registration Form will be available on the First Responders Community of Practice Web site found at [*https://communities.firstresponder.gov/*]. The user will complete the form online and submit it through the Web site.

The Department is committed to improving its information collection

and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of Information Collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, R-Tech (RTD), DHS Form 10059 (09/09).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the First Responders Community of Practice.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 2,000.

b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1,000 burden hours.

Dated: September 16, 2014.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2014–22664 Filed 9–23–14; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–78]

30-Day Notice of Proposed Information Collection: HUD Stakeholder Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette_Pollard_@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 25, 2014.

A. Overview of Information Collection

Title of Information Collection: HUD Stakeholder Survey.

OMB Approval Number: 2501–0027.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92330–A, HUD–92328, HUD–92205–A.

Description of the need for the information and proposed use: The Department of Housing and Urban Development (HUD) hosts events with a variety of groups nationwide designed to educate stakeholders about HUD initiatives and policies. This data collection consists of a brief, optional survey to be completed in person at the end of each event. The information produced by the stakeholder surveys will allow HUD to measure the effectiveness of the stakeholder sessions and collect feedback on policy initiatives. The information can be used to shape policies, improve stakeholder events and make better use of HUD's limited time with stakeholders. There are no similar surveys which allow for HUD to engage in a sustained, systematic collection of feedback from stakeholders on a broad range of HUD initiatives and events.

Respondents (i.e. affected public): HUD stakeholder groups that include (but are not limited to) public housing authorities, congressional members and staff, local government officials, assisted housing residents, HUD grantees, civil rights organizations, homeless advocacy organizations, the legal community, academics, organized labor representatives, HUD grantees, and members of the housing, nonprofit, philanthropic, business and faith-based sectors.

Estimated Number of Respondents: 3150.

Estimated Number of Responses: 3150.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burdens: 315 hrs.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 19, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–22741 Filed 9–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX14GC009PLFM00]

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of annual meeting: Audio conference.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP and NGGDPP Advisory Committee will hold an audio conference call on October 17, 2014, from 8 a.m.–5 p.m. Mountain Standard Time. The Advisory Committee, comprising representatives from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping and data preservation programs.

The Committee will hear updates on progress of the NCGMP toward fulfilling the purposes of the National Geological Mapping Act of 1992, as well as updates on the NGGDPP toward fulfilling the purposes of the Energy Policy Act of 2005.

DATES: October 17, 2014, from 8 a.m.–5 p.m. Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: For the phone number and access code, please contact Michael Marketti, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192, (703) 648–6976.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program and National Geological and Geophysical Data Preservation Program Advisory Committee are open to the Public.

Dated: September 8, 2014.

Peter T. Lyttle,

Program Coordinator, NCGMP, Designated Federal Officer.

[FR Doc. 2014–22712 Filed 9–23–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD.AADD001000]

Advisory Board for Exceptional Children Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Washington, DC. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 for Indian children with disabilities.

DATES: The Advisory Board will meet on Thursday, October 9, 2014, from 8:30 a.m.–4:30 p.m., and Friday, October 10, 2014, from 8:30 a.m.–4:30 p.m. Eastern Time.

ADDRESSES: The meetings of Thursday, October 9, 2014, and Friday, October 10, 2014, will be held at 1951 Constitution Avenue NW., Mailstop 312–SIB, Washington, DC 20240; telephone number (202) 208–6123.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Bement, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., P.O. Box 1088, Suite 332, Albuquerque, New Mexico 87103; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, BIE is announcing that the Advisory Board will hold its next meeting in Washington, DC. The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Act of 2004 (20 U.S.C. 1400 et seq.). The meetings are open to the public.

The following items will be on the agenda:

- Discussion with Dr. Charles Roessel, BIE Director.
- Public Comment (via conference call, October 10, 2014, meeting only *).
- Report from Gloria Yepa, Supervisory Education Specialist, BIE Division of Performance and Accountability.
- Work on BIE Advisory Board Annual Report.
- Discussion and Approval of Charter and By-Laws.
- BIE Advisory Board—Advice and Recommendations.

*During the October 10, 2014, meeting, time has been set aside for public comment via conference call from 1:00–1:30 p.m. Eastern Time. The call-in information is: Conference Number 1 (888) 417–0376, Passcode 1509140#.

Dated: September 18, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–22667 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000.L14300000.ET0000; WYW167985]

Notice of Proposed Withdrawal and Opportunity for Public Meeting for the Split Rock/Devil's Gate Interpretive Sites, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Land and Minerals Management proposes to withdraw, subject to valid existing rights, on behalf of the Bureau of Land Management (BLM), 343.23 acres of public lands from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, or disposal under the Materials Act of 1947, to protect and preserve the Split Rock/Devil's Gate interpretive sites. This notice segregates the lands from mining for up to 2 years while various studies and analyses are made to support a final decision on the withdrawal application.

DATES: Comments must be received on or before December 23, 2014.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Diane Schurman, BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone: 307–775–6189; email: *dschurma@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave

a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed an application requesting the Assistant Secretary for Land and Minerals Management withdraw, subject to valid existing rights, the following described public lands from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, or disposal under the Materials Act of 1947, to protect and preserve the Split Rock/Devil's Gate interpretive sites:

Sixth Principal Meridian

T. 29 N., R. 87 W.,
Sec. 35, NE¼SE¼, NE¼NE¼NW¼SE¼, S½N½NW¼SE¼, S½NW¼SE¼, N½SW¼SE¼ and N½SE¼SE¼.
T. 29 N., R. 89 W.,
Sec. 30, lot 2, NE¼NW¼ and N½SE¼NW¼.
T. 29 N., R. 90 W.,
Sec. 25, E½SW¼NE¼, SE¼NE¼, E½NW¼SE¼, NE¼SE¼, and N½N½SE¼SE¼.

The areas described aggregate 343.23 acres, more or less, in Fremont and Natrona Counties.

The Assistant Secretary for Land and Minerals Management approved the BLM's petition/application. Therefore, the petition/application constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to protect the unique archaeological, historical, geological, and recreational values as well as the Federal investment at the Split Rock and Devil's Gate Interpretive Sites.

The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary use of the land needed to provide the highest level of protection possible for the historic, cultural, aesthetic, and recreational values of the lands.

There are no suitable alternative sites as the described lands contain the resource values to be protected.

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

Records relating to the application may be examined by contacting the BLM at the above address and phone number.

For a period until December 23, 2014, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal application may present their views in writing to the BLM Wyoming State Director at the mailing address or email address noted above. All comments received will be considered before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior for final action.

Comments including names and street addresses of respondents, will be available for public review at the BLM Wyoming State Office, during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director no later than December 23, 2014. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until September 26, 2016, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the site may be allowed with the approval of an authorized officer of the BLM during the segregative period. This application will be processed in accordance with the regulations set forth in 43 CFR 2310.3.

Donald A. Simpson,

Wyoming State Director.

[FR Doc. 2014–22720 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000. EU0000.241A00; N–92955; 13–08807; MO# 4500068474 TAS: 14X5232]

Notice of Realty Action: Direct Sale of Public Land (N–92955) for Affordable Housing Purposes in Las Vegas, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 5-acre public land parcel located in the southern portion of the Las Vegas Valley in Clark County, Nevada, under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the BLM land sale conveyance regulations, and the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The BLM proposes that the parcel be sold by direct sale to the Nevada Housing Division, a division of the State of Nevada, Department of Business and Industry, at less than the parcel's appraised fair market value (FMV) consistent with SNPLMA and applicable BLM policy.

DATES: Comments regarding the proposed sale must be received by the BLM on or before November 10, 2014. The sale would not be held prior to November 24, 2014.

ADDRESSES: Written comments concerning the proposed sale are to be sent to the BLM Las Vegas Field Office, Assistant Field Manager, Division of Lands, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Michelle Leiber at 702–515–5168, or email at *mleiber@blm.gov.* For information on the SNPLMA Section 7(b) affordable housing land sale program go to: *http://www.blm.gov/nv/st/en/snplma/affordable_housing.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Nevada Housing Division submitted a sale nomination application to the BLM for the proposed affordable housing project called Agate Avenue Senior

Apartments, Phase II (Agate Phase II Project). In response, the BLM proposes to sell a 5-acre parcel of public land located in the southern portion of the Las Vegas Valley in Clark County, Nevada, further described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 20, lot 26.
The area described contains 5 acres.

The parcel is identified as Clark County Assessor Parcel Number 177–20–601–011. A map delineating the parcel proposed for sale to the Nevada Housing Division is available for public review at the BLM Las Vegas Field Office or at the Web site *http://www.blm.gov/nv/st/en/snplma/affordable_housing.html.*

The parcel is located south of the intersection of Agate Avenue and Kimo Street within the Las Vegas Boulevard and Interstate 15 corridor south of Blue Diamond Road. The northern, southern, and western boundaries of the parcel abut developed residential and commercial properties and the eastern boundary abuts property that is under development for residential purposes. Access is provided by Agate Avenue located along the northern boundary of the parcel.

The parcel would be sold using the BLM's direct sale procedures (43 CFR 2711.3–3), and under such terms, covenants, or conditions as determined necessary by the BLM authorized officer pursuant to SNPLMA Section 7(b), and the Nevada Guidance Policy and Procedures for Affordable Housing Disposals (Nevada Guidance), approved on August 8, 2006.

Under SNPLMA Section 7(b), the BLM, in consultation with the Department of Housing and Urban Development (HUD), may make BLM-managed public lands available for affordable housing purposes in the State of Nevada at less than the appraised FMV. The amount administratively discounted from the FMV is set forth in the Nevada Guidance. For purposes of SNPLMA, housing is ''affordable housing'' if it serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act, 42 U.S.C. 12704. In the Cranston-Gonzales Act, the term ''low-income families'' means families whose incomes do not exceed 80 percent of the median income for the area as determined by HUD, or as otherwise adjusted by statute. The State of Nevada's proposed project would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income, which represents extremely low income based on the Nevada Guidance. The Agate Phase II Project will also give preference to qualifying Veteran households for at least 10 percent of the units.

The appraised FMV for the 5-acre parcel is $1,800,000. Under the Nevada Guidance, and after consultation with HUD, the BLM authorized officer has determined that discount percentages for the respective median income category would be administratively applied to the appraised FMV for the parcel to establish the price of the public land to be sold under these provisions. The FMV for this property would be discounted 95 percent resulting in a federally-approved sale price of $90,000 for this transaction, so long as the property is used for affordable housing purposes consistent with the covenants, terms and conditions described in the patent.

Consistent with the Nevada Guidance, the preferred method of sale is direct sale. Such method is appropriate when ''a tract is identified for transfer to State or local government . . .'' (43 CFR 2711.3–3(1)), which is the case for sales authorized under SNPLMA Section 7(b). The direct sale method is also supported when, ''A tract is identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project'' (43 CFR 2711.3–3(2)), which is also the case here.

The Clark County, North Las Vegas, Boulder City, and Mesquite 2010–2014 HUD Consolidated Plan identified both rental housing serving low-income and extremely low-income households and housing for persons with special needs, including the elderly and frail elderly, as its top two priorities. The project being considered under this notice addressed those priorities. The consolidated plan identifies a significant housing need for elderly persons including those with special needs and physically disabled in southern Nevada. Since the SNPLMA was passed in 1998, the State of Nevada has invested considerable time and substantial resources in finding eligible properties for affordable housing projects. Consistent with the SNPLMA joint selection process, the Nevada Housing Division consulted with the BLM and Clark County concerning selection of this parcel for disposal for affordable housing purposes. According to the consolidated plan, the need for affordable housing is an issue of public importance and this tract of land would provide a key piece of a project meant to address that need.

The Nevada Housing Division's application includes a comprehensive plan for assessment and evaluation of the need for and the feasibility of this affordable housing project. As required by SNPLMA Section 7(b), HUD reviewed the Agate Phase II Project and provided the BLM its approval recommendation dated May 30, 2014. The HUD's recommendation confirmed that the Agate Phase II Project as proposed would use 100 percent of the parcel to serve senior citizens, including seniors with special needs, with income at or below 60 percent of the area median income. The HUD further confirmed that the Agate Phase II Project location and need are consistent with Section 7(b) of SNPLMA, the Cranston-Gonzales Act, and the 2010–2014 Clark County Consolidated Plan. The HUD conditioned its approval recommendation on two continuing requirements: (1) The Nevada Housing Division and Clark County, as appropriate, are to report the proposed Agate Phase II Project, including public and private funding sources, in HUD required documents and plans; and (2) Submittal by the Nevada Housing Division of the final disposition and development agreement (DDA) and final site plan to the BLM for review and concurrence in consultation with HUD. A DDA will be executed between the Nevada Housing Division and its co-developers, Ovation Development Corporation, and Accessible Space, Inc., to ensure that the terms and conditions for development of the project are consistent with the previously submitted comprehensive plan and other applicable regulations and procedures.

The parcel is within the disposal boundary identified by the U.S. Congress in the SNPLMA, and is in conformance with the BLM Las Vegas Resource Management Plan and decision LD–1, approved by Record of Decision on October 5, 1998. The parcel was also analyzed in the Las Vegas Valley Disposal Boundary Final Environmental Impact Statement and approved by Record of Decision on December 23, 2004. The BLM has completed a site-specific Determination of National Environmental Policy Act Adequacy (DNA) document number DOI–BLM–NV–S010–2014–0081–DNA for the sale. The parcel is not required for any Federal purpose. Consistent with 43 CFR 2711.3–1(d), a deposit of not less than 20 percent of the federally-approved sale price, as discounted consistent with the Nevada Guidance, must be submitted on or before 30 days

from the sale offer, by 12:00 p.m. Pacific Time at the BLM Las Vegas Field Office. Payment(s) will reference BLM serial number N–92955, and must be made in the form of certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the Department of the Interior, Bureau of Land Management (or DOI, BLM).

Failure to submit the deposit will result in forfeiture of the sale offer. The remainder of the sale price must be paid within 180 days following the date of the sale offer. Failure to pay the full price within the 180 days will disqualify the sale offer and cause the entire 20 percent deposit to be forfeited to the BLM, 43 CFR 2711.3–1(d) and 2711.3–3(d). No exceptions will be made. The BLM cannot accept the full sale price at any time following the expiration of the 180th day after the sale offer. Payment may be provided electronically through escrow by Electronic Fund Transfer (EFT), or in the form of a certified check, postal money order, bank draft, cashier's check, or any combination thereof, made payable in U.S. dollars to the order of the DOI, BLM. Arrangements for EFT through escrow to the BLM shall be made a minimum of 14 days prior to the date of payment. The patent would be issued following receipt of final payment, as appropriate.

If patented, the patent will include the following numbered terms, covenants, and conditions:

1. *Affordable Housing:* Pursuant to Section 7(b) of the SNPLMA, the term ''affordable housing'' as used in the sale patent, means housing that serves low-income families as defined in Section 104 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12704).

2. *Affordable Housing Purpose:* For purposes of this proposed sale patent, the term ''affordable housing purpose'' means for an affordable housing project which commits 100 percent of living space to affordable housing, and which overall is used for no purpose other than residential use and related residential use amenities.

3. *Construction:* For purposes of the sale patent, the term ''construction'' means ongoing and substantial work dedicated to the building of the dwelling structures and other improvements necessary for the realization of the low-income affordable housing project located on these lands conveyed under Section 7(b) of the SNPLMA.

4. *Project:* For purposes of this patent, the term ''Project'' means the construction and resulting dwelling structures and other improvements on these lands conveyed under Section 7(b) of the SNPLMA, as approved by the BLM in consultation with HUD, that are necessary for the realization of the low-income affordable housing purposes.

5. *Covenant and Restriction:* The Nevada Housing Division is hereby bound and covenants for itself and all successors-in-interest to use the land as approved by the BLM in consultation with HUD, and as conveyed by the sale patent, only for affordable housing purposes for a period of 40 years (period of affordability). Such period will commence upon the issuance of a certificate of occupancy or its equivalent by the appropriate local governmental authority (i.e., Clark County). The Nevada Housing Division further hereby covenants and binds itself and all successors-in-interest to develop the subject parcel according to a disposition and development agreement (DDA) between the Nevada Housing Division and its co-developers that has received concurrence by the BLM in consultation with the HUD. As in this patent, the DDA shall have a provision stating that in the event of any conflict between the terms of the DDA and the patent and applicable laws, the patent and applicable laws will control. This affordable housing and DDA covenant will be deemed appurtenant to and to run with the land.

6. *Time Limit: Reversion and Fair Market Value:* If, at the end of 5 years from the date of the sale patent, the Agate Phase II Project is not under construction in accordance with the DDA and the final site plan approved by the BLM in consultation with the HUD then, at the option of the United States, the lands, or parts thereof, will revert to the United States, or, in the alternative, the United States may require payment by the owner to the United States of the then FMV.

7. *Use Restriction: Reversion and Fair Market Value:* All land conveyed by the sale patent will be used only for affordable housing purposes as approved by the BLM in consultation with the HUD during the period of affordability. If at any time during the period of affordability any portion of the land conveyed by the sale patent is used for any purpose other than affordable housing purposes by the Nevada Housing Division, or its successor-in-interest, then at the option of the United States, those lands not used for affordable housing purposes will revert to the United States; or, in the alternative, the United States may, at that time, require payment to the United States of the then FMV, or institute a proceeding in a court of competent jurisdiction to enforce the covenant set forth above to use the land conveyed only for affordable housing purposes.

8. *Enforcement:* The covenant/use restriction and the reversionary interest may be enforced by the BLM or HUD, or their successors-in-interest, as deemed appropriate by agreement of these two Federal agencies at the time of enforcement, after reasonable notice including an opportunity to cure any default (90 days) to the Nevada Housing Division and the landowner of record. If any necessary cure has not been completed and it is shown that completion of such cure would be impossible by the end of the 90 days, and diligent and substantial efforts are underway to cure such default, the Federal agencies may consider a request for a reasonable extension of time to complete cure of such default.

9. *Simultaneous Transfer:* The Nevada Housing Division, upon issuance and acceptance of the sale patent, will simultaneously transfer by deed the land conveyed by this sale patent to its successor-in-interest, as reviewed and approved by the BLM in consultation with HUD.

10. *Indemnification and Hold Harmless:* By accepting this patent, the Nevada Housing Division, subject to the limitations of law and to the extent allowed by law, will be responsible for the acts or omissions of its officers, directors and employees in connection with the use or occupancy of the patented real property. Upon simultaneous transfer as described above, successors-in-interests to the Nevada Housing Division of the patented real property, will indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the successors-in-interest, or its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the successor-in-interest's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the successor-in-interest, and its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments,

claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant will be construed as running with the parcel of land patented or otherwise conveyed by the United States, and may be enforced against successors-in-interest, by the United States in a court of competent jurisdiction.

No representation or warranty of any kind, express or implied, is given or will be given by the United States as to the title, the physical condition or the past, present, or potential uses of the land proposed for sale. However, to the extent required by law, such land is subject to the requirements of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

If patented, title to the land will be subject to the following numbered reservations to the United States:

1. All minerals are reserved to the United States. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leasable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945); and

3. A reversionary interest as further defined in the above terms, covenants, and conditions.

If patented, title to the land will be subject to:

1. Valid existing rights [of record], including, but not limited to those documented on the BLM public land records at the time of sale and as defined below;

2. A right-of-way for public county road (Agate Avenue) purposes reserved to Clark County, its successors and assigns, by right-of-way number N–59284, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);

3. A right-of-way for sanitary sewer pipeline purposes reserved to the Clark County Water Reclamation District, its successors and assigns, by right-of-way number N–61105, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); and

4. A right-of-way for water line purposes reserved to the Las Vegas Valley Water District, its successors and assigns, by right-of-way number N–61409, pursuant to Title V of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Pursuant to Section 4(c) of the SNPLMA, subject to valid existing rights, the subject land is withdrawn from location and entry under the mining laws and from operation under the mineral and geothermal leasing laws until Secretarial termination of the withdrawal or patenting of the land. Such withdrawal is documented under case file number N–66364, effective as of October 19, 1998. In addition, by operation of regulation 43 CFR 2711.1–2(d), through publication of this notice, the lands are segregated and not subject to appropriation under the public land laws, including the mining laws. Through either the withdrawal or the segregation, any subsequent application for an appropriative use will not be accepted, will not be considered as filed, and will be returned to the applicant.

Documents concerning the sale, appraisal, reservations, procedures, and conditions, and other environmental review are available for review at the BLM Las Vegas Field Office at the address in the **ADDRESSES** section. If you wish to submit a written comment concerning the sale, before including personal identifying information in your comment such as your address, phone number, email address, etc., 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. The BLM Las Vegas Field Manager will review the comments of all interested parties concerning the sale. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated in the **DATES** section.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Vanessa L. Hice,

Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2014–22719 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM004000 L71220000–EU000; LVTFG14G4440]

Notice of Realty Action: Direct Sale of Public Land, Oklahoma County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is offering to sell a parcel of public land totaling 2.78 acres as a non-competitive direct sale at not less than the appraised fair market value (FMV) of $175,000, to the City of Oklahoma City. The sale is pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM regulations. In accordance with BLM regulations, the BLM authorized officer finds that the public interest would be best served by resolving the inadvertent unauthorized use of public lands by the City of Oklahoma City whose improvements occupy portions of the parcel in question through a direct sale to the City. Such a sale would also protect existing equities in the current use of the land.

DATES: Submit written comments to the BLM at the address below. The BLM must receive comments on or before November 10, 2014.

ADDRESSES: Bureau of Land Management, Field Manager, Oklahoma Field Office, 7906 E. 33rd Street, Suite 101, Tulsa, OK 74145.

FOR FURTHER INFORMATION CONTACT: Richard Fields, Assistant Field Manager, 918–621–4128 or email at *Richard_Fields@blm.gov.* Persons who use a telecommunications devise for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Fields during business

hours. The FIRS is availiable 24 hour a day, 7 days a week, to leave a message or questions for Mr. Fields. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM will conduct a direct sale for the following parcel of public land located at 3501 SW 15th Street, Oklahoma City, Oklahoma. The land is described as:

Indian Meridian, Oklahoma

T. 11 N., R. 4 W.,
Sec. 12, lot 8.

The area described contains 2.78 acres.

The parcel is a single triangular-shaped tract and is fully surrounded by private and city-owned land. The property has improvements such as a city street and a parking lot and landscaping to support the adjacent Dell Campus.

Upon publication of this Notice in the **Federal Register**, the described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this Notice and until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The land would not be sold until at least November 24, 2014. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or September 26, 2016, unless it is extended by the BLM State Director, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The authority for the sale of public lands is found in Section 203 of FLPMA (43 U.S.C. 1713) and regulation 43 CFR 2710. In accordance with 43 CFR 2710.0–6(3)(iii) and 43 CFR 2711.3–3(5), the BLM authorized officer finds that a direct sale would be appropriate here because it would best serve the public interest by resolving the inadvertent unauthorized use of those lands by the City of Oklahoma City. A direct sale would also be consistent with the adjoining ownership pattern.

The parcel is not needed for any other Federal purpose, and it has been determined that the proposed action conforms to the 1994 BLM Oklahoma Resource Management Plan (RMP), goals, objectives, and management actions. The RMP provides for disposal to resolve longstanding instances of unauthorized use or occupancy through land sale if the disposal criteria are met. The parcel of land is difficult and uneconomic to manage as part of the public lands and meets the criteria for disposal from Federal ownership. The City of Oklahoma City occupied the proposed land and constructed a road and a landfill. According to soil-boring tests, the landfill did accept some trash at the site. The landfill activities took place between 1950 and the late 1970s. The site has since been remediated and redeveloped for other purposes by the City.

Federal law requires purchasers to be citizens of the United States; 18 years of age or older; and, in the case of corporations, to be subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying and holding lands or interest therein under the laws of the State of Oklahoma. The purchaser will be given 30 days from receipt of a written offer to submit a deposit of 30 percent of the FMV appraisal of the parcel and 180 days thereafter to submit the remainder of the full purchase price. Payment must be in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the U.S. Department of the Interior—BLM. The BLM will not accept any personal or business checks. Failure to meet conditions of this direct sale will void the sale and any funds received will be forfeited. If the balance of the purchase price is not received within the 180 days, the deposit shall be forfeited to the United States and the parcel withdrawn from sale.

The parcel is subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any right-of-way within the sale parcels will be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. The BLM will notify valid existing right-of-way holders of record of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easement. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The patent, if issued, would be subject to the following terms and conditions, and reservations:

1. A reservation of a right-of-way for ditches and canals constructed by authority of the United States under of the Act of August 30, 1890, (43 U.S.C. 945);

2. A reservation of all minerals deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe are reserved to the United States, together with all necessary access and exit rights;

3. The parcels are subject to valid existing rights; and

4. An appropriate indemnification clause protecting the United States from claims arising out of the lessees/patentee's use, occupancy, or occupation on the leased/patented lands.

Information concerning the sale, encumbrances of record, appraisals, reservations, procedures and conditions, and other environmental documents that may appear in the BLM public files for the proposed sale parcels are available for review during business hours, Monday through Friday, at the BLM Oklahoma Field Office, except during Federal holidays.

Comments received in electronic form, such as email or facsimile, will not be considered. Submit comments to the address in the **ADDRESSES** section. 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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2(a)(c).

Mary A. Uhl,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2014–22723 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF010000 L14300000.FP0000 14X]

Notice of Realty Action: Classification for Lease and Subsequent Conveyance for Recreation and Public Purposes in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 5 acres of public land in San Juan County, New Mexico. The San Juan County Soil and Water Conservation District proposes to use the land for an office building, shop, parking, and outdoor educational classroom.

DATES: Interested parties may submit written comments regarding the proposed classification of the land, or lease and/or subsequent conveyance of the land, on or before November 10, 2014.

ADDRESSES: Written comments concerning this Notice should be addressed to: District Manager, BLM Farmington District Office, 6251 College Avenue, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Vera Matthews, Realty Specialist, at the above address, by phone (505) 564–7724, or by email at *vmatthew@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public land in San Juan County, New Mexico, has been examined and found suitable for classification, for lease and/or subsequent conveyance, to the San Juan County Soil and Water Conservation District under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

New Mexico Principal Meridian

T. 30 N., R. 11 W.,
Sec. 5, W½NW¼SE¼SW¼. Containing 5 acres, more or less.

In accordance with the R&PP Act, the San Juan County Soil and Water District proposes to use the land for an office building, shop, parking and outdoor educational classroom. Additional detailed information pertaining to this application, plan of development, and site plans are contained in case file NMNM 127315 located in the BLM Farmington District Office at the above address. The above-described land is not needed for any Federal purpose. The lease and/or subsequent conveyance of the land to the San Juan County Soil and Water District, are consistent with the BLM Farmington Resource Management Plan, dated December 2003, and would be in the public's interest. The San Juan County Soil and Water District has not applied for more than the 640-acre annual limitation for public purposes other than recreation use and has submitted a statement in compliance with the regulation at 43 CFR 2741.4(b). The San Juan County Soil and Water District is a political subdivision of the State of New Mexico and is a qualified applicant under the R&PP Act.

The lease and subsequent conveyance, if and when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior, including, but not limited to, the terms required by 43 CFR 2741.9.

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. Lease and subsequent conveyance of the public land shall be subject to valid existing rights.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

5. Right-of-way NMNM 111684 for road purposes granted to David McWilliams and Peggy McWilliams, their successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

6. Right-of-way NMNM 125883 for fiber optic cable purposes granted to Qwest Corporation, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

7. Right-of-way NMNM 015515 for oil and gas pipelines purposes granted to Enterprise Field Services, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 185 sec. 28).

8. Oil and Gas Lease NMSF 078138 leased to Burlington Resources Oil and Gas Company, its successors or assigns, pursuant to the Act of February 25, 1920 (30 U.S.C. 226).

9. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

10. Any other reservations that the Authorized Officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Subject to limitations prescribed by law and regulations, prior to conveyance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

Detailed information concerning this proposed project, including, but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM Farmington District Office at the address above.

Upon publication of this notice in the **Federal Register,** the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

Classification Comments: Interested parties may submit comments on the suitability of the land for the proposed facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision, to lease and/or convey under the R&PP Act.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM New Mexico State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on November 24, 2014. The land will not be available for lease and subsequent conveyance until after the classification becomes effective.

Authority: 43 CFR 2741.5.

Debby Lucero,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2014–22734 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00000.LF2000000.HU0000 LFSPHM7D0000;MO# 4500063096]

Notice of Temporary Area Closure at the Red Rock Canyon National Conservation Area Due to Carpenter 1 Wildland Fire in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), as authorized under the provisions of the Federal Land Policy and Management Act of 1976 and pursuant to BLM regulations, is enacting a 5-year temporary closure to the public of 5,683.37 acres in Red Rock Canyon National Conservation Area (NCA) due to the Carpenter 1 Fire, which occurred in July 2013. The closure is needed to address public safety and adjoining private property due to the potential for future downstream flooding from loss of vegetation and top soil until the area is stabilized and rehabilitated.

DATES: The temporary restriction and closure of the described public use is in effect 30 days after September 24, 2014 for 5 years.

FOR FURTHER INFORMATION CONTACT: Lauren Brown, Weeds Management Specialist and ESR Coordinator, 702–515–5295, email *lpbrown@blm.gov,* or Mark Spencer, Field Manager, Red Rock/Sloan Field Office, 702–515–5351, email: *m1spence@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The closure area includes both burned and unburned areas, as well as closing Harris Springs Road to the general public beginning at the intersection of State Route 157 proceeding northward for approximately 5 miles to the U.S. Forest Service (USFS) boundary. The size of the temporary closure is due to heavy rains, flooding, washouts, soil loss, and debris flow that occurred after the fire, generating more extensive damage to the burned and adjoining unburned areas. Pursuant to 43 CFR 8364.1, the time frame for the 5-year temporary closure is needed due to the extensive burn area of the Carpenter 1 Fire and subsequent heavy flooding, soil erosion, and loss of habitat and vegetation that is impacting both burned and unburned areas. The Carpenter 1 Fire burned approximately 27,881 acres in the Mt. Charleston Area outside of Las Vegas, Nevada. The majority of the fire (26,939 acres) occurred on the Springs Mountains National Recreation Area of the Humbolt-Toiyabe National Forest, with the balance of the burn occurring on the Red Rock Canyon NCA (853 acres) and private land (89 acres).

Post-fire efforts proposed by the BLM over the 5-year period will optimize stabilization of soils and rehabilitation. *The BLM Nevada Post-Fire Recovery Plan, Emergency Stabilization and Burned Area Rehabilitation* (September 2013) identifies emergency stabilization and burned area issues that will be addressed by a number of treatments and monitoring actions during the closure period. The BLM will coordinate stabilization and rehabilitation efforts with the USFS, the Nevada Department of Wildlife, and the Clark County Department of Public Works.

The duration of the closure is also consistent with the USFS' temporary closure, which is for 5 years. The area affected by USFS' closure contains 5,683.37 acres in Clark County, Nevada.

The temporary closure order and information is posted at the BLM Southern Nevada District Office, and in areas off of State Route 157 and adjoining boundaries with the USFS. The public lands subject to the temporary closure are approximately 10 miles west of Las Vegas, NV, in the Harris Springs area of the Red Rock Canyon NCA, and are legally described as follows:

Mount Diablo Meridian, Nevada

T. 19 S., R58 E.,
- Sec. 20, SW¼NW¼ and NW¼SW¼;
- Sec. 22, SE¼SW¼, SW¼SE¼, and SE¼SE¼;
- Sec. 23, S½SW¼;
- Sec. 26, NW¼ and NW¼SW¼;
- Sec. 27, N½, N½SW¼, SW¼SW¼, and N½SE¼;
- Secs. 28 and 29;
- Sec. 32;
- Sec. 33, NW¼NE¼, NW¼, and W½SW¼;

T. 20 S., R57 E.,
- Sec. 24, N½, N½SW¼, and N½SE¼;

T. 20 S., R58 E.,
- Sec. 4, lot 4, SW¼NW¼, NW¼SW¼, and SW¼SW¼;
- Sec. 5;
- Sec. 8, NE¼, W½, and NW¼SE¼;
- Sec. 9, NW¼NW¼;
- Sec. 18, lots 1 and 4, SE¼SW¼ and SW¼SE¼;
- Sec. 19, lots 1 thru 3, NE¼, NE¼NW¼, SE¼NW¼, and NE¼SW¼.

On December 17, 2013, the BLM signed a Decision Record to implement the temporary closure. The EA (DOI–BLM–NV–S020–2013–0012–EA) analyzed the alternatives to enact the temporary closure, and is available to the public on the District Web site at *https://www.blm.gov/epl-front-office/eplanning/ projectSummary.do?methodName=renderDefaultProjectSummary&projectId=37606.*

Motorized vehicle use on Harris Springs Road off of State Route 157 is closed to the public during this period. This temporary closure applies to the public and all motorized vehicles, excluding:

(1) Any emergency or law enforcement vehicle or personnel for emergency or administrative purposes;

(2) BLM/USFS/NDOW vehicles/personnel;

(3) Anyone who is expressly authorized in writing by the BLM Field Manager of the Red Rock/Sloan Field Office or the Fire Management Officer, Southern Nevada District;

(4) Clark County Department of Public Works; and

(5) Affected residents who have prior existing rights to access their property.

If satisfactory rehabilitation is achieved prior to September 30, 2019, the temporary closure will be lifted.

Penalties: Any person who fails to comply with the temporary closure order is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months.

Authority: 43 CFR 8364.1.

Mark R. Spencer,

Field Manager, Red Rock/Sloan Field Office.

[FR Doc. 2014–22717 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML0000 L12200000.BY0000 14XL1109AF]

Temporary Closure of Public Land to Recreational Target Shooting Near the Prehistoric Trackways National Monument in Doña Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Las Cruces District Office is restricting recreational target shooting on approximately 290 acres of public land near the Prehistoric Trackways National Monument (Monument). The restriction is needed to ensure public safety near the Monument entrance which is the Permian Tracks Road in Doña Ana County, New Mexico.

ADDRESSES: Copies of this closure order and maps showing the location of the restriction are available from the BLM, Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

DATES: This restriction is effective on October 24, 2014 and shall remain in effect until a final decision is made in the Tri-County Resource Management Plan. During the temporary closure, the BLM will develop long-term resource management plans that will address public lands both inside and outside the Monument with public involvement.

FOR FURTHER INFORMATION CONTACT: David Wallace, Assistant District Manager, Multi-Resources Division, 1800 Marquess Street, Las Cruces, NM 88005; or call 575–525–4393. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The recreational target shooting restriction includes public land along the Permian Tracks Road, which is the primary entrance to the Monument. Since designation of the Monument in 2009, the area has seen a significant increase in visitation from school children and the general public for guided hikes and museum field trips that focus on the paleontological resources. Documented near-misses between Monument visitors and bullets from recreational target shooting along the Permian Tracks Road are increasing.

Most of the surrounding public land is open for dispersed recreational target shooting. The restriction will remain in effect until a final decision is issued in the TriCounty Resource Management Plan.

The restrictions applicable to the closure are as follows:

1. The public land to be closed under this notice is described as:

New Mexico Principal Meridian, New Mexico

T. 22 S., R. 1 E.,
Sec. 19, N½NE¼SE¼SE¼, N½NW¼SE¼SE¼;
Sec. 20, S½SW¼;
Sec. 29, NW¼NE¼, N½NW¼;
Sec. 30, N½NE¼.
The area described aggregates 290.00 acres.

Discharging of firearms for recreational target shooting is prohibited in this location.

2. This restriction does not affect the ability of local, State, or Federal officials in the performance of their duties in the area, including the discharge of firearms.

3. This Notice will be posted along the public roads where this restriction is in effect.

4. The following persons are exempt from this closure order:

a. Federal, State, or local law enforcement officers, while acting within the scope of their official duties.

b. Any person who is hunting in accordance with State law.

Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year. These actions are taken to protect the public and BLM employee health and safety.

Authority: 43 CFR 8364.1.

Jesse J. Juen,

State Director.

[FR Doc. 2014–22722 Filed 9–23–14; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1228 (Final)]

Steel Concrete Reinforcing Bar From Turkey; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On September 15, 2014, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation concerning Turkey (79 FR 54965). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping duty investigation concerning steel concrete reinforcing bar from Turkey (investigation No. 731–TA–1228 (Final)) is terminated.

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

FOR FURTHER INFORMATION CONTACT: Alan Treat (202–205–3426), Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.
Issued: September 19, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–22692 Filed 9–23–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On September 16, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Jersey in *United States and New Jersey Department of Environmental Protection and Administrator of the New Jersey Spill Compensation Fund* v.

D.S.C. of Newark Enterprises, Inc. and Anthony A. Coraci, Civil Action No. 2:14–cv–05734–JLL–MAH.

The proposed consent decree would resolve the claims of the United States and the State of New Jersey Department of Environmental Protection and Administrator of the New Jersey Spill Compensation Fund for recovery of response costs and natural resource damages against D.S.C. of Newark Enterprises, Inc. (''DSC'') under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') relating to releases of hazardous substances at the Cornell-Dubilier Electronics, Inc. Superfund Site in South Plainfield, New Jersey (''the Site''). The consent decree would also resolve the United States' claims under the Federal Debt Collection Procedures Act, to void certain transfers of assets that were made from DSC to its sole shareholder, Anthony A. Coraci (''Coraci''), to the extent necessary to satisfy DSC's debt to the United States.

The consent decree requires DSC and Coraci (''the Settling Defendants'') to pay $22.0 million to the United States and New Jersey, and 50% of the Settling Defendants' insurance recoveries in excess of $750,000, net of certain fees incurred to obtain the recoveries. The consent decree also requires DSC, the current owner of property at the Site, to continue to allow access to EPA to conduct response actions at the Site, to obtain an agreement from any transferee to allow such access, and to cooperate with respect to the filing of a deed notice, engineering controls, restrictions on use and alterations of the property, and monitoring requirements concerning the property at the Site. In return, the United States and New Jersey agree to resolve all past and future liability the Settling Defendants and specified related parties (''Related Parties'') may have for response costs and natural resource damages at the Site under section 107 of CERCLA. The United States further agrees not to sue or take administrative action against the Settling Defendants and Related Parties under section 7003 of the Resource Conservation and Recovery Act (''RCRA''), and the State further agrees not to sue or take administrative action against the Settling Defendants and Related Parties under the New Jersey Spill Compensation and Control Act or the Industrial Site Recovery Act, the common law of negligence, nuisance and/or strict liability, with regard to the Site. In addition, upon receipt of the payments required by the Settling Defendants, the United States and New Jersey agree to release the respective federal and state liens placed on DSC's property at the Site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and New Jersey Department of Environmental Protection and Administrator of the New Jersey Spill Compensation Fund* v. *D.S.C. of Newark Enterprises, Inc. and Anthony A. Coraci,* D.J. Ref. No. 90–11–2–08223/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–22609 Filed 9–23–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 18, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States et al.* v. *Hawaii Department of Transportation,* Civil Case. No. 14–00408 (D. Hi.).

In this civil enforcement action under the federal Clean Water Act (''Act''), the United States alleges that the Hawaii Department of Transportation (''Defendant''), failed to comply with certain requirements of the Act by failing to comply with terms of the Hawaii National Pollutant Discharge Elimination System (''NPDES'') General Permit for municipal storm water discharges at Honolulu and Kalaeloa Barbers Point Harbors. The complaint further alleges that Defendant violated an administrative order issued by EPA in 2009 requiring correction of violations and deficiencies in Defendant's storm water management plans for the two harbors. The complaint seeks injunctive relief and civil penalties.

The proposed Consent Decree would resolve violations for certain provisions of the Act and the NPDES General Permit for municipal storm water discharges at Honolulu and Kalaeloa Barbers Point Harbors. The proposed Consent Decree requires Defendant to implement a comprehensive storm water management plan over the life of the Consent Decree and pay a civil penalty of $1.2 million.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Hawaii Department of Transportation,* Civil Case. No. 14–00408 (D. Hi.), D.J. Ref. No. 90–5–1–1–07488/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* The Justice Department will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library,

U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.25 (25 cents per page reproduction cost) payable to the United States Treasury. Additional costs may be incurred for attachments.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–22685 Filed 9–23–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 18, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of California in the lawsuit entitled *United States of America* v. *Sims Group USA Corporation d/b/a Sims Metal Management,* Civil Action No. 3:14–CV–4209.

The United States of America brought claims on behalf of the United States Environmental Protection Agency under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* against Sims Group USA Corporation d/b/a Sims Metal Management.

The United States alleges that the violations arose from Sims' industrial activities at the Port of Redwood City in Redwood City, California. The United States alleges that Sims allowed metal and other material to fall from its ship-loading conveyor directly into Redwood Creek. In addition, the Complaint alleges that Sims violated several requirements of its General Permit authorization for stormwater discharges associated with industrial activity. Sims encapsulated its ship-loading conveyor and came into compliance with the CWA in March 2012. It came into compliance with the General Permit in April 2013.

The proposed Consent Decree would require Sims to pay $189,500 in civil penalties for its violations, and to study and remediate contaminated sediments near the conveyor.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Sims Group USA Corporation d/b/a Sims Metal Management,* D.J. Ref. No. 90–5–1–1–10706. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. Please enclose a check or money order for $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–22607 Filed 9–23–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Assistance From the Department of Labor, Employee Benefits Security Administration

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Request for Assistance From the Department of Labor, Employee Benefits Security Administration'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 24, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201407–1210–002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for an information collection that provides the public a means to request for assistance from the EBSA. The EBSA assists employee benefit plan participants in understanding their rights, responsibilities, and benefits under employee benefit law and intervenes informally on participants' behalf with the plan sponsor in order to help them obtain health and retirement benefits that may have been inappropriately denied. Such informal intervention can avert the necessity for a formal investigation or a civil action. The EBSA maintains a toll-free telephone number through which inquirers can reach Benefits Advisors in ten Regional Offices. The EBSA has also made a request for assistance form available on its Web site for those wishing to obtain assistance in this manner.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0146.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 21, 2014 (79 FR 29208).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0146. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Request for Assistance From the Department of Labor, Employee Benefits Security Administration.

OMB Control Number: 1210–0146.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 6,500.

Total Estimated Number of Responses: 6,500.

Total Estimated Annual Time Burden: 3,250 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 17, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–22636 Filed 9–23–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 6, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 6, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 11th day of September 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—5 TAA PETITIONS INSTITUTED BETWEEN 9/2/14 AND 9/5/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85513	Heartland Footwear (State/One-Stop)	Pocahontas, AR	09/02/14	08/29/14
85514	Avon Products, Inc., Customer Contact Center (Workers)	Springdale, OH	09/02/14	08/30/14
85515	ITW Switches (Company)	Buffalo Grove, IL	09/04/14	09/03/14
85516	Bimbo Bakeries (State/One-Stop)	Fresno, CA	09/04/14	09/03/14
85517	M&D Industries, Inc. (Company)	Clarendon, PA	09/04/14	09/03/14

[FR Doc. 2014–22694 Filed 9–23–14; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 14–06]

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2015

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report to Congress is provided in accordance with Section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the ''Act'').

Dated: September 18, 2014.

John C. Mantini,

Assistant General Counsel, Millennium Challenge Corporation.

Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance for Fiscal Year 2015

Summary

In accordance with section 608(b)(1) of the Millennium Challenge Act of 2003 (the ''Act'', 22 U.S.C. 7707(b)(1)), the Millennium Challenge Corporation (MCC) is submitting the following report. This report identifies the criteria and methodology that the Millennium Challenge Corporation (MCC) intends to use to determine which candidate countries may be eligible to be considered for assistance under the Act for FY 2015.

Under section 608 (c)(1) of the Act, MCC will, for a thirty-day period following publication, accept and consider public comment for purposes of determining eligible countries under section 607 of the Act (22 U.S.C. 7706).

Criteria and Methodology for FY 2015

This document explains how the Board of Directors (Board) of the Millennium Challenge Corporation (MCC) will identify, evaluate, and determine eligibility of countries for Millennium Challenge Account (MCA) assistance for fiscal year (FY) 2015. The statutory basis for this report is set forth in appendix A. Specifically, this document discusses:

I. Which countries MCC will evaluate
II. How the Board evaluates these countries
  A. Overall
  B. For selection for first compact eligibility
  C. For selection for second/subsequent compact eligibility
  D. For selection for the threshold program

I. Which countries are evaluated?

As discussed in the August 2014 Report on Countries that are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2015 and Countries that Would be Candidates but for Legal Prohibitions (the ''Candidate Country Report''), MCC evaluates all low-income countries (LICs) and lower-middle income countries (LMICs) countries as follows:

- For scorecard evaluation purposes for FY 2015, MCC defines LICs as those countries between $0 and $1985 GNI per capita, and LMICs as those countries between $1986 and $4125 GNI per capita.[1]
- For funding purposes for FY 2015, MCC defines the poorest 75 countries as LICs, and the remaining countries up to the upper-middle income (UMIC) threshold of $4125 as LMICs.[2]

Lists of all LICs and LMICs under scorecard evaluation are provided in appendix B, including which countries among them are statutorily prohibited from receiving U.S. assistance. The list using the ''funding'' definition appeared in the Candidate Country Report, which describes how funding categories work.

II. How does the Board evaluate these countries?

A. Overall Evaluation

The Board looks at three legislatively mandated factors in its evaluation of any candidate country for compact eligibility: (1) Policy performance; (2) the opportunity to reduce poverty and generate economic growth; and (3) the availability of MCC funds.

1. Policy Performance

Because of the importance of needing to evaluate a country's policy performance—and needing to do so in a comparable, cross-country way—the Board relies to the maximum extent possible upon the best-available objective and quantifiable indicators of policy performance. These indicators act as proxies of the country's commitment to good governance, as laid out in MCC's founding legislation. Comprised of 20 third-party indicators in the categories of ''encouraging economic freedom,'' ''investing in people,'' and ''ruling justly,'' MCC ''scorecards'' are created for all LICs and LMICs. To ''pass'' the indicators on the scorecard, the country must perform above the median among its income group (as defined above), except in the cases of inflation, political rights, civil liberties, and immunization rates (LMICs only), where minimum threshold scores have been established. In particular, the Board considers whether the country

- Passed at least 10 of the 20 indicators, with at least one in each category,
- passed the ''Control of Corruption'' indicator, and
- passed either the ''Political Rights'' or ''Civil Liberties'' indicator.

While satisfaction of all three aspects means a country is termed to have ''passed'' the scorecard, the Board also considers whether the country performed ''substantially worse'' in any one policy category than it does on the scorecard overall. Appendix C describes all 20 indicators, their definitions, what is required to ''pass,'' their source, and their relationship to the legislative criteria.

The 20 policy performance indicators are the predominant basis for determining which countries will be eligible for MCC assistance, and the Board expects a country to be passing its scorecard at the point the Board decides to select the country for either a first or second/subsequent compact. However, the Board also recognizes that even the best-available data has inherent challenges. For example, data gaps, real-time events versus data lags, the absence of narratives and nuanced detail, and other similar weaknesses affect each of these indicators. In such instances, the Board uses its judgment to interpret policy performance as measured by the scorecards. The Board may also consult other sources of information to further enhance its understanding of a given country's policy performance beyond the issues on the scorecard, which is especially useful given the unique perspective each Board member brings to the table (e.g., specific policy issues related to trade, civil society, other U.S. aid programs, financial sector performance, and security/foreign policy issues). The Board uses its judgment on how best to weigh such information in assessing overall policy performance.

2. The Opportunity To Reduce Poverty and Generate Economic Growth

The Board also consults other sources of qualitative and quantitative information to have a more detailed view of the opportunity to reduce poverty and generate economic growth in a country.

While the Board considers a range of other information sources depending on

[1] This corresponds to LIC and LMIC definitions using the historic International Development Association (IDA) thresholds published by the World Bank.

[2] By law, no more than 25 percent of all compact funds for a given fiscal year may be provided to LMIC countries (using this ''funding'' definition).

the country, specific areas of attention typically include better understanding the issues, trends, and trajectory of:

- The control of corruption and rule of law;
- The state of democratic and human rights (especially of vulnerable groups [3]);
- The perspective of civil society on salient governance issues;
- The potential for the private sector (both local and foreign) to lead investment and growth;
- The levels of poverty within a country; and
- The country's institutional capacity.

Where applicable, the Board also considers MCC's own experience and ability to reduce poverty and generate economic growth in a given country—such as considering MCC's core skills versus the country's needs, capacity within MCC to work with a country, and the likelihood that MCC is seen by the country as a credible partner.

The goal in using this information is to have greater clarity regarding the likelihood that MCC investments will have an appreciable impact on reducing poverty and generating economic growth in a given country. The Board has used such information both to *not* select countries that are otherwise passing their scorecards, as well as to better understand when a country's performance on a particular indicator may not be up to date, and/or about to change. More details on this subject (sometimes referred to as ''supplemental information'') can be found on MCC's Web site at *http://www.mcc.gov/documents/reports/report-2012001121001-fy13-selection-supplemental-info.pdf.*

3. The Availability of MCC Funds

The final factor that the Board must consider when evaluating countries is the funding available. The agency's allocation of its budget is constrained, and often specifically limited, by provisions in authorizing legislation and appropriations acts. MCC has a continuous pipeline of countries in compact development, compact implementation, and compact closure, as well as threshold programs. Consequently, the Board factors in the overall portfolio picture when making its selection decisions given the funding available for each of the agency's programs.

Sub-sections B and C describe how each of these three legislatively mandated factors are applied with regard to two selection situations facing the Board each December: Selection of countries for first compact eligibility and selection of countries for second/subsequent compact eligibility. Subsection D describes selection of countries for the threshold program.

B. Evaluation for Selection of Countries for First Compact Eligibility

When selecting countries for compacts, the Board looks at all three legislatively mandated aspects described in the previous section: (1) Policy performance, first and foremost as measured by the scorecards and bolstered through additional information as described in the previous section; (2) the opportunity to reduce poverty and generate economic growth, examined through the use of other supporting information, as described in the previous section; and (3) the funding available.

At a minimum, the Board looks to see that the country passes its scorecard. It also examines supporting evidence that the country's commitment to good governance is on a sound footing and on a positive trajectory, and that MCC has funding to support a meaningful compact with that country. Where applicable, previous threshold program information is also considered. The Board then weighs the information described above across each of the three dimensions.

The approach described above is then applied in any additional years of selection of a country to continue to develop a first compact, with the added benefit of having cumulative scorecards, cumulative records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the emerging multi-year trajectory.

C. Evaluation for Selection of Countries for Second/Subsequent Compact Eligibility

Section 609(k) of the Millennium Challenge Act of 2003, as amended, specifically authorizes MCC to enter into ''one or more subsequent Compacts.'' MCC does not consider subsequent compact eligibility, however, before countries have completed their compact, or are within 18 months of completion, (e.g., a second compact if they have completed or are within 18 months of completing their first compact). Selection for subsequent compacts is not automatic and is intended only for countries that (1) exhibit successful performance on their previous compact; (2) exhibit improved scorecard policy performance during the partnership; and (3) exhibit a continued commitment to further their sector reform efforts in any subsequent partnership. As a result, the Board has an even higher standard when selecting countries for subsequent compacts.

1. Successful Implementation of the Previous Compact

To evaluate the degree of success of the previous compact, the Board looks to see if there is a clear evidence base of success within the budget and time limits of the compact, in particular by looking at three aspects:

(a) The degree to which there is evidence of strong political will and management capacity: Is the partnership characterized by the country ensuring that both policy reforms and the compact itself are both being implemented to the best ability that the country can deliver;

(b) The degree to which the country has exhibited a commitment and capacity to achieve program results: Are the financial and project results being achieved; to what degree is the country committing its own resources to ensure the compact is a success; to what extent is the private sector engaged (if relevant); and other compact-specific issues; and

(c) The degree to which the country has implemented the compact in accordance with MCC's core policies and standards: That is, is the country adhering to MCC's policies and procedures, including in critical areas such as remediating unresolved fraud and corruption/abuse or misuse of funds issues; procurement; and monitoring and evaluation.

Details on the specific types of information examined (and sources used) in each of the three areas are provided in appendix D. The overall sentiment is that the Board is looking for evidence that the previous compact will be completed or has been completed successfully, on time and on budget, and that there is a commitment to continued, robust reform going forward.

2. Improved Scorecard Policy Performance

Beyond successful implementation of the previous compact, the Board expects the country to have improved its overall scorecard policy performance during the partnership and to pass the scorecard in the year of selection for the subsequent compact. The Board focuses on:

- The overall scorecard pass/fail rate over time, what this suggests about underlying policy performance, as well as an examination of the underlying reasons;

[3] For example, women; children; lesbian, gay, bisexual, and transgender individuals; people with disabilities; and workers.

• The progress over time on policy areas measured by both hard-hurdle indicators—Control of Corruption, and Democratic Rights—including an examination of the underlying reasons; and

• Other indicator trajectories as deemed relevant by the Board.

In all cases, while the Board expects the country to be passing its scorecard, other sources of information are examined to understand the nuance and reasons behind scorecard or indicator performance over time, including any real-time updates, methodological changes within the indicators themselves, shifts in the relevant candidate pool, or alternative policy performance perspectives (such as gleaned through consultations with civil society and related stakeholders). Other sources of information are also consulted to look at policy performance over time in areas not covered by the scorecard but that are deemed important by the Board (such as trade, foreign policy concerns, etc.).

3. A Commitment To Further Sector Reform

The Board expects that subsequent compacts will endeavor to tackle deeper policy reforms necessary to unlock an identified constraint to growth. Consequently, the Board considers its own experience during the previous compact in considering how committed the country is to reducing poverty and increasing economic growth, and therefore tries to gauge the country's commitment for further sector reform should it be selected for a subsequent compact. This includes:

• Assessing the country's delivery of policy reform during the previous compact (as described above);

• Assessing expectations of the country's ability and willingness to continue embarking on sector policy reform in a subsequent compact;

• Examining both other sources of information that describe the nature of the opportunity to reduce poverty and generate growth (as outlined in A.2 above), and the relative success of the previous compact overall, as already discussed; and

• Finally, considering how well funding can be leveraged for impact, given its experience in the previous compact.

Through this overall approach to subsequent compact selection, the Board applies the three legislatively mandated evaluation criteria (policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available) in a way that rests critically on deeply assessing the previous partnership: from a compact success standpoint, a commitment to improved scorecard policy performance standpoint, and a commitment to continued sector policy reform standpoint. The Board then weighs all of the information described above in making its decision.

The approach described above is then applied in any additional years of selection to continue to develop the subsequent compact, with the added benefit of having even further detail on previous compact implementation, cumulative scorecards, cumulative records of policy performance, and other accumulated supporting information to determine the overall pattern of performance over the resulting multi-year trajectory.

D. Evaluation for Eligibility for Threshold Programs

The Board may also select countries to participate in the Threshold Program. The Threshold Program provides assistance to candidate countries that exhibit a significant commitment to meeting the eligibility criteria described in the previous sub-sections, but fail to meet such requirements. Specifically, in examining the policy performance, the opportunity to reduce poverty and generate economic growth, and the funding available, the Board will consider whether a country potentially eligible for threshold program assistance appears to be on a trajectory to becoming a viable contender for compact eligibility in the medium term.

APPENDIX A: Statutory Basis for this Report

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7707(b) (the Act).

Section 605 of the Act authorizes the provision of assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries for compact assistance for FY 2015 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, MCC's opportunity to reduce poverty and generate economic growth in the country, and the availability of funds. These steps include the submission of reports to the congressional committees specified in the Act and publication of information in the **Federal Register** that identify:

1. The countries that are ''candidate countries'' for MCA assistance for FY 2015 based on per capita income levels and eligibility to receive assistance under U.S. law. (section 608(a) of the Act; 22 U.S.C. 7707(a));

2. The criteria and methodology that MCC's Board of Directors (Board) will use to measure and evaluate policy performance of the candidate countries consistent with the requirements of section 607 of the Act (22 U.S.C. 7706) in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act; 22 U.S.C. 7707(b)); and

3. The list of countries determined by the Board to be ''eligible countries'' for FY 2015, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act; 22 U.S.C. 7707(d)).

This report reflects the satisfaction of item #2 above.

APPENDIX B: Lists of all LICs, LMICs, and Statutorily Prohibited Countries for Evaluation Purposes

Income Classification for Scorecards

Since MCC was created, it has relied on the World Bank's gross national income (GNI) per capita income data (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into two income categories for purposes of creating scorecards: LICs and LMICs. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecards ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize.

MCC will continue to use the traditional income categories for eligibility *to categorize countries in two groups for purposes of FY 2015 scorecard comparisons:*

• LICs are countries with GNI per capita below IDA's historical ceiling for eligibility ($1,985 for FY 2015); and

• LMICs, which are countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's upper middle income country threshold ($1,986–$4,125 for FY 2015).

The list of countries categorized as LICs and LMICs for the purpose of scorecard assessments can be found below.[4]

[4] In December 2011, a statutory change requested by the agency altered the way MCC must group countries for the purposes of applying MCC's 25 percent LMIC funding cap. This change, designed to bring stability to the funding stream, affects how MCC funds countries selected for compacts and does not affect the way scorecards are created. For determining whether a country can be funded as an LMIC or LIC:

• The poorest 75 countries are now considered LICs for the purposes of MCC funding. They are not limited by the 25 percent funding cap on LMICs.

• Countries with a GNI per capita above the poorest 75 but below the World Bank's upper middle income country threshold ($4,125 for FY 2015) are considered LMICs for the purposes of MCC funding. By law, no more than 25 percent of

Continued

Low Income Countries (FY 2015 Scorecard)

1. Afghanistan
2. Bangladesh
3. Benin
4. Burkina Faso
5. Burma
6. Burundi
7. Cambodia
8. Cameroon
9. Central African Republic
10. Chad
11. Comoros
12. Congo, the Democratic Republic of
13. Cote d'Ivoire
14. Djibouti
15. Eritrea
16. Ethiopia
17. Gambia
18. Ghana
19. Guinea
20. Guinea-Bissau
21. Haiti
22. India
23. Kenya
24. Korea, Democratic People's Republic of
25. Kyrgyz Republic
26. Laos
27. Lesotho
28. Liberia
29. Madagascar
30. Malawi
31. Mali
32. Mauritania
33. Mozambique
34. Nepal
35. Nicaragua
36. Niger
37. Pakistan
38. Rwanda
39. Sao Tome and Principe
40. Senegal
41. Sierra Leone
42. Solomon Islands
43. Somalia
44. South Sudan
45. Sudan
46. Tajikistan
47. Tanzania
48. Togo
49. Uganda
50. Uzbekistan
51. Vietnam
52. Yemen
53. Zambia
54. Zimbabwe

Lower Middle Income Countries (FY 2015 Scorecard)

1. Armenia
2. Bhutan
3. Bolivia
4. Cabo Verde
5. Congo, Republic of
6. Egypt
7. El Salvador
8. Georgia
9. Guatemala
10. Guyana
11. Honduras
12. Indonesia
13. Kiribati
14. Kosovo
15. Micronesia
16. Moldova
17. Mongolia
18. Morocco
19. Nigeria
20. Papua New Guinea
21. Paraguay
22. Philippines
23. Samoa
24. Sri Lanka
25. Swaziland
26. Syria
27. Timor-Leste
28. Ukraine
29. Vanuatu

Statutorily Prohibited Countries for FY 2015 Scorecards (Included in the Data Pool for Comparative Purposes, but by Law Cannot Be Considered for Funding)

1. Bolivia
2. Burma
3. Cambodia
4. Eritrea
5. North Korea
6. Sudan
7. Syria
8. Zimbabwe

APPENDIX C: Indicator Definitions

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCA funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources. Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the Public Guide to the Indicators on MCC's public Web site at *www.mcc.gov*).

Ruling Justly

1. Political Rights: Independent experts rate countries on the prevalence of free and fair elections of officials with real power; the ability of citizens to form political parties that may compete fairly in elections; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Pass: Minimum score of 17 out of 40. Source: Freedom House

2. Civil Liberties: Independent experts rate countries on freedom of expression; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Pass: Minimum score of 25 out of 60. Source: Freedom House

3. Freedom of Information: Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a county is filtering internet content or tools. Pass: Score must be above the median score for the income group. Source: Freedom House/FRINGE Special/Open Net Initiative

4. Government Effectiveness: An index of surveys and expert assessments that rate countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

5. Rule of Law: An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness, independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

6. Control of Corruption: An index of surveys and expert assessments that rate countries on: ''grand corruption'' in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in ''state capture,'' among other things. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

Encouraging Economic Freedom

1. Fiscal Policy: The overall budget balance divided by gross domestic product (GDP), averaged over a three-year period. The data for this measure comes primarily from IMF country reports or, where public IMF data are outdated or unavailable, are provided directly by the recipient government with input from U.S. missions in host countries. All data are cross-checked with the IMF's World Economic Outlook database to try to ensure consistency across countries and made publicly available. Pass: Score must be above the median score for the income group. Source: International Monetary Fund Country Reports, National Governments, and the International Monetary Fund's World Economic Outlook Database

2. Inflation: The most recent average annual change in consumer prices. Pass: Score must be 15% or less. Source: The International Monetary Fund's World Economic Outlook Database

3. Regulatory Quality: An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation,

all compact funds for a given fiscal year can be provided to these countries.

The FY 2015 Candidate Country Report lists LICs and LMICs based on this new definition and outlines which countries are subject to the 25 percent funding cap.

among other areas. Pass: Score must be above the median score for the income group. Source: Worldwide Governance Indicators (World Bank/Brookings)

4. Trade Policy: A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Pass: Score must be above the median score for the income group. Source: The Heritage Foundation

5. Gender in the Economy: An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, and to travel freely. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

6. Land Rights and Access: An index that rates countries on the extent to which the institutional, legal, and market framework provide secure land tenure and equitable access to land in rural areas and the time and cost of property registration in urban and peri-urban areas. Pass: Score must be above the median score for the income group. Source: The International Fund for Agricultural Development and the International Finance Corporation

7. Access to Credit: An index that rates countries on rules and practices affecting the coverage, scope, and accessibility of credit information available through either a public credit registry or a private credit bureau; as well as legal rights in collateral laws and bankruptcy laws. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

8. Business Start-Up: An index that rates countries on the time and cost of complying with all procedures officially required for an entrepreneur to start up and formally operate an industrial or commercial business. Pass: Score must be above the median score for the income group. Source: International Finance Corporation

Investing in People

1. Public Expenditure on Health: Total expenditures on health by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The World Health Organization

2. Total Public Expenditure on Primary Education: Total expenditures on primary education by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: The United Nations Educational, Scientific and Cultural Organization and National Governments

3. Natural Resource Protection: Assesses whether countries are protecting up to 17 percent of all their biomes (*e.g.,* deserts, tropical rainforests, grasslands, savannas and tundra). Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

4. Immunization Rates: The average of DPT3 and measles immunization coverage rates for the most recent year available. Pass: Score must be above the median score for LICs, and 90% or higher for LMICs. Source: The World Health Organization and the United Nations Children's Fund

5. Girls Education:

a. Girls' Primary Completion Rate: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). LICs are assessed on this indicator. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

b. Girls Secondary Enrollment Education: The number of female pupils enrolled in lower secondary school, regardless of age, expressed as a percentage of the population of females in the theoretical age group for lower secondary education. LMICs will be assessed on this indicator instead of Girls Primary Completion Rates. Pass: Score must be above the median score for the income group. Source: United Nations Educational, Scientific and Cultural Organization

6. Child Health: An index made up of three indicators: (i) access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Pass: Score must be above the median score for the income group. Source: The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy

Relationship to Legislative Criteria

Within each policy category, the Act sets out a number of specific selection criteria. A set of objective and quantifiable policy indicators is used to inform eligibility decisions for MCA assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. Most are addressed by multiple indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) Promote political pluralism, equality and the rule of law (Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy);

(B) respect human and civil rights, including the rights of people with disabilities (Political Rights, Civil Liberties, and Freedom of Information);

(C) protect private property rights (Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access);

(D) encourage transparency and accountability of government (Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness); and

(E) combat corruption (Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption);

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) Encourage citizens and firms to participate in global trade and international capital markets (Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality);

(B) promote private sector growth (Inflation, Business Start-Up, Fiscal Policy, Land Rights and Access, Access to Credit, Gender in the Economy, and Regulatory Quality);

(C) strengthen market forces in the economy (Fiscal Policy, Inflation, Trade Policy, Business Start-Up, Land Rights and Access, Access to Credit, and Regulatory Quality); and

(D) respect worker rights, including the right to form labor unions (Civil Liberties and Gender in the Economy); and

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) Promote broad-based primary education (Girls' Primary Completion Rate, Girls' Secondary Education Enrollment Rate, and Total Public Expenditure on Primary Education);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (Immunization Rates, Public Expenditure on Health, and Child Health); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (Natural Resource Protection).

APPENDIX D: Subsequent Compact Considerations

MCC reporting and data in the following chart are used to assess compact performance of MCC partners nearing the end of compact implementation (*i.e.,* within the 18-month window). Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC-partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's Web site under MCC country programs (*www.mcc.gov/pages/countries*) or monitoring and evaluation (*http://www.mcc.gov/pages/results/m-and-e*) Web pages.

Topic	MCC reporting/data source	Published documents
COUNTRY PARTNERSHIP Political Will:		

Topic	MCC reporting/data source	Published documents
• Status of major conditions precedent	• Quarterly implementation reporting. • Quarterly results reporting • Survey of MCC staff	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://go.usa.gov/jMcC.* Survey questions to be posted: *http://1.usa.gov/1q0zp3n.*
• Program oversight/implementation. ○ project restructures. ○ partner response to MCA-unit capacity issues. • Political independence of MCA-unit		
Management Capacity • Project management capacity • Project performance • Level of MCC intervention/oversight • Relative level of resources required		
PROGRAM RESULTS		
Financial Results:		
• Commitments—including contributions to compact funding	• Indicator tracking tables	• Monitoring and Evaluation Plans (available by country): *http://go.usa.gov/jMcC.*
• Disbursements	• Quarterly financial reporting	• Quarterly Status Reports (available by country): *http://1.usa.gov/NfEbcI.*
Project Results:		
• Output, outcome, objective targets	• Quarterly implementation reporting.	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://1.usa.gov/QoduNl.* • Survey questions to be posted: *http://1.usa.gov/PE0xCX.*
• MCA-unit commitment to 'focus on results' • MCA-unit cooperation on impact evaluation	• Quarterly results reporting. • Survey of MCC staff • Impact evaluations.	
• Percent complete for process/outputs. • Relevant outcome data • Details behind target delays		
Target Achievements		
ADHERENCE TO STANDARDS:		
• Procurement	• Audits (Government Accountability Office and MCC's Office of the Inspector General). • Quarterly implementation reporting. • Survey of MCC staff	• Published OIG and GAO Audits. • Survey questions to be posted: *http://1.usa.gov/PE0xCX.*
• Environmental and social. • Fraud and corruption. • Program closure. • Monitoring and evaluation. • All other legal provisions.		
COUNTRY SPECIFIC		
Sustainability:		
• Implementation entity	• Quarterly implementation reporting. • Quarterly results reporting • Survey of MCC staff	• Quarterly results published as "Table of Key Performance Indicators" (available by country): *http://1.usa.gov/QoduNl.* • Survey questions to be posted: *http://1.usa.gov/PE0xCX.*
• MCC investments. Role of private sector or other donors: • Other relevant investors/investments. • Other donors/programming. • Status of related reforms. • Trajectory of private sector involvement going forward.		

[FR Doc. 2014–22652 Filed 9–23–14; 8:45 am]

BILLING CODE 9211–03–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. to 4:00 p.m., Thursday, October 16, 2014.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting of the Board of Trustees will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Chair's Remarks and Appropriations Update; (2) Consent Agenda Approval, including the Minutes of the April 24, 2014, Board of Trustees Meeting, the Udall Center for Studies in Public Policy Workplan, and resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy; Transfer of Funds to the Native Nations Institute for Leadership, Management, and Policy; and the Parks in Focus Fund, Inc., Bylaws; (3) Election of Secretary of the Board; (4) Election of Trustee to the Executive Committee; (5)

Executive Director's Remarks and Financial and Management Report; (6) Internal Controls Update; (7) U.S. Institute for Environmental Conflict Resolution Report and Discussion; (8) Communications Discussion and Udall Foundation Web site; (9) Native Nations Institute Report; (10) Education Programs Report; and (11) Internal Personnel Matters.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTIONS CLOSED TO THE PUBLIC: Executive Session to Discuss Internal Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: September 19, 2014.

Elizabeth E. Monroe,

Executive Assistant, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2014–22811 Filed 9–22–14; 11:15 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 2014. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2015–008

1. *Applicant*

Dr. Michael J. Polito, Department of Oceanography and Coastal Sciences, Louisiana State University, 1002–Y Energy, Coast & Environment Building, Baton Rouge, LA 70803

Activity for Which Permit Is Requested: Take, Import; The applicant intends to opportunistically obtain small samples of blood (1mL), and body and tail feathers from Macaroni, Gentoo, Chinstrap, and Adélie penguins from breeding sites in the South Orkneys, South Shetland, and Antarctic Peninsula regions while based aboard a commercial tour ship. These samples will be used for genetic and stable isotope studies to help interpret migratory connectivity and diet. Up to one site for Macaroni penguins, up to six sites each for Chinstrap and Adélie penguins, and up to eight sites for Gentoos will be sampled with up to 20 individuals sampled per site. Samples will be sent back to the USA for analysis.

Location: Sites in the South Orkneys, South Shetland, and Antarctic Peninsula regions.

Dates: 1 November 2014 through 31 September 2015.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–22710 Filed 9–23–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On August 8, 2014 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on September 17, 2014 to: Matthew Lazzara, Permit No. 2015–005.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–22708 Filed 9–23–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0203]

Proposed Revisions to Conduct of Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising the following sections and soliciting public comment on the following sections in Chapter 13, ''Conduct of Operations,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 13.1.1, ''Management and Technical Support Organization''; Section 13.1.2–13.1.3, ''Operating Organization''; Section 13.2.1, ''Reactor Operator Requalification Program; Reactor Operator Training''; Section 13.2.2, ''Non-licensed Plant Staff Training''; Section 13.5.1.1, ''Administrative Procedures—,General''; and Section 13.5.2.1, ''Operating and Emergency Operating Procedures.''

DATES: Submit comments by November 24, 2014. Comments received after this date will be considered, if it is practical to do so, but the Commission is only able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search

for Docket ID NRC–2014–0203. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6992 or email to: *Jonathan.DeGange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0203 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0203.

• NRC's Agencywide Documents Access and Management System (ADAMS):

You may obtain publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0203 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submissions. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Availability of Documents

The ADAMS accession numbers for the current revisions, proposed draft revisions, and redline strikeouts comparing current revisions and the proposed revisions of individual sections are available in ADAMS under the following accession numbers:

SRP Section	Current revision	Draft revision	Redline strikeout
13.1.1	ML070460302	MB13311B662	ML13330B669
13.1.2–13.1.3	ML070250009	ML13311B719	ML13330B690
13.2.1	ML070100636	ML13311B565	ML13330B645
13.2.2	ML070100637	ML14030A091	ML14051A028
13.5.1.1	ML112730402	ML13115A067	ML13115A093
13.5.2.1	ML070100635	ML13311B514	ML13311B773

III. Further Information

The NRC seeks public comments on the proposed revision of Standard Review Plan (SRP) Sections 13.1.1, 13.1.2–13.1.3, 13.2.1, 13.2.2, 13.5.1.1, and 13.5.2.1. The changes to SRP Chapter 13 reflect the current staff reviews, methods and practices based on lessons learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter. The draft SRP sections, if finalized, would provide guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) with respect to conduct of operations. The draft SRP sections would also provide guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to those same subject matters.

Following the NRC staff's evaluation of public comments, the NRC intends to finalize the revised SRP Sections 13.1.1, 13.1.2–13.1.3, 13.2.1, 13.2.2, 13.5.1.1, and 13.5.2.1 in ADAMS and post the revised sections on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.* The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC's regulations, and compliance with the SRP is not required.

IV. Backfitting and Issue Finality

Issuance of the draft SRP sections, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, do not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—was intended to apply to every NRC's action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the draft SRP sections (if finalized) in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP sections (if finalized) in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *The staff has no intention to impose the draft SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the draft SRP sections to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the draft SRPs—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRPs (if finalized) on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision, as applicable.

Dated at Rockville, Maryland, this 12th day of September, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–22733 Filed 9–23–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0204]

Quality Assurance Program Description—Design Certification, Early Site Permit and New License Applicants

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 17.5, ''Quality Assurance Program Description—Design Certification, Early Site Permit and New License Applicants.''

DATES: Comments must be filed no later than November 24, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0204. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6992 or email to: *Jonathan.DeGange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0204 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0204.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The proposed SRP Section 17.5, Revision 1, ''Quality Assurance Program Description—Design Certification, Early Site Permit and New License Applicants,'' is available in ADAMS under Accession No. ML14035A202. A redline strikeout comparing the proposed Revision 1 and current Revision 0 can be found in ADAMS under Accession No. ML14035A201.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0204 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NRC is seeking public comment on the proposed revision to SRP Section 17.5. This section has been developed to assist the NRC's staff review Quality Assurance (QA) program descriptions under part 50 of Title 10 of the *Code of Federal Regulation*s (10 CFR). The revisions to this SRP section reflect no changes in staff position, nor are new SRP acceptance criteria introduced. The changes simplify and reflect plain language throughout in accordance with the NRC's Plain Writing Action Plan. Additionally, the staff has aligned SRP Section 17.5 with Regulatory Guide (RG) 1.28, ''Quality Assurance Program Criteria (Design and Construction),'' Revision 4 and RG 1.33, ''Quality Assurance Program Requirements (Operation),'' Revision 2. The changes also reflect alignment with the latest edition of NQA–1–2008/2009a which the staff found acceptable for meeting the requirement of Appendix B to 10 CFR part 50.

Following the NRC staff's evaluation of public comments, the NRC intends to finalize SRP Section 17.5, Revision 1 in ADAMS and post it on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC's regulations, and compliance with the SRP is not required.

III. Backfitting and Issue Finality

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to the NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions.

The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 12th day of September, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–22728 Filed 9–23–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73140; File No. SR–NASDAQ–2014–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the First Trust Emerging Markets Local Currency Bond ETF of First Trust Exchange-Traded Fund III

September 18, 2014.

I. Introduction

On July 18, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' 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 the First Trust Emerging Markets Local Currency Bond ETF (''Fund'') under Nasdaq Rule 5735. The Exchange filed Amendment No. 1 to the proposal on July 25, 2014.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 5, 2014.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund III (''Trust''), which was established as a Massachusetts business trust on January 9, 2008.[5] The Fund will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified that reverse repurchase agreements will not be used by the Fund to enhance leverage.

[4] *See* Securities Exchange Act Release No. 72716 (July 30, 2014), 79 FR 45535 (''Notice'').

[5] According to the Exchange, the Trust is registered with the Commission as an investment

be a series of the Trust. First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Global Portfolios Ltd will serve as investment sub-adviser (''Sub-Adviser'') to the Fund and provide day-to-day portfolio management.[6] First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its principal investments, investments in derivatives and foreign currencies, and other investments and investment restrictions.[7]

Principal Investments

The investment objective of the Fund will be to seek maximum total return and current income. Under normal market conditions,[8] the Fund will invest at least 80% of its net assets (including investment borrowings) in bonds, notes, bills, certificates of deposit, time deposits, commercial paper, and loans issued by issuers in emerging market[9] countries (''Debt Instruments'') that are denominated in the local currency of the issuer. Debt Instruments will be issued or guaranteed (as applicable) by: (i) Foreign governments (which may be local foreign governments); (ii) instrumentalities, agencies, or other political subdivisions of foreign governments (which may be local foreign governments); (iii) central banks, sovereign entities, supranational issuers, or development agencies; or (iv) entities or enterprises organized, owned, backed, or sponsored by any of the entities set forth in the foregoing clauses (i)–(iii).[10] The Fund will invest in Debt Instruments issued by at least 13 non-affiliated issuers.

In implementing the Fund's investment strategy, the Sub-Adviser will seek to provide current income and enhance capital, while minimizing volatility. The Sub-Adviser will continually review fundamental economic and structural themes that impact long- and medium-term asset returns in emerging markets. The Sub-Adviser will also consider shorter-term market drivers such as valuations, liquidity conditions, and sentiment to determine the appropriate positioning of the Fund's investments. The Sub-Adviser will adjust the portfolio's country allocations, duration, and individual security positioning to reflect the most attractive opportunities on a continuous basis.

The Fund's exposure to any single country generally will be limited to 20% of the Fund's net assets (although this percentage may change from time to time in response to economic events). The percentage of Fund assets invested in a specific region, country, or issuer will change from time to time. The Fund intends, initially, to invest in Debt Instruments of issuers in the following countries: Brazil, Chile, Colombia, Hungary, Indonesia, Israel, Malaysia, Mexico, Nigeria, Peru, Philippines, Poland, Romania, Russia, South Africa, South Korea, Thailand, Turkey, and Uruguay. This list may change as market developments occur and may include additional issuers. The Fund will invest only in Debt Instruments that, at the time of purchase, are performing, and not in default or distressed; however, the Debt Instruments in which the Fund invests may become non-performing, distressed, or defaulted subsequent to purchase and the Fund may continue to hold such Debt Instruments. The Fund may invest in Debt Instruments of any credit quality,[11] including unrated securities, and with effective or final maturities of any length.

Liquidity will be a substantial factor in the Fund's security selection process.[12] Under normal market conditions, at least 80% of the Fund's net assets that are invested in Debt

company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission. *See* Post-Effective Amendment No. 10 to Registration Statement on Form N–1A for the Trust, dated July 8, 2014 (File Nos. 333–176976 and 811–22245). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Relief''). In addition, the Exchange states that the Commission has issued no-action relief pertaining to the Fund's ability to invest in derivatives, notwithstanding certain representations in the application for the Exemptive Relief. *See* Commission No-Action Letter (December 6, 2012).

[6] The Exchange states that neither the Adviser nor the Sub-Adviser is a broker-dealer; however, both the Adviser and the Sub-Adviser are affiliated with the Distributor (as defined herein), which is a broker-dealer. The Exchange represents that the Adviser and the Sub-Adviser have each implemented a fire wall with respect to their broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio. The Exchange further represents that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In addition, the Exchange represents that in the event (a) the Adviser or the Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer or registers as 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 or any new adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and the Adviser or Sub-Adviser or any new adviser or sub-adviser, as applicable, will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[7] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (''NAV''), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. *See supra* notes 4 and 5, respectively.

[8] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income 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.

[9] According to the Adviser and the Sub-Adviser, while there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser will look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Adviser and Sub-Adviser will consider a country to be an emerging market if it is classified by the World Bank in the lower, lower middle, or upper middle income designation for one of the past three years. This definition could be expanded or exceptions could be made depending on the evolution of market and economic conditions.

[10] Debt Instruments include fixed rate, floating rate, and index-linked debt obligations. In addition, Debt Instruments include inflation-linked bonds. Inflation-linked bonds are fixed income securities that are structured to provide protection against inflation. The value of the inflation-linked bond's principal or the interest income paid on the bond is adjusted to track changes in an official inflation measure. The value of inflation-linked bonds is expected to change in response to changes in real interest rates. Real interest rates are tied to the relationship between nominal interest rates and the rate of inflation. If nominal interest rates increase at a faster rate than inflation, real interest rates may rise, leading to a decrease in the value of inflation-linked bonds.

[11] The universe of emerging markets local currency debt currently includes securities that are rated ''investment grade'' as well as ''non-investment grade'' securities. The Fund will invest in both investment-grade and non-investment-grade securities, as well as unrated securities. There is no limit on the amount of the Fund's assets that may be invested in non-investment grade and unrated securities.

[12] In reaching liquidity decisions, the Adviser and/or the Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

Instruments will be invested in Debt Instruments that are issued by issuers with outstanding debt of at least $200 million (or the foreign currency equivalent thereof).

Investments in Derivative Instruments and Foreign Currencies

The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. Under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. Derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate, or index, and may relate to, among other things, interest rates, currencies, or currency exchange rates. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies. The Fund may invest in exchange-listed futures contracts,[13] exchange-listed options,[14] exchange-listed options on futures contracts, forward currency contracts, non-deliverable forward currency contracts, and exchange-listed currency options.[15]

The Fund will use derivative instruments primarily to hedge interest rate and foreign currency risk and to actively manage interest rate and foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure (*i.e.,* to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, or to preserve capital.[16] The Fund's investments in derivative instruments will not be used to seek to achieve a multiple or inverse multiple of an index.

The Fund will invest in foreign currencies and Debt Instruments denominated in foreign (non-U.S.) currencies, and will receive revenues in foreign currencies. In addition, the Fund may engage in foreign currency transactions on a spot (cash) basis and, as indicated above, enter into forward currency contracts.[17] A forward currency contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions (*i.e.,* non-deliverable forward currency contracts) may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in derivative instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities, and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed.

Other Investments and Investment Restrictions

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objective and, as described above, the Fund may invest in derivative instruments and foreign currencies. In addition, the Fund may invest its remaining assets as described below.

The Fund may invest up to 20% of its net assets in non-U.S. corporate bonds that are not included within the meaning of the term ''Debt Instruments'' (referred to as ''Corporate Bonds''). The Fund will invest only in Corporate Bonds that the Adviser and/or the Sub-Adviser deems to be sufficiently liquid.[18] Under normal market conditions, a Corporate Bond must have $200 million (or the foreign currency equivalent thereof) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of non-U.S. corporate bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in Corporate Bonds with less than $200 million (or the foreign currency equivalent thereof) par amount outstanding if (i) the Adviser and/or the Sub-Adviser deems such securities to be sufficiently liquid and (ii) such investment is deemed by the Adviser and/or the Sub-Adviser to be in the best interest of the Fund.

The Fund may invest up to 20% of its net assets in short-term debt securities (as described in the following paragraph) that are not included within the meaning of the term ''Debt Instruments,''[19] money market funds, and other cash equivalents, or it may hold cash. For temporary defensive purposes, during the initial invest-up period, and during periods of high cash inflows or outflows, the Fund may depart from its principal investment

[13] The Fund will use futures contracts to hedge interest rate risk and to actively manage interest rate exposure.

[14] Option purchases and sales can be used to help manage exposures (*i.e.,* exposures to interest rates and/or currencies) more efficiently in the portfolio, while limiting downside.

[15] At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[16] The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or the Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history, and its share of market participation.

[17] At least 90% of the Fund's net assets that are invested in foreign currencies will be invested in currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, *see www.bis.org.*

[18] *See supra* note 12.

[19] Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch Ratings (''Fitch'') and having a maturity of one year or less. For the sake of clarity, the foregoing parameters do not apply to Debt Instruments.

strategies and invest part or all of its assets in these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or Sub-Adviser believes that securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are the following: (1) Fixed rate and floating rate U.S. government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) short-term securities issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities;[20] (3) certificates of deposit issued against funds deposited in a bank or savings and loan association; (4) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (5) repurchase agreements,[21] which involve purchases of debt securities; (6) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (7) commercial paper, which is short-term unsecured promissory notes;[22] and (8) other securities that are similar to the foregoing.

The Fund may invest up to 20% of its net assets in the securities of money market funds (as noted above) and other exchange-traded funds (''ETFs'')[23] that invest primarily in short-term debt securities or Debt Instruments. Except for these investments in other investment companies, the Fund will not invest directly in equity securities.[24] The ETFs in which the Fund will invest will be exchange-listed and trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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 illiquid by the Adviser and/or the Sub-Adviser.[25] 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 securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or (b) securities of other investment companies.

The Fund may purchase securities on a when-issued or other delayed delivery basis and may enter into reverse repurchase agreements. Reverse repurchase agreements will not be used by the Fund to enhance leverage.

The Fund will seek to qualify for treatment as a Regulated Investment Company under Subchapter M of the Internal Revenue Code of 1986, as amended.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[27] 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 Nasdaq Rule 5735 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,[28] 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 Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. In addition, the Intraday Indicative Value,[29] as defined in Nasdaq Rule

[20] The relevant non-U.S. government, agency, or instrumentality must have a long-term debt rating of at least A by S&P Ratings, Moody's, or Fitch. For the sake of clarity, the foregoing ratings requirement does not apply to Debt Instruments.

[21] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). The Sub-Adviser will review and monitor the creditworthiness of such institutions. The Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[22] Except for commercial paper that is included within the meaning of the term ''Debt Instruments,'' the Fund will only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F1 or higher by Fitch.

[23] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country, and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies (including without limitation ETFs) in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or –3X) ETFs.

[24] It is possible, however, that an investment company in which the Fund invests will invest a portion of its assets in foreign and/or domestic equity securities.

[25] *See supra* note 12.

[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] According to the Exchange, the Intraday Indicative Value reflects an estimated intraday value of the Fund's Disclosed Portfolio and will be based upon the current value for the components of a Disclosed Portfolio. The Exchange states that the Intraday Indicative Value 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, that premiums and discounts between the Intraday Indicative Value and the market price may occur, and that the Intraday Indicative Value should not

Continued

5735(c)(3), for the Fund will be available on the NASDAQ OMX Information LLC proprietary index data service, and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[30] On each business day, before commencement of trading in Shares in the Regular Market Session [31] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[32] The Fund's custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments, as well as the estimated amount of cash (if any), constituting the creation basket for the Fund for that day. The NAV of the Fund will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange is open for business.[33]

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. Quotation and last sale information for ETFs will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Pricing information for ETFs and exchange-traded derivative instruments will be available from the exchanges on which they trade and from major market data vendors. Pricing information for Debt Instruments, forward currency contracts, non-deliverable forward currency contracts, and other debt securities in which the Fund may invest will be available from major broker-dealer firms, major market data vendors and/or Pricing Services. Money market funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or major market data vendors. The Fund's Web site, 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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the

be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

[30] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[31] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

[32] On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security 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 Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. This Web site information will be publicly available at no charge.

[33] NAV per Share will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, dividing such amount by the total number of Shares outstanding, and rounding to the nearest cent. The Fund's investments will be valued daily at market value or, in the absence of market value with respect to any investment, at fair value, in each case in accordance with valuation procedures, which may be revised from time to time, adopted by the Trust Board (''Valuation Procedures'') and in accordance with the 1940 Act. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service (''Pricing Service''), or a major market maker or dealer, or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a Pricing Service, or a major market maker or dealer. Certain securities, including Debt Instruments, in which the Fund will invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the fair value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities. Typically, Debt Instruments and other debt securities in which the Fund may invest will be valued using information provided by a Pricing Service. To the extent debt securities have a remaining maturity of 60 days or less when purchased, they will be valued at cost adjusted for amortization of premiums and accretion of discounts. Overnight repurchase agreements will be valued at cost. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers. ETFs listed on any exchange other than the Exchange will be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. ETFs listed on the Exchange will be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of ETFs traded on the Exchange, the ETFs will be valued using fair value pricing. ETFs traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such ETFs. Shares of money market funds will be valued at their net asset values as reported by such funds to Pricing Services. Exchange-traded options and futures contracts will be valued at the closing price in the market where such contracts are principally traded. Forward currency contracts and non-deliverable forward currency contracts will be valued at the current day's interpolated foreign exchange rate, as calculated using the current day's spot rate, and the thirty, sixty, ninety, and one-hundred-eighty day forward rates provided by a Pricing Service or by certain independent dealers in such contracts. Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Trust Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by the Valuation Procedures and conducted in accordance with the provisions of the 1940 Act. Valuing the Fund's securities using fair value pricing will result in using prices for those securities that may differ from current market valuations or official closing prices on the applicable exchange. Because foreign securities exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund's securities may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

Exchange, make trading in the Shares inadvisable,[34] and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in 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 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 portfolio.[35] In addition, the Exchange states that, while neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, each of the Adviser and 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 that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.[36] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[37] 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. Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

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 be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be 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.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members 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 must be in compliance with Rule 10A–3 under the Act.[38]

(6) 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 illiquid by the Adviser and/or 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.

(7) Under normal market conditions, the Fund will invest at least 80% of its net assets (including investment borrowings) in Debt Instruments. The Fund will invest in Debt Instruments issued by at least 13 non-affiliated issuers. The Fund's exposure to any single country generally will be limited to 20% of the Fund's net assets (although this percentage may change from time to time in response to economic events). The Fund will invest

[34] These reasons may include: (1) the extent to which trading is not occurring in the securities or other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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.

[35] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[36] *See supra* note 6. The Exchange states that 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, the 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.

[37] 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.

[38] *See* 17 CFR 240.10A–3.

only in Debt Instruments that, at the time of purchase, are performing.

(8) Under normal market conditions, at least 80% of the Fund's net assets that are invested in Debt Instruments will be invested in Debt Instruments that are issued by issuers with outstanding debt of at least $200 million (or the foreign currency equivalent thereof).

(9) Under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. The Fund's investments in derivative instruments will not be used to seek to achieve a multiple or inverse multiple of an index.

(10) At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(11) The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis.

(12) At least 90% of the Fund's net assets that are invested in foreign currencies will be invested in currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the BIS Triennial Central Bank Survey.

(13) The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in derivative instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities, and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed.

(14) The Fund may invest up to 20% of its net assets in Corporate Bonds. Under normal market conditions, a Corporate Bond must have $200 million (or the foreign currency equivalent thereof) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in Corporate Bonds with less than $200 million (or the foreign currency equivalent thereof) par amount outstanding if (i) the Adviser and/or the Sub-Adviser deems such securities to be sufficiently liquid and (ii) such investment is deemed by the Adviser and/or the Sub-Adviser to be in the best interest of the Fund.

(15) The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Trust Board. The Sub-Adviser will review and monitor the creditworthiness of such institutions. The Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

(16) The ETFs in which the Fund will invest will be exchange-listed and trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(17) Reverse repurchase agreements will not be used by the Fund to enhance leverage.

(18) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act [39] 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,[40] that the proposed rule change (SR–NASDAQ–2014–073), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

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[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73142; File No. SR–NASDAQ–2014–065]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares® Commodities Trust I

September 18, 2014.

On June 11, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' 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: (1) adopt listing standards for Paired Class Shares in new Rule 5713; and (2) list and trade Paired Class Shares (''Shares'') issued by AccuShares® Commodities Trust I (''Trust'') relating to the following funds pursuant to new Rule 5713: (a) AccuShares S&P GSCI® Spot Fund; (b) AccuShares S&P GSCI® Agriculture and Livestock Spot Fund; (c) AccuShares S&P GSCI® Industrial Metals Spot Fund; (d) AccuShares S&P GSCI® Crude Oil Spot Fund; (e) AccuShares S&P GSCI® Brent Oil Spot Fund; (f) AccuShares S&P GSCI® Natural Gas Spot Fund; and (g) AccuShares Spot CBOE® VIX® Fund (each individually, ''Fund,'' and, collectively, ''Funds''). The proposed rule change was published for comment in the **Federal Register** on June 23, 2014.[3] On August 6, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission received no comments on the proposal. This Order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72412 (June 17, 2014), 79 FR 35610 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 72779, 79 FR 47162 (August 12, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated September 19, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

approve or disapprove the proposed rule change.

I. Description of the Proposal

A. General Description of Paired Class Shares

''Paired Class Shares'' would be issued by a trust on behalf of a fund, each a segregated series of the trust.[7] Paired Class Shares would have values that are based on an index or other numerical variable (''Underlying Benchmark'') whose value reflects the value of assets, prices, price volatility, or other economic interests (''Reference Asset'').[8] The trust would always issue Paired Class Shares in pairs of shares of opposing classes of each fund. The values of the opposing classes would move in opposite directions as the value of the fund's Underlying Benchmark varies from its starting level, where one constituent of the pair is positively linked to the fund's Underlying Benchmark (''Up Shares'') and the other constituent is negatively linked to the fund's Underlying Benchmark (''Down Shares'').[9] The rate of linkage or leverage of a fund's Up Shares and Down Shares performance to the performance of the fund's referenced Underlying Benchmark would be one-to-one.[10] The calculation of the liquidation value of a fund attributable to each of its classes of Paired Class Shares (''Class Value''), and to each share of such class's pro rata portion of Class Value (''Class Value per Share''), would be determined according to a mathematical formula.[11]

Each fund would engage in scheduled ''regular distributions,'' and also may engage in: (1) ''special distributions,'' which would be triggered when the Underlying Benchmark exceeds a fixed rate of change since the fund's prior regular or special distribution date or inception date in the case of the first such distribution (''prior distribution date''); and (2) ''corrective distributions,'' which would be triggered when the trading price of a Paired Class Share deviates by a specified amount from its Class Value per Share for a specified period of time. Immediately after each regular, special, and corrective distribution, the fund's Underlying Benchmark participation or exposure would be reset, and the fund's Class Value per Share for each of its classes would be set to equal the lowest Class Value per Share of the two classes of Paired Class Shares. To the extent any class of Paired Class Shares of a fund has a positive net income from income or gain on class assets, after deduction of class liabilities, on a regular or special distribution date as measured from the prior distribution date, such class of Paired Class Shares would receive a distribution in cash equal to such positive net income regardless as to whether such class is entitled to a regular or special distribution on such date.

Paired Class Shares would be structured with the objective of providing investors with exposure to changes in an Underlying Benchmark. The trust issuing Paired Class Shares on behalf of a fund would actively monitor deviations of trading price to Class Value per Share. To the extent there is a material and persistent deviation of a Paired Class Share trading price from such Paired Class Share's Class Value per Share according to pre-set thresholds, the trust issuing the Paired Class Shares would distribute to holders of each class shares of the opposing class, which would leave each holder with an equal number of Up Shares and Down Shares. According to the Exchange, as each holder would own both Up Shares and Down Shares, each holder could redeem their shares through an authorized participant (''Authorized Participant'')[12] for cash at their respective Class Values per Share, which would eliminate the premium or discount.

The Exchange further states that, even if a corrective distribution is not triggered, the existence of a fund's corrective distribution feature would be expected to modify investor and Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked. The Exchange states that regular and special distributions would have the effect of delivering changes in Class Value per Share to each class of the Paired Class Shares either directly through the distribution or indirectly through the dilution caused by the distribution.[13] Thus, market expectation of regular and special distributions would cause the trading prices of a fund's Paired Class Shares to experience less-pronounced conditions of premium or discount to Class Value per Share. The Exchange also states that a trust issuing Paired Class Shares on behalf of a fund would make regular and special distributions and reset the Fund's exposure or participation in its Underlying Benchmark to avoid depleting all of the capital of one class of shares.[14] For regular distributions, Paired Class Shares would reset their Underlying Benchmark participation on regularly scheduled dates, and for special distributions, would reset whenever their Underlying Benchmark changes by a set percentage since the prior distribution date. Thus, on each reset date, a percentage change in the Underlying Benchmark would generally correspond to a percentage change in the Class Value per Share and leverage drift would be minimized.[15]

With respect to creations and redemptions of Paired Class Shares, the procedures would be similar in nature to those for other exchange traded products. Paired Class Shares of a fund would be created and redeemed in specified aggregations of equal quantities of Up Shares and Down Shares[16] at their respective Class Values per Share. Paired Class Shares could only be created or redeemed by Authorized Participants.[17] In contrast to other exchange traded products that often allow or require non-cash (in-kind) creation and redemption consideration in the form of specified securities or other assets and do not involve multiple share classes, Paired Class Shares creation and redemption transactions would only occur (a) for cash consideration, and (b) in equal pre-determined quantities of Up Shares and Down Shares.

B. Proposed Listing Standards for Paired Class Shares (NASDAQ Rule 5713)

Proposed Rule 5713(a) indicates that NASDAQ would consider for trading, whether by listing or pursuant to unlisted trading privileges (''UTP''),

[7] *See* proposed NASDAQ Rule 5713(c).

[8] *See id.* The Exchange states that other economic interests would include, for example, currencies, interest rates, non-investable economic indices, and other measures of financial instrument value. *See* Notice, *supra* note 3, 79 FR at 35611, n.11.

[9] *See* proposed NASDAQ Rule 5713(c).

[10] *See* Notice, *supra* note 3, 79 FR at 35611.

[11] *See id.* The Exchange represents that the mathematical formula would be based on the following factors: (1) the value of the fund's assets; (2) the allocation of such value based on changes in the level of the fund's Underlying Benchmark which may be limited, reduced, capped, or otherwise modified according to formula or pre-set parameters; and (3) the daily accrual of gain and income or loss on the assets of the fund, less the liabilities of the fund, as such gains, income losses, and liabilities are allocated to each class of the fund. *See* Notice, *supra* note 3, 79 FR at 35611, n.12.

[12] An Authorized Participant may place orders to create or redeem one or more ''Creation Units.'' *See* note 16 *infra.*

[13] *See* Notice, *supra* note 3, 79 FR at 35612.

[14] *See id.*

[15] The Exchange describes ''leverage drift'' as circumstances when the percentage changes in the price of shares do not correlate to the percentage changes in the Underlying Benchmark once the Underlying Benchmark increases or decreases over time. *See id.* at 35611.

[16] Each Creation Unit for each Fund would be comprised of 25,000 Up Shares and 25,000 Down Shares. *See id.* at 35612, n.14.

[17] *See id.* at 35612.

Paired Class Shares if the Paired Class Shares meet the criteria of Rule 5713. Proposed Rule 5713(b) clarifies that the rule is applicable only to Paired Class Shares. Subsection (b) also states that except to the extent inconsistent with this Rule, or unless the context otherwise requires, the By-laws and all other rules and procedures of the Board of Directors would be applicable to the trading on NASDAQ of such securities. Paired Class Shares, which are defined in proposed new subsection (c), are included within the definition of ''security'' or ''securities'' as such terms are used in the By-laws and Rules of NASDAQ.

Paired Class Shares Defined

Proposed subsection (c) specifically states that the term ''Paired Class Share'' means a security: (1) That is issued by a trust on behalf of a fund as part of a pair of shares of opposing classes whose respective underlying values move in opposite directions as the value of the fund's Underlying Benchmark (which is defined in NASDAQ Rule 5713(e)) varies from its starting level, where one constituent of the pair is positively linked to the fund's Underlying Benchmark—Up Shares—and the other constituent is inversely linked to the fund's Underlying Benchmark—Down Shares; (2) that is issued in exchange for cash; (3) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature within 90 calendar days and that serve certain functions; [18] (4) that represents a beneficial interest in the fund; (5) the value of which is determined by the underlying value of the fund that is attributable to the class of which such security is a part; [19] (6) that, when timely aggregated in a specified minimum number or amount of securities, along with an equal number or amount of the securities of the opposite class that constitute the other part of the pair, may be redeemed for a distribution of cash; and (7) that may be subject to mandatory redemption of all Paired Class Shares under specified circumstances.

Distributions

Proposed Rule 5713(d) provides that a fund may engage in scheduled regular distributions, special distributions that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the prior distribution, and corrective distributions that are automatically triggered when the trading price of a Paired Class Share deviates by a specified amount from its underlying value for a specified period of time.

Designation

Proposed Rule 5713(e) states that NASDAQ may trade, either by listing or pursuant to UTP, Paired Class Shares whose values are based on an Underlying Benchmark whose value reflects the value of a Reference Asset. Each issue of Up Shares or Down Shares of a fund would be designated as a separate series and would be identified by a unique symbol.

Listing Standards

Proposed Rule 5713(f) sets forth the initial and continued listing criteria. The Exchange proposes to adopt three initial listing requirements in Rule 5713(f)(i): (1) NASDAQ would establish a minimum number of Paired Class Shares for each fund required to be outstanding at the time of commencement of trading on NASDAQ; (2) NASDAQ would obtain a representation from the trust on behalf of each fund that the underlying value per share of each Up Share and Down Share would be calculated daily and that the underlying values and information about the assets of the fund would be made available to all market participants at the same time; and (3) if the Underlying Benchmark is maintained by a broker-dealer or investment advisor, the broker-dealer or investment advisor would be required to erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.

Under proposed NASDAQ Rule 5713(f)(ii), NASDAQ would consider the suspension of trading in, or removal from listing of, a fund's Paired Class Shares under any of the following circumstances: (1) If, following the initial twelve-month period beginning upon the commencement of trading of the Paired Class Shares, (a) there are fewer than 50 record or beneficial holders of the fund's Up Shares or Down Shares for 30 or more consecutive trading days, (b) the fund has fewer than 50,000 Up Shares or 50,000 Down Shares issued and outstanding, or (c) the combined market value of all shares of a fund issued and outstanding is less than $1,000,000; (2) if the intraday level of the Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset, is no longer calculated or available [20] on at least a 15-second delayed basis during the Regular Market Session [21] when the fund's Paired Class Shares trade on NASDAQ from a source unaffiliated with the sponsor, the custodian, the trustee of the trust, the fund, or NASDAQ that is a major market data vendor (*e.g.,* Reuters or Bloomberg); (3) if the underlying value per share of each Up Share and Down Share of a fund is no longer made available on a daily basis to all market participants at the same time; (4) if the estimate of the value of a share of the series of Paired Class Shares (''Intraday Indicative Value'') of the underlying value of each listed Up Share and Down Share of the fund is no longer made available on at least a 15-second delayed basis by a major market vendor during the time the Paired Class Shares trade on NASDAQ during the Regular Market Session; (5) if the ''firewall'' erected around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark is no longer in place; or (6) if such other event occurs or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Proposed Rule 5713(f)(ii) also provides that upon termination of a fund, Paired Class Shares issued in connection with the fund must be

[18] These functions are: (1) Covering the fund's expenses; (2) providing income distributions to investors, based on income (after expenses) from the financial instruments held by the fund; (3) providing cash proceeds for regular and special distributions to be made in cash in lieu of Paired Class Shares; and (4) providing cash proceeds to be paid upon the redemption of Paired Class Shares. *See id.* at 35612, n.15. Thus, for example, upon redeeming 100 Paired Class Shares an investor would receive cash equal to the NAV per share for each share redeemed. Moreover, a trust issuing Paired Class Shares on behalf of a fund may engage in regular distributions, special distributions, and corrective distributions. *See* proposed NASDAQ Rule 5713(d).

[19] The Paired Class Shares value would either: (1) Increase as a result of an increase in the Underlying Benchmark and decrease as a result of a decrease in the Underlying Benchmark (in the case of an Up Share); or (2) increase as a result of a decrease in the Underlying Benchmark and decrease as the result of an increase in the Underlying Benchmark (in the case of a Down Share). *See* proposed NASDAQ Rule 5713(c)(5).

[20] The Underlying Benchmark may no longer be available due to a number of circumstances, including when the publication of the Underlying Benchmark is no longer economically viable, the data used to compute the Underlying Benchmark is no longer available, or the Underlying Benchmark methodology no longer tracks the same Reference Asset. *See* Notice, *supra* note 3, 79 FR at 35613, n.21.

[21] NASDAQ market makers are open for business during normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. *See* NASDAQ Rule 4617. The Exchange states that it has trading hours from 4:00 a.m. until 8:00 p.m. Eastern Time, with trading sessions before and after normal market hours (''Pre-Market'' and ''Post-Market'') and appropriate rules to facilitate transactions during all trading sessions. Normal market hours are also known as the Regular Market Session. *See, e.g.,* Rules 5705 (ETFs: portfolio depository receipts and index fund shares) and 5710 (securities linked to the performance of indexes and commodities (including currencies)).

removed from listing. A fund may terminate in accordance with the provisions of the fund's prospectus, which may provide for termination if the underlying value of the Paired Class Shares falls below a specified amount.

Additional Provisions of Proposed Rule 5713

Provisions relating to the term, trustee, and voting rights are set forth in proposed NASDAQ Rule 5713(f)(iii)–(v). Proposed subsection (f)(iii) states that the stated term of a fund shall be as stated in the fund's prospectus. However, a fund may be terminated under such earlier circumstances as may be specified in the prospectus. Proposed subsection (f)(iv) states that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. In addition, no change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ. Regarding voting rights, subsection (f)(v) states that such rights, if any, would be as set forth in the applicable fund's prospectus.

Proposed Rule 5713(g) sets forth a limitation of NASDAQ liability with respect to errors, omissions, or delays in calculating or disseminating any applicable Underlying Benchmark value, the underlying value of the fund and its Paired Class Shares, distribution values or any other information relating to the purchase, redemption, or trading of the Paired Class Shares.

With respect to the activity and disclosure of Market Maker accounts, proposed NASDAQ Rule 5713(h) states that an Exchange member must file with NASDAQ, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in the applicable securities or physical commodities included in (or options, futures, or options on futures on) the Reference Asset of the Underlying Benchmark of any Paired Class Shares (or any other derivatives based on the Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark) that the registered Market Maker may have or over which it may exercise investment discretion. In addition, proposed NASDAQ Rule 5713(h)(i) prohibits registered Market Makers from trading in the applicable securities or physical commodities included in (or options, futures, or options on futures on) the Reference Asset of the Underlying Benchmark of any Paired Class Shares (or any other derivatives based on the Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark) in an account in which the registered Market Maker, directly or indirectly, controls trading activities, or in which the registered Market Maker has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ as required by this proposed Rule. Proposed Rule 5713(h)(ii) provides that, in addition to the existing obligations under NASDAQ rules regarding the production of books and records (*see, e.g.,* NASDAQ Rule 4625), a registered Market Maker in Paired Class Shares must make available to NASDAQ such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable securities or physical commodities included in, or options, futures, or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, as may be requested by NASDAQ.

The Exchange also proposes six Commentaries to Rule 5713. Proposed Commentary .01 provides that members must provide all purchasers of newly issued Paired Class Shares a prospectus for the fund. Proposed Commentary .02 states that transactions in Paired Class Shares would occur during the trading hours specified in Rule 4120. Proposed Commentary .03 states that NASDAQ would file separate proposals under Section 19(b) of the Act before trading any new series of Paired Class Shares. Proposed Commentary .04 states that prior to a substitute or replacement Underlying Benchmark being selected for a fund, NASDAQ must file a related proposed rule change pursuant to Rule 19b–4 under the Act to continue trading the Paired Class Shares. Proposed Commentary .05 states that subsection 5713(f)(ii)(D), as discussed previously, is not applicable as a continuing listing standard if a fund's Paired Class Shares have been approved for listing and trading by the Commission under Section 19(b)(2) of the Act without the requirement that an estimate of the Intraday Indicative Value be made available on at least a 15-second delayed basis by a major market vendor during the time the Paired Class Shares trade on NASDAQ during the Regular Market Session. Lastly, proposed Commentary .06 states that NASDAQ would implement written surveillance procedures for trading the Paired Class Shares.

Additional details of proposed NASDAQ Rule 5713 can be found in the Notice and Exhibit 5 thereto.[22]

C. Description of the Trust, the Funds, and the Shares

The Exchange has made the following representations and statements in describing, among other things, the Funds, the corresponding Underlying Benchmarks, arbitrage, and distributions.[23]

The Shares would be offered by the Trust, which is a Delaware statutory trust.[24] AccuShares Investment Management, LLC, a Delaware limited liability company, is the sponsor (''Sponsor''), and Wilmington Trust, N.A., a national banking association, would serve as the trustee (''Trustee'') and the investment advisor (''Investment Advisor'') for each Fund. The Investment Advisor, which is chosen by the Sponsor, would be responsible for investing each Fund's available cash in bills, bonds, and notes issued and guaranteed by the United States Treasury (''United States Treasury Securities'') with remaining maturities of 90 days or less (''Eligible Treasuries'') and over-night repurchase agreements collateralized by United States Treasury Securities (''Eligible Repos,'' and together with cash and Eligible Treasuries, collectively, ''Eligible Assets''). State Street Bank and Trust Company (''State Street''), a Massachusetts trust company, would serve as the custodian, administrator, and transfer agent (''Custodian,'' ''Administrator,'' or ''Transfer Agent'') for each Fund.[25]

[22] *See* Notice, *supra* note 3. *See also http://www.sec.gov/rules/sro/nasdaq/2014/34-72412-ex5.pdf.*

[23] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including risks, Class Value and Class Value per Share calculations, creation and redemption procedures, fees, disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice, *supra* note 3, and Registration Statement, *infra* note 24, respectively.

[24] The Exchange states that the offer and sale of Paired Class Shares of each Fund would be registered with the Commission by means of the Trust's registration statement on Form S–1 (''Registration Statement'') under the Securities Act of 1933 (''Securities Act''). According to the Exchange, the Registration Statement was filed on March 18, 2014 and will be effective as of the date of such offer and sale. *See* Notice, *supra* note 3, 79 FR at 35615.

[25] The Custodian would hold each Fund's securities and cash and would perform each Fund's Class Value and Class Value per Share calculations. As Administrator, State Street would, among other

Continued

The Underlying Benchmark of each Fund, other than the AccuShares Spot CBOE VIX Fund (''VIX Fund''), would be constructed, calculated, and published by S&P® Dow Jones Indices LLC (''Index Provider'').[26] The CBOE Volatility Index® (''VIX''), which is the Underlying Benchmark of the VIX Fund, would be constructed by the Chicago Board Options Exchange, Incorporated (''CBOE''), and calculated and published by the Index Provider. Both the Index Provider and CBOE are unaffiliated with the Trust and the Sponsor.[27] In accordance with proposed NASDAQ Rule 5713(f)(i)(C), to the extent that an Underlying Benchmark is maintained by a broker-dealer or investment advisor, such broker-dealer or investment advisor would erect a ''firewall'' around personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.

Description of the Underlying Benchmarks

Each S&P GSCI Commodity Index would be constructed, calculated, and published by the Index Provider. The S&P GSCI Spot index (''S&P GSCI''), which would serve as the Underlying Benchmark for the AccuShares S&P GSCI Spot Fund, is an index on a production-weighted basket of currently 24 principal physical commodities that satisfy criteria established by the Index Provider. The commodities included in the S&P GSCI would be weighted, on a production basis, to reflect the relative significance (in the view of the Index Provider) of those commodities to the world economy. The referenced commodities within the S&P GSCI Agricultural and Livestock Spot Index (''S&P GSCI–AL'') and the S&P GSCI Industrial Metals Spot Index (''S&P GSCI–IN'') would each receive weightings that differ from the weightings they receive in the broader S&P GSCI.[28] The value of the S&P GSCI has been normalized (''Normalizing Constant'') such that its hypothetical level on January 2, 1970 was 100.

The S&P GSCI Crude Oil Spot Index (''S&P GSCI–CL''), the S&P GSCI Brent Crude Oil Spot Index (''S&P GSCI–BR''), and the S&P GSCI Natural Gas Spot Index (''S&P GSCI–NG'') are single-commodity sub-indices of the S&P GSCI.[29] The S&P GSCI–AL and the S&P GSCI–IN are sub-indices of the S&P GSCI that comprise related groups of commodities otherwise contained in the broader S&P GSCI. All of the S&P GSCI Commodity Indices are the spot versions of such indices.

Each S&P GSCI Commodity Index would reflect only the daily settlement prices (''Daily Contract Reference Prices'') of commodities futures contracts that are the components of such index (''Designated Contracts'') on each business day. Each S&P GSCI Commodity Index would be based on the daily settlement prices of first nearby contract, except during the five-day ''Roll Period'' during which the ''Roll Contract Expirations'' shift to the next nearby contract and during which the weighting of the first nearby contract is decreased in favor of the next expiry contract 20 percent per day. Immediately following the Roll Period, the next expiry contract would be used for the index until the next following Roll Period. When shifting to a next nearby contract, contract quantities remain consistent, and relative values between the nearby and next nearby contracts could vary. The daily value of the S&P GSCI Commodity Indices, therefore, would be calculated solely based on the commodity production weightings assigned by the Index Provider of each Designated Contract, and of the Daily Contract Reference Prices of the nearby contract expiration of each Designated Contract, and it would not reflect any roll yield.

The quantity of each of the contracts included in the S&P GSCI Commodity Indices would be determined on the basis of a five-year average, referred to as the ''world production average,'' of the production quantity of the underlying commodity, as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook, and other official sources. However, if a commodity is primarily a regional commodity—based on its production, use, pricing, transportation, or other factors—the Index Provider would calculate the weight of that commodity based on regional, rather than world, production data. At present, natural gas is the only commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

The Exchange states that a complete and current description of the eligibility criteria, weighting, and calculation methodologies the Index Provider would utilize in selecting commodities and Designated Contracts and their weights for an S&P GSCI Commodity Index can be found in the S&P GSCI Handbook, which is available at: *www.spindices.com/documents/methodologies/methodology-sp-gsci.pdf.*

The Underlying Benchmark of the VIX Fund would be the VIX. The VIX is constructed by CBOE and calculated and published by the Index Provider. The VIX would seek to serve as a measure of the expected volatility of the S&P 500® total return stock index (''S&P 500 Index''). It is an up-to-the-minute market estimate of expected volatility, calculated by using real-time S&P 500 Index option (ticker: SPX) bid/ask quotes. The SPX is the Reference Asset of the VIX. Each business day, the VIX uses SPX options with at least eight days left to expiration and then weights them to yield a constant, 30-day measure of the expected volatility of the S&P 500 Index.

The VIX is based on real-time option prices, which reflect investors' consensus view of future expected stock market volatility. During periods of financial stress, which are often accompanied by steep market declines, SPX options prices—and the VIX—tend to rise. As expectations of large market moves subside, SPX option prices tend to decline, which in turn causes the VIX to decline.

The VIX is quoted in percentage points and translates, roughly, to the expected movement in the S&P 500 Index over the next 30-day period, which is then annualized. The VIX is based on the spot variation of its Reference Asset and, as such, does not

things, perform or supervise the performance of services necessary for the operation and administration of the Funds (other than making investment decisions or providing services provided by other service providers), including accounting and other fund administrative services. As Transfer Agent, State Street would, among other things, provide transfer agent services with respect to the creation and redemption of Creation Units. The Transfer Agent would receive from Authorized Participants creation and redemption orders and deliver acceptances and rejections of such orders to Authorized Participants as well as coordinate the transmission of such orders and instructions among the Sponsor and the Authorized Participants.

[26] The Underlying Benchmarks for all of the Funds other than the VIX Fund are: (1) the S&P GSCI Spot index; (2) the S&P GSCI Agricultural and Livestock Spot index; (3) the S&P GSCI Industrial Metals Spot index; (4) the S&P GSCI Crude Oil Spot index; (5) the S&P GSCI Brent Crude Oil Spot index; and (6) the S&P GSCI Natural Gas Spot index, (collectively, ''S&P GSCI Commodity Indices'').

[27] The Exchange represents that, should the Index Provider become affiliated with the Trust and the Sponsor, an appropriate firewall would be required. *See* Notice, *supra* note 3, 79 FR at 35615, n.31.

[28] The S&P GSCI–AL comprises contracts referencing the following Reference Assets: Corn, Chicago Wheat, Soybeans, Live Cattle, Lean Hogs, Sugar, Cotton, Kansas Wheat, Coffee, Feeder Cattle, and Cocoa. The S&P GSCI–IN comprises contracts referencing the following Reference Assets: LME Copper, Aluminum, Nickel, Zinc, and Lead. The S&P GSCI comprises contracts referencing the Reference Assets of the S&P GSCI–AL and the S&P GSCI–IN, as well as West Texas Intermediate Crude Oil, Brent Crude Oil, Gas Oil, Heating Oil, RBOB Gasoline, Gold, Natural Gas, and Silver.

[29] The S&P GSCI–CL, the S&P GSCI–BR, and the S&P GSCI–NG comprise, respectively, contracts referencing West Texas Intermediate Crude Oil, Brent Crude Oil, and Natural Gas.

incorporate the effects of closing out an expiring contract and establishing a position in the next available contact. Consequently, the VIX does not reflect any roll yield in option contract turnover and is properly viewed as a spot measure of 30-day expiry expected S&P 500 Index volatility measured through SPX price movements. The Exchange states that additional information regarding the VIX can be found at CBOE's Web site at *www.cboe.com/VIX.*

Description of the Funds

As is the case with Paired Class Shares generally, as discussed above, the Trust would issue Shares on behalf of a Fund in offsetting pairs, where one constituent of the pair, the Up Shares, is positively linked to the Fund's Underlying Benchmark and the other constituent, the Down Shares, is negatively linked to the Fund's Underlying Benchmark. Therefore, the Trust would only issue, distribute, maintain, and redeem equal quantities of Up Shares and Down Shares on behalf of a Fund at all times. The Trust would create and redeem Paired Class Shares on behalf of a Fund in Creation Units only for cash. Once created, a Fund's Paired Class Shares would trade independently of each other on the Exchange. As generally described above for all Paired Class Shares, the cash proceeds from the creation of Paired Class Shares by a Fund may be held by a Fund only in Eligible Assets that serve certain functions.[30] Each Fund would invest its assets to preserve its capital while, at the same time, earning an investment return that is consistent with such preservation of capital.

Fund Assets

Each Fund would maintain its Eligible Assets in a separate custody account maintained by the Fund's Custodian that would be segregated from the assets of any other series of the Trust, the Custodian, or any other customer of the Custodian. If, on any date, there is cash on deposit in a Fund's custody account that is not required to make payments or to make distributions to shareholders, all such cash would be either held as cash or invested by the Investment Advisor, acting in accordance with the Investment Advisory Agreement and on behalf of the Fund, in cash bank deposits, Eligible Treasuries, or Eligible Repos.[31]

Each Fund would invest its cash in Eligible Treasuries or Eligible Repos in order to generate income to pay its fees, expenses, and taxes and to generate income to shareholders from cash on deposit in the Fund that would not be immediately needed for other purposes pending a later net income distribution. Each Fund would hold a portion of its assets in Eligible Repos, because these agreements mature and convert to cash within one business day, which would make it possible for the Fund to have sufficient cash available on each business day to be able to effect any redemptions of its Creation Units.

Except on a distribution date on which such proceeds would be needed to effect redemptions or net income distributions or to distribute cash for regular and special distributions, the Investment Advisor, on behalf of the Fund, would reinvest on a daily basis the proceeds received upon the maturity of the Fund's Eligible Treasuries and Eligible Repos in Eligible Assets. The Investment Advisor would also invest in Eligible Assets all of a Fund's cash funds delivered to it in connection with each creation of the Fund's Creation Units. On the liquidation of a Fund, all of the proceeds of the Eligible Treasuries and Eligible Repos held by the Fund would be used to make final cash liquidating payments (less the fees, expenses, and taxes of the Fund not assumed by the Sponsor) to the Fund's shareholders. Upon any redemption of a Fund's Creation Units by an Authorized Participant, the cash of the Fund would be used to pay the proceeds of such redemption to the redeeming Authorized Participant.

Distributions

With respect to the specific distributions applicable to the Funds, as more generally described above for all Paired Class Shares, each Fund would be expected to engage in four types of distributions as of certain distribution dates. The first type of distribution, regular distributions, would occur at regular intervals for each Fund. Regular distributions would generally occur as long as there has been a change in the level of the Underlying Benchmark (and, in the case of the VIX Fund, the Daily Amount) as of the distribution date since the prior distribution date. Secondly, each Fund would expect to make net income distributions on each regular or special distribution date to the shareholders of any class of such Fund whose class Net Investment Income is positive as of such distribution date.

The other two types of distributions would not be expected to occur regularly and are mechanisms intended to protect the interests of investors by providing them with the expected value of their Shares upon specified events. Thus, the third type, special distributions, would occur where the change in the Underlying Benchmark exceeds a specified percentage value since the prior distribution date but before the next regular distribution. The fourth type, corrective distributions, would occur only if the trading price of a class' Shares on the Exchange deviates for a specified length of time over a specified threshold amount from the Class Value per Share of such class.

Regular Distributions. Each Fund would engage in regular distributions on either a monthly or quarterly basis as set forth in the applicable Fund prospectus.[32] After each regular distribution, the applicable Fund would reset its Share Index Factors. An investor receiving distributions in cash could then choose to either do nothing or reinvest all or part of the distribution in the desired class of Shares to gain more economic exposure to the Underlying Benchmark.

An investor receiving distributions in pairs of Shares may: (1) Sell the Shares received for cash and maintain the proceeds in cash; (2) sell only the opposing class of Shares received and maintain proceeds in cash; or (3) sell only the opposing class of Shares received and reinvest the proceeds in the desired class of Shares to gain more economic exposure to the Underlying Benchmark.

Special Distributions. Special distributions would be a measure designed to protect the Funds and the investors in the Funds during periods when the Fund's Underlying Benchmark experiences unexpected

[30] *See supra* note 18 and accompanying text.

[31] Eligible Repos would: (1) be entered into with a seller that is a bank with at least one billion U.S. dollars in assets or a registered securities dealer that is deemed creditworthy by the Fund's investment advisor; (2) terminate the business day following their execution; (3) be denominated in U.S. dollars; and (4) be ''collateralized fully,'' meaning that (a) the value of the assets collateralizing the Eligible Repo (less transaction costs, including loss of interest, that the Fund reasonably could expect to incur if the seller were to default) would be, and during the entire term of the Eligible Repo would remain, at least equal to the resale price payable by the seller under the Eligible Repo, (b) such assets would be held by a custodian bank for the benefit of the Fund during the term of the Eligible Repo, and (c) such assets would consist entirely of United States Treasury Securities.

[32] The VIX Fund and the AccuShares S&P GSCI Natural Gas Spot Fund would engage in monthly regular distributions on the 15th day of each calendar month (or the next following business day if the scheduled regular distribution date is not a business day). Each of the other five Funds would engage in quarterly regular distributions on March 15, June 15, September 15 and December 15 of each year (or the next following business day if the scheduled regular distribution date is not a business day).

degrees of volatility. The Funds would effect a special distribution and a resetting of the Share Index Factors between regular distribution dates where the change in the Underlying Benchmark exceeds a specified percentage value since the prior distribution date, as set forth in the applicable Fund prospectus.[33] A reverse share split may also be executed in conjunction with any special distributions.

Value of Regular and Special Distributions. When the Class Values per Share of the Up Shares and the Down Shares of a Fund differ at the close of a Measuring Period (after adjusting for any net income distribution for such Shares), the Share class with the higher Class Value per Share would be expected to receive a regular or special distribution on that distribution date.

The value of a distribution relating to each of a Fund's Up Shares (where such Shares are valued at their respective Class Values per Share) entitled to a distribution on a distribution date would be equal to the positive amount, if any, of the closing Class Value per Share of the Fund's Up Shares (after adjusting for any net income distribution) less the closing Class Value per Share of the Fund's Down Shares (after adjusting for any net income distribution).

The value of a distribution relating to each of a Fund's Down Shares (where such Shares are valued at their respective Class Values per Share) entitled to a distribution on a distribution date would be equal to the positive amount, if any, of the closing Class Value per Share of the Fund's Down Shares (after adjusting for any net income distribution) less the closing Class Value per Share of the Fund's Up Shares (after adjusting for any net income distribution).

Regular and special distributions would ordinarily be made in the form of cash during the first six months of trading in a Fund's Shares. Thereafter, each Fund would pay all or any part of any regular or special distribution in Paired Class Shares instead of cash where further cash distributions would adversely affect the liquidity of the market for the Fund's Shares[34] or impact the Fund's ability to meet minimum asset size Exchange listing standards.[35] All payments made in Paired Class Shares would be made in equal numbers of Up and Down Shares. To the extent a Share distribution would result in the distribution of fractional Shares, cash in an amount equal to the value of the fractional Shares would be distributed rather than fractional Shares.

Corrective Distributions. Corrective distributions would occur for the Funds after the trading price of a Fund's Shares deviates materially and persistently from Class Value per Share according to fixed thresholds as set forth in the applicable Fund prospectus. Corrective distributions would be a formulaic process that continuously measures for any material deviation between the Class Value per Share of the Shares and the closing trading prices of the Shares as reported on the Exchange. After a specified period of time following a Fund's inception, if the closing trading prices of the Shares of the Fund deviate significantly from their Class Value per Share by a specified amount over a specified period of time, as set forth in the applicable Fund prospectus, the Fund would make a corrective distribution in addition to a regular distribution or special distribution on the next scheduled regular distribution date or special distribution date if previously triggered.[36] In a corrective distribution, each Share (including those to be distributed on the related regular or special distribution date) would be resolved into a risk neutral position comprising an equal number of Up Shares and Down Shares. The corrective distribution would distribute: (1) a number of Down Shares equal to the number of outstanding Up Shares to the Up Shares holders; and (2) a number of Up Shares equal to the number of outstanding Down Shares to the Down Shares holders.

Net Income Distributions. Whenever a Fund engages in a regular or special distribution, such Fund would determine whether any of its classes has a positive Net Investment Income. Shareholders of any class that has a positive Net Investment Income would receive a net income distribution. Net income distributions may occur for any class regardless of whether such class receives a regular or special distribution on that date.

Share Splits. Reverse share splits would be declared to maintain a positive Class Value per Share for either the Up Shares or the Down Shares of a Fund should the Class Value per Share of either class approach zero. Reverse share splits would be expected to occur in the context of special distributions and are expected to be triggered after Class Value per Share declines below a specified dollar threshold as set forth in the applicable Fund prospectus.[37] No other share splits would be expected to occur, although the Sponsor would have the right to declare in its sole discretion a share split, either forward or reverse, pursuant to the Trust Agreement. In the event of a reverse share split, the Share Index Factors and the per-Share calculations for Net Investment Income would be adjusted to reflect the split to maintain continuity in tracking the Fund's Underlying Benchmark.

Notification. Each Fund engaging in a regular distribution, a special distribution, a corrective distribution, or a net income distribution would provide at least three business days' advance notice (or longer advance notice as may be required by the Exchange)[38] of such an event. Each Fund engaging in a share split would provide at least ten calendar days' advance notice (or longer advance notice as may be required by the Exchange)[39] of such an event. In each instance, the Sponsor would notify the Exchange, and post a notice of such event and its details on the Sponsor's Web site (*www.AccuShares.com*).

With respect to regular distributions, the information provided would consist of the schedule of distributions and associated distribution dates, and a notification, as of the record date for such regular distribution, on the Sponsor's Web site as to whether or not the regular distribution would occur. For regular distributions that occur on schedule, the Sponsor would cause a press release to be issued identifying the receiving class, the amount of cash, the amount of Paired Class Shares (if any), and any other information the Sponsor deems relevant regarding the distribution and post such information on the Sponsor's Web site. This information would also be contained in

[33] The percentage value for special distributions for each of the Funds would be 75%. *See* Notice, *supra* note 3, 79 FR at 35619, n.41.

[34] The Fund would engage in distributions of Paired Class Shares to maintain a net asset value sufficient to meet the net asset value expectations of certain institutional shareholders that condition their investment in exchange-traded products to only those products having more than a minimum amount of net assets. According to the Exchange, Paired Class Share distributions would have the effect of preserving a Fund's net assets (aggregate Class Values) to attract and retain these institutional investors and thereby increase the liquidity of the market for a Fund's Shares. *See id.* at 35619, n.42.

[35] *See* proposed NASDAQ Rule 5713(f)(ii)(A)(iii).

[36] The corrective distribution threshold for the VIX Fund would be a 10.0% deviation for three consecutive business days. The corrective distribution threshold for the AccuShares S&P GSCI Natural Gas Spot Fund would be a 7.5% deviation for three consecutive business days. The corrective distribution threshold for each of the other five Funds would be a 5.0% deviation over three consecutive business days. *See* Notice, *supra* note 3, 79 FR at 35620, n.44.

[37] The specified dollar threshold for each Fund would be $4.00. *See id.* at 35620, n.45.

[38] The Exchange states that it may determine that a longer notice is advisable in certain circumstances (*e.g.,* an extended, or unexpected, market break).

[39] *See id.*

the Fund's quarterly and annual reports on Forms 10–Q and 10–K and annual reports to shareholders.

With respect to special distributions, corrective distributions, and share splits, the information provided would include the relevant ex-, record, and payment dates for each such event and relevant data concerning each such event. These events would also be reported in press releases, on the Sponsor's Web site, and in current reports on Form 8–K as material events, as well as in the Fund's periodic reports. In addition, notice of net income distributions for each class of a Fund, if any, would also be included in the notifications of regular, special, and corrective distributions.

Additional details regarding the Trust, the Funds, and the Shares can be found in the Notice.[40]

II. Proceedings to Determine Whether to Approve or Disapprove SR–NASDAQ–2014–065 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[41] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[42] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, 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,'' and ''to protect investors and the public interest.''[43]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[44]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 15, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 29, 2014.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[45] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission requests that commenters consider the following:

1. As described above, the Exchange represents in the proposed rule change that Paired Class Shares would engage in three different types of distributions: regular, special, and corrective. According to the Exchange, market expectation of these distributions would cause the trading prices of Paired Class Shares to experience less-pronounced conditions of premium or discount to Class Value per Share. Further, according to the Exchange, corrective distributions would eliminate then-existing premiums or discounts and would prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked. What are commenters' views on the effect that the distributions would have on premiums and discounts between the trading price of the Paired Class Shares and their respective Class Value per Share? Do commenters agree with the Exchange's assertions? Why or why not?

2. What are commenters' views on whether retail investors and other market participants would be able to understand the Funds' redemption mechanics and the types and timing of distributions in which the Funds would engage? For example, do commenters believe that retail investors in one class of the two classes of shares could be reasonably expected to understand the practical implications of receiving, as a result of certain distributions, shares of the opposing class, which would leave the investor with an equal number of Up Shares and Down Shares, even though they started with only one class of the two classes of shares? Do commenters believe that retail investors could be reasonably expected to understand the actions they would have to take following such a distribution to reestablish the exposure to the index that they had prior to the distribution?

3. In the proposed rule change, the Exchange represents that each fund issuing Paired Class Shares would periodically reset its exposure to its Underlying Benchmark to avoid depleting all of the capital of one class of shares and to avoid ''leverage drift.'' What are commenters' views on whether retail investors and other market participants would be able to understand the effect of these ''resets'' on their investment in the Funds?

4. With respect to the trading of Paired Class Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what ways?

5. Although each of the Funds would be based on an index, none of the Funds would actually invest its portfolio assets in an effort to match or exceed the performance of its underlying index. Instead, each Fund would hold short-term government securities (and repurchase agreements on those securities) and would allocate the value of its portfolio between holders of Up Shares and holders of Down Shares, depending on changes in the underlying index. What are commenters' views with respect to whether retail investors will understand this aspect of the Funds, and what are commenters' views about whether it is appropriate for an exchange-traded product to be structured in this way?

Comments may be submitted by any of the following methods:

[40] *See supra* note 3.

[41] 15 U.S.C. 78s(b)(2)(B).

[42] *Id.*

[43] 15 U.S.C. 78f(b)(5).

[44] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[45] *See supra* note 3.

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–2014–065 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 Numbers SR–NASDAQ–2014–065. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–065 and should be submitted on or before October 15, 2014. Rebuttal comments should be submitted by October 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

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[46] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73143; File No. SR–OCC–2014–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Apply Enhanced Post-Trade Price Reasonableness Checks on Confirmed Trades in Standardized Options and Futures Options To Increase the Likelihood That Erroneous Trades Will Be Identified and Voided

September 18, 2014.

On July 21, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2014–16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 5, 2014.[3] The Commission received one comment on the proposal.[4] On August 20, 2014, OCC filed Amendment No. 1 to the proposal.[5] The Commission is publishing this notice to solicit comments on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal

OCC proposed to add an interpretation and policy concerning its administration of existing Article VI, Section 7(c) of the By-Laws and to implement price reasonableness checks in connection with the reporting of confirmed trades in standardized options and futures options to OCC by an exchange under Article VI, Section 7 and Rule 401. Article VI, Section 7(c) provides that an exchange may instruct OCC to disregard a confirmed trade previously reported to OCC for clearance and settlement under certain circumstances.[6] One such circumstance is a determination that ''new or revised trade information was required to properly clear the transaction.'' To promote OCC's ability to protect itself and clearing members from the negative effects of clearing trades in standardized options and futures options that may contain erroneous premium information, OCC would apply to accepted trades a premium price threshold triggering further scrutiny of trades that exceed it.

Background

According to OCC, the Board of Directors and Risk Committee have been evaluating risk controls with respect to trades priced significantly away from current market prices and the risks they present to OCC.[7] OCC stated that it anticipates the proposed price reasonableness review process would be put in place while it also develops other post-trade risk controls for potential implementation.

Post-Trade Price Validation Process

According to OCC, earlier this year, a trade data entry parameter in OCC's systems that does not allow OCC to accept a trade having a premium price of more than $9,999.99 per contract prevented OCC from accepting erroneous trades that resulted from a trading algorithm error of a customer of a clearing member. If the systems parameter had not prevented OCC from accepting the trades, the settlement obligation for the clearing member for these trades alone could have exceeded $800 million. This amount would have been in addition to any other settlement obligation of the clearing member.

In light of the incident, and to promote the protection of OCC and clearing members from erroneous trades, OCC's Risk Committee directed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 32718 (July 30, 2014), 79 FR 45527 (August 5, 2014) (SR–OCC–2014–16) (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Ellen Greene, Vice President, Securities Industry and Financial Markets Association, dated August 21, 2014. The commenter strongly agreed with OCC's proposal and believed that it is appropriate that the Commission approve the proposal. OCC did not respond to the comment.

[5] In Amendment No. 1, OCC amended the proposal to further clarify the criteria OCC will use to identify trades for referral to exchanges for evaluation under the obvious error or other applicable exchange rules. Specifically, OCC clarified that it would include a ''5% intrinsic value threshold,'' as described more fully below, to identify trades for referral to exchanges. OCC stated that it would review this threshold on a quarterly basis for continued adequacy and any adjustments to the threshold will be the subject of rule filing with the Commission.

[6] *See* Article VI, Section 7(c); *see also* Exchange Act Release No. 46734 (October 28, 2002), 67 FR 67229 (November 4, 2002) (SR–OCC–2002–18) (approving amendments to OCC's By-Laws and Rules supporting the transition to near real-time reporting of matched trade information, including amendments to Article VI, Section 7 to allow instructions to OCC under certain conditions to disregard a matched trade).

[7] *See e.g.,* OCC Press Release, OCC and The U.S. Options Exchanges Adopt New Pre- and Post-Trade Risk Control Principles (May 21, 2014), *http://www.theocc.com/about/press/releases/2014/05_21.jsp.* OCC stated that it intends that these principles will be the subject of additional proposed rule changes.

OCC to perform an analysis of whether OCC should implement procedures regarding a reasonableness review for premium prices at some threshold level less than the current systems parameter of $9,999.99 per contract. Based on its internal analysis, OCC determined that it is appropriate to set a premium price limit of $2,000 per contract because that premium threshold protects OCC and clearing members from erroneous trades that have the potential to cause significant settlement obligations while simultaneously not applying the post-trade price reasonableness check review to a material number of trades that may be valid.

Under the proposed process, receipt of a trade that exceeds the premium price limit of $2,000 per contract will generate an automatic notice to alert OCC staff.[8] After being accepted into OCC's systems for clearing, certain trades will be referred by OCC to the reporting exchange for evaluation under the obvious error or other applicable rules of the exchange. To identify trades for referral, OCC staff will compare the trade price to the approximate intrinsic value of the option. (Intrinsic value reflects the amount, if any, by which the option is in the money.) If the difference between such values exceeds five percent (5%), the trade will be referred. OCC believes that applying this preliminary reasonableness check will enhance the effectiveness of its proposed review process by reducing the likelihood that valid trades are referred to the reporting exchange. OCC estimates the trade identification and referral process should take less than an hour from initiation by OCC to full resolution by a reporting exchange. While a trade is involved in the post-trade reasonableness check process, OCC will not report the position to clearing members or further process the trade. In the event the exchange determines that the trade is valid, the exchange will notify OCC and the trade will continue through OCC's clearing and reporting processes using the originally reported price. If the exchange determines that the trade was in error or erroneously priced such that, as provided in Article VI, Section 7(c), new or revised trade information is required to properly clear the transaction, OCC expects the exchange will instruct OCC to disregard or ''bust'' the trade. However, in the event the exchange does not exercise its authority under its own rules to instruct OCC to disregard the trade pursuant to Article VI, Section 7(c), the trade will continue through OCC's clearing and reporting process using the originally reported price.

OCC will provide notice to market participants of the post-trade price reasonableness check process, and the process will be implemented upon regulatory approval. OCC believes this implementation timing is appropriate because OCC's Board instructed OCC to implement the post-trade risk control as quickly as practicable. OCC's decision to implement the process for price reasonableness checks and to set the premium price limit at the $2,000 level also necessitates related systems changes and conforming changes to certain policies and procedures. Conforming changes to affected policies and procedures include amending OCC's trade and position processing policy. Certain policies and procedures will also be updated to reflect aspects of the process for price reasonableness checks related to governance processes at OCC that are described in more detail below.

Ongoing Oversight of the Proposed Post-Trade Price Validation Process

The premium level at which the price reasonableness review process is triggered will be subject to adjustment or suspension under certain conditions. OCC states that it will review the level on a quarterly basis for continued adequacy.[9] In the event the maximum premium price traded over the prior quarter declines by a predetermined dollar amount or the average number of valid trades referred to reporting exchanges exceeds a predetermined number of occurrences per quarter, OCC will be authorized to adjust the applicable premium level.[10] Establishment of such level and any modification thereof that may be made from time to time must be reported to the Risk Committee. In addition, the Executive Chairman, President or Chief Operating Officer will be authorized to temporarily summarily suspend the then-applicable premium limit in the event that in excess of a predetermined number of valid trades are being referred to the reporting exchanges for review provided, however, that when the causes responsible for the temporary suspension are resolved, the approved premium threshold will be reinstated. The Risk Committee, along with the Chief Risk and Compliance Officers, will be advised of any such suspension. OCC believes these processes help ensure an appropriate level of management and Risk Committee oversight for the continued effectiveness of the proposed price reasonableness review process.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[11] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[12] and Rule 17Ad–22(d)(4) of the Act.[13] Section 17A(b)(3)(F) of the Act[14] requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency for which it responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and to protect investors and the public interest. OCC's proposed rule is consistent with these requirements because it is designed to increase the likelihood that erroneous trades in standardized options and futures options will be identified and voided by reporting options exchanges by OCC identifying and referring to the exchanges certain confirmed trades in standardized options and futures options for which new or revised trade information may be required to properly clear the transaction.

In so doing, OCC's proposal is designed to protect investors from the costs of erroneous trades that have the potential to cause significant settlement obligations while, at the same time, balancing the need to protect investors from the likelihood that valid trades will be referred back to the exchanges.

Rule 17Ad–22(d)(4) of the Act[15] requires, in part, for registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and

[8] OCC also intends to retain its current system parameter of $9,999.99 per contract as well.

[9] OCC states that it will also review the 5% intrinsic value threshold on a quarterly basis for continued adequacy. Any changes to this threshold will be the subject of a subsequent rule filing with the Commission.

[10] Any such action by OCC regarding the premium level would also be subject to the regulatory process of filing a proposed rule change with the Commission.

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(d)(4).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(d)(4).

minimize them through the development of appropriate systems, controls, and procedures. OCC's proposed rule is consistent with Rule 17Ad–22(d)(4) of the Act [16] because OCC's proposal establishes policies and procedures designed to identify potential erroneous trades in standardized options and futures options as a source of operational risk and minimize those risks by implementing a process by which potentially erroneous trades may be voided by an options exchange. For the reasons set forth above, the Commission finds that OCC's proposal is consistent with Section 17A(b)(3)(F) of the Act,[17] and Rule 17Ad–22(d)(4) of the Act.[18]

III. Accelerated Approval of the Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,[19] for approving the proposed rule change, as modified by Amendment No. 1, earlier than 30 days after the date of publication of notice in the **Federal Register**.

As discussed above, OCC filed Amendment No. 1 to clarify that OCC staff would include the 5% intrinsic value threshold in its review to identify which trades should be referred to exchanges for review. OCC also stated that it would review this threshold on a quarterly basis for continued adequacy and any adjustments to the threshold will be the subject of rule filing with the Commission. The 5% intrinsic value threshold should enhance the effectiveness of OCC's review process by reducing the likelihood that valid trades will be referred to the exchanges. Accordingly, given that OCC's proposal should decrease the likelihood that erroneous trades will be submitted to OCC by the exchanges, thereby reducing the risk presented to OCC and further facilitating the accurate clearance and settlement of securities transactions, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–16 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–OCC–2014–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_16.pdf*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–16 and should be submitted on or before October 15, 2014.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [20] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–OCC–2014–16), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22673 Filed 9–23–14; 8:45 am]

BILLING CODE 8011–01–P

[16] *Id.*

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(d)(4).

[19] 15 U.S.C. 78s(b)(2)(C)(iii).

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73137; File No. SR–NYSE–2014–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Establishing the NYSE Best Quote & Trades Data Feed

September 18, 2014.

On July 21, 2014, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') 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 establish the NYSE Best Quote & Trades (''NYSE BQT'') data feed. The proposed rule change was published for comment in the **Federal Register** on August 8, 2014.[3] One comment on the proposal has been received.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72750 (August 4, 2014), 79 FR 46494.

[4] *See* Letter from Ira D. Hammerman, General Counsel, SIFMA, to Kevin M. O'Neill, Deputy Secretary, Commission, dated August 28, 2014.

[5] 15 U.S.C. 78s(b)(2).

disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates November 6, 2014, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSE–2014–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22669 Filed 9–23–14; 8:45 am]

BILLING CODE 8011–01–P

[6] *Id.*

[7] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73141; File No. SR–NYSEArca–2014–100]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the SPDR SSgA Global Managed Volatility ETF Under NYSE Arca Equities Rule 8.600

September 18, 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 September 5, 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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the SPDR SSgA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600. 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 list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] SPDR SSgA Global Managed Volatility ETF (''Fund'').[5]

The Shares will be offered by SSgA Active ETF Trust (the ''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[6] SSgA Funds Management, Inc. will serve as the investment adviser to the Fund (the ''Adviser'' or ''SSgA FM''). State Street Global Markets, LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company (the ''Administrator'', ''Custodian'' or ''Transfer Agent'') will serve as administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing and trading of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF); 71540 (February 12, 2014), 79 FR 9515 (February 19, 2014) (SR–NYSEArca–2013–138) (order approving listing and trading of shares of the iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF).

[6] The Trust is registered under the 1940 Act. On September 20, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–173276 and 811–22542) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812–13487) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or 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, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investment Policies

According to the Registration Statement, the Fund will seek to provide competitive long-term returns while maintaining low long-term volatility relative to the broad global market. Under normal circumstances,[8] the Fund will invest all of its assets in the SSgA Global Managed Volatility Portfolio (the ''Portfolio''), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Portfolio.

The Adviser will utilize a proprietary quantitative investment process to select a portfolio of exchange-listed and traded equity securities that the Adviser believes will exhibit low volatility and provide competitive long-term returns relative to the broad global market.[9] The Portfolio will invest its assets in both U.S. and foreign investments. The Portfolio will generally invest at least 80% of its net assets in global equity securities and at least 30% of its net assets in global equity securities of issuers economically tied to countries other than the United States and will generally hold securities of issuers economically tied to at least three countries, including the United States. The Portfolio may purchase exchange-listed and traded common stocks and preferred securities of U.S. and foreign corporations.[10] The Adviser expects to favor securities with low exposure to market risk factors and low security-specific risk. The Adviser will consider market risk factors to include, among others, a security's size, momentum, value, liquidity, leverage and growth. While the Adviser will attempt to manage the Fund's volatility exposure to stabilize performance, there can be no guarantee that the Fund will reach its target volatility. Additionally, the Adviser will implement risk constraints at the security, industry, size exposure, and sector levels. Through this quantitative process of security selection and portfolio diversification, the Adviser expects that the Portfolio will be subject to a low level of absolute risk (as defined by standard deviation of returns) and thus should exhibit low volatility over the long term.

The Fund is intended to be managed in a ''master-feeder'' structure, under which the Fund will invest substantially all of its assets in a corresponding Portfolio (*i.e.,* a ''master-feeder''), which is a separate 1940 Act-registered mutual fund that has an identical investment objective.[11] As a result, the Fund (*i.e.,* the ''feeder fund'') will have an indirect interest in all of the securitites owned by the corresponding Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the investment advisory agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level will be deducted from the advisory fees charged at the Fund level. This arrangement avoids a ''layering'' of fees, *e.g.,* the Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees (''Board'') determines that doing so would be in the best interests of shareholders.

The exchange-listed and traded equity securities in which the Portfolio would be permitted to invest will be limited to: (1) equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement (''CSSA'') with the Exchange or, (2) ''Actively-Traded Securities'' as defined in Regulation M (''Reg M'') under the Act that are traded on U.S. and non-U.S. exchanges with last sale reporting.[12]

The Portfolio and Fund do not intend to concentrate their investments in any particular industry. The Portfolio and Fund will look to the Global Industry Classification Standard (''GICS'') Level 3

[8] The term ''under normal circumstances'' 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.

[9] Volatility is a statistical measurement of the magnitude of up and down fluctuations in the value of a financial instrument or index over time. Volatility may result in rapid and dramatic price swings.

[10] Investment in common stock of foreign corporations may also be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs'') and European Depositary Receipts ('' EDRs'') (collectively ''Depositary Receipts''). Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign corporation. For ADRs, the depsitory is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. For other Depositary Receipts, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. Depositary Receipts will not necessarily be denominated in the same currency as their underlying securities. Generally, ADRs, in registered form, are designated for use in European securities markets. GDRs are tradable in the United States and in Europe and are designed for use throughout the world. The Portfolio may invest in unsponsored Depositary Receipts. The issuers of unsponsored Depositary Receipts are not obligated to disclose material information in the United States, and, therefore, there may be less information available regarding such issuers and there may not be a correlation between such information and the market value of the Depositary Receipts. Unsponsored Depositary Receipts will not exceed 10% of the Fund's not assets.

[11] The Adviser represents that, in general, the Portfolio (*i.e.,* the master fund) will be where investments will be held, which investments will primarily consist of equity securities; and may, to a lesser extent, include other investments as described under ''Non-Principal Investment Policies'' below. The Fund (*i.e.,* the feeder fund) will invest in shares of the Portfolio and will not invest in investments described under ''Non-Principal Investment Policies'', but may be exposed to such investments by means of the Fund's investment in shares of the Portfolio. In extraordinary instances, the Fund reserves the right to make direct investments in equity securities and other investments.

[12] Rule 101 under Reg M defines Actively-Traded Securities as securities that have an average daily trading volume (''ADTV'') of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million. Rule 102 includes an analogous definition for actively-traded reference securities.

(Industries) in making industry determinations.[13]

The Portfolio may invest in exchange-traded preferred securities. Preferred securities pay fixed or adjustable rate dividends to investors, and have ''preference'' over common stock in the payment of dividends and the liquidation of a company's assets.

Non-Principal Investment Policies

In certain situations or market conditions, in order to take temporary defensive positions, the Fund may (either directly or through the Portfolio) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

According to the Registration Statement, in addition to the principal investments described above, the Portfolio may invest its remaining net assets in other investments, as described below. The investment practices of the Portfolio are the same in all material respects to those of the Fund.

The Portfolio may invest in U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities.[14]

The Portfolio may purchase U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities.

The Portfolio may invest in restricted securities. Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to ''qualified institutional buyers'' under Rule 144A under the Securities Act. When Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, the Portfolio may make such investments depending on the market that exists for the particular security. The Board has delegated the responsibility for determining the liquidity of Rule 144A restricted securities that the Portfolio may invest in to the Adviser.[15]

The Portfolio may conduct foreign currency transactions on a spot (*i.e.,* cash) or forward basis (*i.e.,* by entering into forward contracts to purchase or sell foreign currencies).

The Portfolio may invest in exchange-traded products (''ETPs''), including exchange-traded funds (''ETFs'') registered under the 1940 Act; exchange traded commodity trusts; and exchange-traded notes (''ETNs'').[16]

In addition, the Portfolio may invest in the securities of other investment companies, including money market funds and exchange-traded closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.[17] The Portfolio may invest up to 25% of its total assets in one or more ETPs that are qualified publicly traded partnerships (''QPTPs'') and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.[18] A QPTP is an entity that is treated as a partnership for federal income tax purposes, subject to certain requirements. If such an ETP fails to qualify as a QPTP, the income generated from the Portfolio's investment in the ETP may not comply with certain income tests necessary for the Portfolio to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code.[19]

The Portfolio may invest in exchange-traded shares of real estate investment trusts (''REITs'').

The Portfolio may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a fund acquires a financial instrument (*e.g.,* a security issued by the U.S. government or an agency thereof, a banker's acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. The resale price reflects an agreed upon interest rate effective for the period the instrument is held by a fund and is

[13] GICS classifications can be found on the Standard & Poor's Web site at *http://www.us.spindices.com/search/?query=gics+map.*

[14] One type of U.S. Government obligation, U.S. Treasury obligations, are backed by the full faith and credit of the U.S. Treasury and differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one-year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Other U.S. Government obligations are issued or guaranteed by agencies or instrumentalities of the U.S. Government including, but not limited to, Federal National Mortgage Association (''Fannie Mae''), the Government National Mortgage Association (''Ginnie Mae''), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Mortgage Corporation (''FHLMC''), the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the National Credit Union Administration and the Federal Agricultural Mortgage Corporation. Some obligations issued or guaranteed by U.S. Government agencies and instrumentalities, including, for example, Ginnie Mae pass-through certificates, are supported by the full faith and credit of the U.S. Treasury.

[15] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer) and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer) [sic].

[16] For purposes of this filing, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Portfolio may invest in ETFs managed by the Adviser. The Adviser may receive management or other fees from the ETPs in which the Portfolio or Fund may invest, as well as a management fee for managing the Fund. The ETPs all will be listed and traded in the U.S. on national securities exchanges.

[17] The Fund will invest substantially all of its assets in the Portfolio. Pursuant to Section 12(d)(1) of the 1940 Act, a fund may invest in the securities of another investment company (the ''acquired company'') provided that the fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) more than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the fund; (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the fund) having an aggregate value in excess of 10% of the value of the total assets of the fund; or (iv) in the case of investment in a closed-end fund, more than 10% of the total outstanding voting stock of the acquired company. The Fund may also invest in the securities of other investment companies if such securities are the only investment securities held by the Fund, such as through a master-feeder arrangement. The Fund currently will pursue its investment objective through such an arrangement. To the extent allowed by law, regulation, the Fund's investment restrictions and the Trust's exemptive relief, the Fund may invest its assets in securities of investment companies that are money market funds, including those advised by the Adviser or otherwise affiliated with the Adviser, in excess of the limits discussed above.

[18] Examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

[19] 26 U.S.C. 851.

unrelated to the interest rate on the underlying instrument.

The Portfolio may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that a fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases a fund is able to keep some of the interest income associated with those securities.

In addition to repurchase agreements, the Portfolio may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), cash and cash equivalents, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds; (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase ''Prime-1'' by Moody's or ''A–1'' by Standard & Poor's, or if unrated, of comparable quality as determined by the Adviser [20]; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by the Portfolio; and (vii) variable rate demand notes.

Investment Restrictions

According to the Registration Statement, the Portfolio and the Fund will be classified as a ''non-diversified'' investment company under the 1940 Act.[21] A non-diversified classification means that the Portfolio or Fund is not limited by the 1940 Act with regard to the percentage of its assets that may be invested in the securities of a single issuer. This means that the Portfolio or Fund may invest a greater portion of its assets in the securities of a single issuer than a diversified fund.

Although the Portfolio and Fund will be non-diversified for purposes of the 1940 Act, the Portfolio and Fund intend to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a ''regulated investment company'' for purposes of the Internal Revenue Code of 1986. [22]

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 illiquid by the Adviser.[23] 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 securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[24]

Neither the Fund nor the Portfolio will invest in options, futures contracts or swaps agreements. The Fund's and Portfolio's investments will be consistent with its investment objective and will not be used to enhance leverage.

Net Asset Value

The Fund will calculate net asset value (''NAV'') using the NAV of the Portfolio. NAV per Share for the Fund will be computed by dividing the value of the net assets of the Portfolio (*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 fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Portfolio will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Portfolio's NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or applicable exchange or market on which the Portfolio's investments are traded) announces an early closing time. Creation/redemption order cut-off times (as described further below) may also be earlier on such days.

In calculating the Portfolio's NAV, the Portfolio's investments will generally be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. In the case of shares of other funds that are not traded on an exchange, a market valuation means such fund's published NAV per share. The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Board of the SSgA Master Trust from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

Common stocks and exchange-traded equity securities (including shares of preferred securities, ETPs, closed-end funds, QPTPs, REITs and Depositary

[20] Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing.

[21] A ''non-diversified company'', as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

[22] 26 U.S.C. 851.

[23] *See* note 24, *infra.*

[24] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

Receipts (other than unsponsored Depositary Receipts traded in the OTC market) traded on a national securities exchange generally will be valued at the last reported sale price or the official closing price on that exchange where the stock is primarily traded on the day that the valuation is made. Foreign exchange-traded equities and listed ADRs will be valued at the last sale or official closing price on the relevant exchange on the valuation date. If, however, neither the last sale price nor the official closing price is available, each of these securities will be valued at either the last reported sale price or official closing price as of the close of regular trading of the principal market on which the security is listed.

Securities of investment companies (other than ETFs registered under the 1940 Act), including affiliated funds, money market funds and closed-end funds, will be valued at NAV.

Unsponsored Depositary Receipts, which are traded in the OTC market, will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date.

Rule 144A securities, repurchase agreements and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. Spot currency transactions will generally be valued at bid prices received from independent pricing services converted into U.S. dollars at current market rates on the date of valuation. Foreign currency forwards normally will be valued on the basis of quotes obtained from broker-dealers or third party pricing services.

According to the Adviser, fixed income securities, including U.S. Government obligations, U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities, and short-term instruments will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market or exchange. In determining the value of a fixed income investment, pricing services determine valuations for normal institutional-size trading units of such securities using valuation models or matrix pricing, which incorporates yield and/or price with respect to bonds that are considered comparable in characteristics such as rating, interest rate and maturity date and quotations from securities dealers to determine current value.

Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the SSgA Master Trust's procedures require the Pricing and Investment Committee[25] to determine a security's fair value if a market price is not readily available, in accordance with the 1940 Act. In determining such value, the Pricing and Investment Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (*e.g.,* movement in interest rates, market indices, and prices from the Portfolios' index providers). In these cases, the Portfolio's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Creation and Redemption of Shares

The NAV of Shares of the Fund will be determined once each business day, normally 4:00 p.m. Eastern time. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the authorized participant agreement.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities held by the corresponding master fund (the ''Deposit Securities'') per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of the Deposit Securities (''Deposit Cash'') and the ''Cash Component,'' computed as described below. When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The ''Cash Component'' is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component shall be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, immediately prior to the opening of business on the Exchange's Core Trading Session (9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described in the Registration Statement, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests

[25] The Pricing and Investment Committee is subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Portfolio and the Fund.

received in proper form (as defined below) on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an authorized participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an authorized participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

The creation/redemption order cut-off time for the Fund is expected to be 4:00 p.m. Eastern time. On days when the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the day.

Availability of Information

The Fund's Web site (*www.spdrs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[26] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[27]

On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund and of the Portfolio the following information on the Fund's Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares and dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, 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 NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume 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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. With respect to U.S. exchange-listed equity securities, the intra-day, closing and settlement prices of common stocks and exchange-traded equity securities (including shares of preferred securities, ETPs, closed-end funds, QPTPs, REITs and U.S. exchange-listed Depositary Receipts) will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. With respect to non-U.S. exchange-listed equity securities, intra-day, closing and settlement prices of common stocks and other equity securities (including shares of preferred securities, and non-U.S. Depositary Receipts), will be available from the foreign exchanges on which such securities trade as well as from major market data vendors. Pricing information regarding each asset class in which the Fund or Portfolio will invest will generally be available through nationally recognized data service providers through subscription arrangements. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including U.S. Government obligations, U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities, and short-term instruments; unsponsored Depositary Receipts; and spot and forward currency transactions held by the Fund and Portfolio. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[28] 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 Exchange's Core Trading Session by one or more major market data vendors.[29] The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund and of the Portfolio on a daily basis and to provide a close estimate of that value throughout the trading day. Additional information regarding the Trust and the Shares,

[26] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and their service providers.

[27] 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 Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[28] The IOPV calculation will be an estimate 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 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. Premiums and discounts between the IOPV and the market price of the Shares may occur. This 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.

[29] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds.

including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[30] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [31] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the 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.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[32] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[33] 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'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Sharing Procedures

The Commission requires that, in designing a new derivative securities product, the self-regulatory organization (''SRO'') determine that it has adequate information sharing procedures to detect and deter potential trading abuses.[34] In many, but not all, cases, this requirement is met through listing standards that require the securities underlying a new derivatives securities product to be listed on markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has a comprehensive surveillance sharing agreement (''CSSA''). For example, the generic listing standards for options on closed end funds holding foreign stocks, options on foreign index ETFs and foreign index options require information sharing agreements for the underlying index or portfolio securities.[35] Similarly, the listing standards for stock index warrants, contain a specific limitation on the percentage of foreign country securities that are not traded on markets that are not subject to CSSAs.[36]

[30] *See* NYSE Arca Equities Rule 7.12.

[31] 17 CFR 240.10A–3.

[32] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[34] *See, e.g.,* Securities Exchange Act Release No. 40761 (December 8, 1998) (S7–13–98) (New Products Release). The New Products Release was adopted in 1998 to expand the scope of SRO matters that do not constitute proposed rule changes in response to the need for flexibility in regulating new derivative securities products by developing streamlined filing procedures to ease the SROs' regulatory burdens in many circumstances.

[35] *See, e.g.,* NYSE Arca Options Rule 5.3(e) (options on international closed end funds) (requiring the Exchange to have a market information sharing agreement with the primary exchange for each of the securities held by the fund or that such fund be classified as a diversified fund under Section 5(b) of the 1940 Act and that securities of the fund be issued by issuers in five or more countries); NYSE Arca Options Rule 5.3(g) (options on ETFs) (requiring that non-U.S. component securities of the underlying index or portfolio that are not subject to CSSAs not, in the aggregate, represent more than 50% of the weight of the index or portfolio; that component securities for which the primary market is in any one country that is not subject to a CSSA not represent 20% or more of the index weight; and that component securities for which the primary market is in any two countries not subject to CSSAs not represent 33% or more of the index weight); NYSE Arca Options Rule 5.12 (broad-based index options) (requiring that non-U.S. component securities of the index not subject to CSSAs not, in the aggregate, represent more than 20% of the index weight).

[36] *See, e.g.,* NYSE Arca Equities Rule 8.3 (a)(7) (Listing of Currency and Index Warrants) (Foreign

Continued

However, the generic listing standards for ETFs based on foreign indexes in NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units), and for closed end funds holding foreign securities do not include specific CSSA requirements [37]. Additionally, the American Stock Exchange and the New York Stock Exchange proposed and the Commission approved the listing or trading pursuant to unlisted trading privileges [sic] many foreign index-based ETFs that hold securities listed and traded on markets with which the ETF-listing exchange did not have CSSAs.[38]

The equity securities in which the Portfolio would be permitted to invest will be limited to: (1) Equity securities that trade in markets that are members of the ISG or are parties to a CSSA with the Exchange or, (2) Actively-Traded Securities as defined in Reg M that are traded on exchanges with last sale reporting.[39] The Exchange believes that its ability to monitor trading in the Fund would not be impacted by the absence of CSSAs with, or ISG membership of, markets on which ''Actively-Traded Securities'' (as defined in Rule 101(c)(1) of Reg M [40]) are listed or traded. Many established and reputable markets are not members of ISG.[41] Such markets have price transparency, regulatory surveillance, liquidity, last sale information, as well s [sic] numerous other regulatory requirements traditionally associated with national securities exchanges in the United States. However, at times, local laws, such as privacy laws in France and other European nations, preclude markets from becoming ISG members, or would result in any CSSA entered into being severely limited with respect to the information that can be shared. It is important to note that while some exchanges in the European Union may not be ISG members, they do all have the obligation to share trading data with their national regulator and the national regulators are parties to sharing agreements with each other. Therefore, while there may be instances where the exchanges in the European Union may not directly share trading data, regulators may share information with each other when necessary, to deter and detect market manipulation.

As the global marketplace has evolved and become more interconnected, an issuer's securities may be traded on multiple markets. For example, thanks to harmonized European legislation, and especially the ''Prospectus Directive'' of the Markets in Financial Instruments Directive (''MiFID''),[42] issuers wishing to raise capital in the European Union may take advantage of ''passporting'' their prospectus, which allows an issuer to use one prospectus and raise capital across the European Economic Area (EEA).[43] One of the consequences of this single prospectus is that an issuer's securities can and often do trade across several markets in the EEA, some of which may be ISG members and others may not.

Additionally, MiFID, introduced in 2007, contains a transaction reporting requirement, under which various markets and trading firms are required to submit transaction reports to an ''Approved Reporting Mechanism''.

MiFID also makes it possible for any transferable security that has been admitted to trading on a regulated market of an ''EU Member State'' to be admitted to trading on other Member States' regulated markets or on any other trading venues. As a result, it is difficult to predict where the liquidity in any particular security will primarily reside. Moreover, the MiFID best execution requirement,[44] may require an executing broker to trade on markets that are not ISG members. These developments would make it challenging for the Fund to limit the trading of foreign securities on markets that are members of ISG or with which the Exchange has a CSSA.

In addition, the Exchange believes that it is not necessary to its ability to detect and deter manipulation in Shares of the Fund for equity securities in which the Fund invests to be listed and traded on markets that are members of ISG or with which the Exchange has a CSSA, provided that such equity securities are Actively-Traded Securities. As the Commission noted in adopting Reg M, Actively-Traded Securities are less likely to be manipulated because the costs of such manipulation is high, aberrations in price are more likely to be discovered and quickly corrected, and generally are traded on market [sic] with high levels

Country Securities or American Depository Receipts thereon that: (A) are not subject to a comprehensive surveillance agreement, and (B) have less than 50% of their global trading volume (in dollar value) within the United States, shall not, in the aggregate, represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading). In addition, *see, e.g.,* Securities Exchange Act Release Nos. 31121 (August 28, 1992) (SR–PSE–92–09 and SR–PSE–92–10) (order granting accelerated approval of proposed rule changes relating to listing index warrants based on the FT–SE Eurotrack 200 Index and the Eurotop 100 Index); 30462 (March 11, 1992) (SR–Amex 91–10, SR–NYSE–91–13, SR–CBOE–91–09, SR–CBOE–91–13) (order approving proposed rule changes relating to listing of index options and index warrants based on the FT-SE Eurotrack 200 Index); 28544 October 17, 1990 (SR–Amex–90–08; SR–NYSE–90–36; SR–PHLX–90–25; SR–PSE–90–18) (order approving proposed rule changes relating to the listing of index warrants based on the CAC–40 Index).

[37] *See, e.g.,* Securities Exchange Act Release No. 54739 (November 9, 2006) (SR–Amex–2006–78) (stating that CSSAs are not required in connection with listing of ETFs under the generic listing criteria of American Stock Exchange Rule 1000A given that the [sic] such generic listing criteria otherwise require minimum levels of liquidity, concentration and pricing transparency for index components).

[38] *See, e.g.,* Securities Exchange Act Release Nos. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49) (order approving listing and trading of six series of World Equity Benchmark Shares based on foreign stock indexes); 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (SR–Amex–99–49) (order partially approving listing and trading of series of the iShares Trust based on foreign stock indexes); 44900 (October 25, 2001), 66 FR 55712 (November 2, 2001) (SR–Amex–2001–45) (order approving listing and trading of seven series of funds of iShares, Inc. based on foreign indexes); 36947 (March 8, 1996) (SR–Amex–95–43) (order approving listing of Index Fund Shares based on 18 foreign indexes); 52178 (July 29, 2005) (SR–NYSE–2005–41 (order approving listing of iShares MSCI EAFE Growth and iShares MSCI EAFE Value Funds); 52816 (November 21, 2005) (SR–NYSE–2005–70) (order approving listing of iShares MSCI Index Funds). A list of ISG members is available at *https://www.isgportal.org/isgPortal/public/members.htm.*

[39] *See* note 12, *supra.*

[40] 17 CFR 242.101(c)(1).

[41] Non-ISG member exchanges include: Abu Dhabi Securities Exchange; Athens Exchange; BM&FBOVESPA S.A.; BME Spanish Exchanges; Bolsa Mexicana de Valores; Bourse de Luxembourg; Deutsche Börse AG; Euronext Brussels N.V./S.A.; Euronext Lisbon-Sociedade Gestora de Mercados Regulamentados, S.A.; Euronext Paris S.A.; Indonesia Stock Exchange; Irish Stock Exchange; Johannesburg Stock Exchange; Moscow Exchange; Philippine Stock Exchange; Saudi Stock Exchange; Shanghai Futures Exchange; Shenzhen Stock Exchange; SIX Swiss Exchange; Stock Exchange of Thailand; Taiwan Futures Exchange; Taiwan Stock Exchange; Tel-Aviv Stock Exchange; The Egyptian Exchange; Wiener Börse AG; Zhengzhou Commodity Exchange.

[42] Information regarding the Prospectus Directive is available from the European Commission at *http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm.*

[43] *See* The Forum of European Securities Commissions [FESCO], *A ''European Passport'' For Issuers* at 4–8, Fesco/99–098e (May 10, 2000), *available at http://www.esma.europa.eu/system/files/99_098e.PDF.*

[44] *See, generally,* The Committee of European Securities Regulators [CESR], *Best Execution Under MiFID; Questions and Answers,* CESR/07–320 (May 2007), *available at http://www.cmvm.pt/CMVM/Cooperacao%20Internacional/Docs_ESMA_Cesr/Documents/07_320.pdf* (MiFID's best execution regime requires investment firms to take all reasonable steps to obtain the best possible result for their clients, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to order execution. CESR considers this requirement to be of a general and overarching nature.); *see also* The Committee of European Securities Regulators (CESR), *Best Execution Under MiFID; Public Consultation,* CESR/07–050b (February 2007), *available at http://www.esma.europa.eu/system/files/07_050b.pdf;* Financial Services Authority (FSA), *Implementing MiFID's Best Execution Requirement* (May, 2006), *available at http://www.fsa.gov.uk/pubs/discussion/dp06_03.pdf.*

of transparency and surveillance. For this reason, Actively-Traded Securities were excepted from the prophylactic provisions of Rule 101 of Reg M [45] and, thus, would not be subject to the restrictions imposed upon distribution participants or issuers and selling security holders during the restricted period, as those terms are defined in Reg M.

As the Commission recognized in adopting Reg M, detection of manipulation of Actively-Traded Securities is aided substantially by the widespread coverage by analysts, news outlets, investors and other market participants around the world of these securities.[46] This close scrutiny and increased transparency of the secondary markets means that unusual market activity is likely to be observed and quickly corrected.

Further, as also noted by the Commission in adopting Reg M, because the costs associated with manipulating an Actively-Traded Security will be higher, the likelihood of manipulation of Actively-Traded Securities is low. This potential for improper activity in an Actively-Traded Security to be used to manipulate, or otherwise impact, trading in the Shares of the Fund is further diluted by the fact that a single Actively-Traded Security represents only part of the value of the Fund. This limited impact is guaranteed by diversification requirements applicable to the Fund in the Exchange's listing rules and the Internal Revenue Code, which requires certain diversification to qualify as a regulated investment company (''RIC'').[47]

The Exchange also notes that other provisions of the securities laws encourage disparate treatment for active, large capitalization securities. In its no action letter [48] to FINRA in 2012 regarding Rule 15c3–1 under the Act (the ''Net Capital Rule'') [49], the Commission expanded the universe of foreign equity securities that were deemed to have a ready market [50]. Similar to the exemptions afforded Actively-Traded Securities, the beneficial attributes of liquidity and size were once again acknowledged and formed the basis for the Commission's interpretation of this fundamental customer protection provision of the securities laws.[51]

Permitting the Fund to invest in Actively-Traded Securities, even if they trade on markets that are not member of ISG, will allow investors to benefit from the Fund's portfolio managers' expertise as well as potentially reducing costs to shareholders. Investing directly in Actively-Traded Securities would, in many cases, be a less expensive alternative than other investments used by the Fund's portfolio managers when they are restricted to trading in markets that are members of ISG or with which the Exchange has a CSSA. For example, investing in international index ETFs [52] is a common way fund managers provide investors with exposure to regions whose markets are not members of ISG. These international index ETFs can be a less efficient and less targeted proxy for direct investment in foreign security components of those indexes. The fees imbedded in such ETFs would be borne directly by a fund and indirectly by investors in shares of a fund. Thus, the ability of the Fund to directly invest in Actively-Traded Securities listed or traded on markets that may not be members of ISG or with which the Exchange has a CSSA would be a less expensive alternative for the Fund's portfolio managers, which lower costs to the benefit of shareholders of the Fund.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [53] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and

[45] Rule 102 similarly excepts from its provisions, actively-traded reference securities.

[46] *See* Release Nos. 33–7375; 34–38067; IC 22412: International Series Release Nos. 1039; File No. S7–11–96 (62 FR 520, January 3, 1997) (Anti-manipulation Rules concerning Securities Offerings), at 62 FR 527.

[47] *See* 26 U.S.C. 851.

[48] *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets (''Division''), Commission, to Grace B. Vogel, Executive Vice President, FINRA (November 28, 2012) (the ''Ready Market No-Action Letter'') *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2012/finra-112812.pdf.*

[49] The primary purpose of the Net Capital Rule is to protect customers and other market participants from broker-dealer failures by ensuring that broker-dealers maintain sufficient liquid assets to satisfy their liabilities and to provide a cushion in excess of liabilities to cover select risks in the event of liquidation. The Net Capital Rule enhances investor/customer confidence in the financial integrity of broker-dealers and the securities market.

[50] Paragraph (c)(11)(i) of the net capital rule states that the term ''ready market'' shall include ''a market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.'' The ready market designation implies that for the purposes of broker-dealer net capital calculations, securities with such a designation held by the broker-dealer would be subject to a 15% haircut as opposed to a 100% haircut for non-marketable securities.

[51] In the Ready Market No Action Letter, the Division stated that it would not recommend enforcement action to the Commission if a broker-dealer treats an equity security of a foreign issuer as having a ready market under Rule 15c3–1(c)(11) and subject to haircuts under paragraph (c)(2)(vi)(J), if the following conditions are met: (1) The security is listed for trading on a foreign securities exchange located within a country that is recognized on the FTSE World Index, where the security has been trading on that exchange for at least the previous 90 days; (2) Daily quotations for both bid and ask or last sale prices for security provided by the foreign securities exchange on which the security is traded are continuously available to broker-dealers in the United States, through an electronic quotation system; (3) The median daily trading volume (calculated over the preceding 20 business day period) of the foreign equity security on the foreign securities exchange on which the security is traded is either at least 100,000 shares or $500,000; and (4) The aggregate unrestricted market capitalization in shares of such security exceeds $500 million over each of the preceding 10 business days.

[52] As noted above, international index ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3), which does not include a requirement that index components trade on markets that are members of ISG or with which the Exchange has a CSSA.

[53] 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Adviser has implemented a ''fire wall'' with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, the Trust's Pricing and Investment Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Portfolio and the Fund. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. 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. 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 illiquid by the Adviser. The ETPs held by the Fund will be traded on U.S. national securities exchanges and will be subject to the rules of such exchanges, as approved by the Commission. Neither the Fund nor the Portfolio will invest in options, futures contracts or swaps agreements. The Fund's and Portfolio's investments will be consistent with its investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the 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. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The exchange-listed and traded equity securities in which the Portfolio would be permitted to invest will be limited to: (1) Equity securities that trade in markets that are members of the ISG or are parties to a CSSA with the Exchange or, (2) Actively-Traded Securities as defined in Reg M that are traded on U.S. and non-U.S. exchanges with last sale reporting. 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 that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The intra-day, closing and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The exchange-listed and traded equity securities in which the Portfolio would be permitted to invest will be limited to: (1) equity securities that trade in markets that are members of the ISG or are parties to a CSSA with the Exchange or, (2) Actively-Traded Securities as defined in Reg M that are traded on U.S. and non-U.S. exchanges with last sale reporting. The Exchange believes that the requirements described above applicable to non-U.S. equities, namely the requirements that non-U.S. equity securities be Actively-Traded Securities as defined in Reg M, and that they trade in markets with last sale reporting, will provide an additional choice for investors who desire exposure to non-U.S. equities by an issue of Managed Fund Shares greater than that currently permitted by Managed Fund Shares issues, while also providing for minimum liquidity thresholds relating to ADTV and public float.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an actively-managed exchange-traded

product that will principally hold U.S. and non U.S. equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that the requirements described above applicable to non-U.S. equities, namely the requirements that non-U.S. equity securities be Actively-Traded Securities as defined in Reg M, and that they trade in markets with last sale reporting, will provide an additional choice for investors who desire exposure to non-U.S. equities by an issue of Managed Fund Shares greater than that currently permitted by Managed Fund Shares issues, while also providing for minimum liquidity thresholds relating to ADTV and public float.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–100 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-2014–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2014–100 and should be submitted on or before October 15,2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22671 Filed 9–23–14; 8:45 am]

BILLING CODE 8011–01–P

[54] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration (''SBA'') under Section 309 of the Small Business Investment Act of 1958, as amended and Section 107.1900 of the SBA Rules and Regulations, SBA by this notice declares null and void the license to function as a small business investment company under Small Business Investment Company License No. 05/05–0307 issued to NXT Capital SBIC, LP.

United States Small Business Administration.

Dated: September 18, 2014.

Javier E. Saade,

Associate Administrator for Investment and Innovation.

[FR Doc. 2014–22665 Filed 9–23–14; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 8875]

Secretary of State's Determination Under the International Religious Freedom Act of 1998

SUMMARY: The Secretary of State's designation of ''Countries of Particular Concern'' for religious freedom violations.

Pursuant to section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act), notice is hereby given that, on July 18, 2014, the Secretary of State, under authority delegated by the President, has designated each of the following as a ''Country of Particular Concern'' (CPC) under section 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Eritrea, Iran, Democratic People's Republic of Korea, Saudi Arabia, Sudan, Turkmenistan, and Uzbekistan.

The Secretary simultaneously designated the following Presidential Actions for these CPCs:

For Burma, the existing ongoing arms embargo referenced in 22 CFR 126.1(a) pursuant to section 402(c)(5) of the Act;

For China, the existing ongoing restriction on exports to China of crime control and detection instruments and equipment, under the Foreign Relations Authorization Act of 1990 and 1991 (Public Law 101–246), pursuant to section 402(c)(5) of the Act;

For Eritrea, the existing ongoing arms embargo referenced in 22 CFR 126.1(a) pursuant to section 402(c)(5) of the Act;

For Iran, the existing ongoing travel restrictions based on serious human rights abuses under section 221(a)(1)(C) of the Iran Threat Reduction and Syria Human Rights Act of 2012, pursuant to section 402(c)(5) of the Act;

For North Korea, the existing ongoing restrictions to which North Korea is subject, pursuant to sections 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment) pursuant to section 402(c)(5) of the Act;

For Saudi Arabia, a waiver as required in the ''important national interest of

the United States,'' pursuant to section 407 of the Act;

For Sudan, the restriction on making certain appropriated funds available for assistance to the Government of Sudan in the annual Department of State, Foreign Operations, and Related Programs Appropriations Act, currently set forth in section 7042(j) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014 (Div. K, Pub. L. 113–76), and any provision of law that is the same or substantially the same as this provision, pursuant to section 402(c)(5) of the Act;

For Turkmenistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act; and

For Uzbekistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act.

Dated: September 16, 2014.

Kari Johnstone,

Office Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2014–22769 Filed 9–23–14; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 8880]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Online Dispute Resolution (ODR)

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice that the ACPIL ODR Study Group will hold a public meeting. The ACPIL ODR Study Group will meet to discuss the next session of the UNCITRAL ODR Working Group, scheduled for October 20–24, 2014 in Vienna. This is not a meeting of the full Advisory Committee.

The UNCITRAL ODR Working Group is charged with the development of legal instruments for resolving both business to business and business to consumer cross-border electronic commerce disputes. The Working Group is in the process of developing generic ODR procedural rules for resolution of cross-border electronic commerce disputes, along with separate legal instruments that may take the form of annexes such as guidelines for online dispute resolution providers and arbitrators. For the reports of the first eight sessions of the UNCITRAL ODR Working Group—December 13–17, 2010, in Vienna (A/CN.9/716); May 23–27, 2011, in New York (A/CN.9/721); Nov. 14–18, 2011, in Vienna (A/CN.9/739); May 21–25, 2012, in New York (A/CN.9/744); November 5–9, 2012, in Vienna (A/CN.9/762): May 20–24, 2013, in New York (A/CN.9/769); November 18–22, 2014, in Vienna (A/CN.9/795) and March 24–28, 2014, in New York (A/CN.9/801)—please follow the following link: *http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html.* Documents relating to the upcoming session of the Working Group are available on the same link.

Time and Place: The meeting of the ACPIL ODR Study Group will take place on Thursday October 2 from 10:00 a.m. to 1:00 p.m. EDT at 2430 E Street NW., South Building (SA 4) (Navy Hill), Room 356. Participants should arrive at Navy Hill before 9:45 a.m. for visitor screening. Participants will be met at the Navy Hill gate at 23rd and D Streets, NW., and will be escorted to the South Building. Persons arriving later will need to make arrangements for entry using the contact information provided below. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to Navy Hill is strictly controlled. For preclearance purposes, those planning to attend in person are requested to send an email to *PIL@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, affiliation, and email address. This will greatly facilitate entry. A member of the public needing reasonable accommodation should provide an email requesting such accommodation to *pil@state.gov* no later than a week before the meeting. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information. Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http: www.state.gov/documents/organization/103419.pdf for additional information.*

Dated: September 17, 2014.

Michael J. Dennis,

Attorney-Adviser, Office of Private International Law, U.S. Department of State.

[FR Doc. 2014–22760 Filed 9–23–14; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 8879]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2016) Visa Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: This public notice provides information on how to apply for the DV–2016 Program.

SUPPLEMENTARY INFORMATION:

Program Overview

The Congressionally-mandated Diversity Immigrant Visa Program is administered annually by the Department of State. Section 203(c) of the Immigration and Nationality Act (INA) provides for a class of immigrants known as ''diversity immigrants,'' from countries with historically low rates of immigration to the United States. For fiscal year 2016, 50,000 diversity visas (DVs) will be available. There is no cost to register for the DV Program.

Applicants who are selected in the lottery (''selectees'') must meet simple, but strict, eligibility requirements in order to qualify for a diversity visa. Selectees are chosen through a randomized computer drawing. Diversity visas are distributed among six geographic regions and no single country may receive more than seven percent of the available DVs in any one year.

For DV–2016, natives of the following countries are not eligible to apply, because more than 50,000 natives of these countries immigrated to the United States in the previous five years:

Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

Changes in eligibility this year: None.

Eligibility

Requirement #1: Individuals born in countries whose natives qualify may be eligible to enter. If you were not born in

an eligible country, there are two other ways you might be able to qualify.

• Was your spouse born in a country whose natives are eligible? If yes, you can claim your spouse's country of birth—provided that both you and your spouse are named on the selected entry, are issued diversity visas, and enter the United States simultaneously.

• Were you born in a country whose natives are ineligible, but in which neither of your parents was born or legally resident at the time of your birth? If yes, you may claim the country of birth of one of your parents if it is a country whose natives are eligible for the DV–2016 program. For more details on what this means, see the Frequently Asked Questions.

Requirement #2: Each applicant must meet the education work experience requirement of the DV program by having either:

• A high school education or its equivalent, defined as successful completion of a 12-year course of formal elementary and secondary education;

or

• two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's O*Net Online database will be used to determine qualifying work experience.

For more information about qualifying work experience for the principal DV applicant, see the Frequently Asked Questions.

Do not submit an entry to the DV program unless you meet both of these requirements.

Entry Period

Entries for the DV–2016 DV program must be submitted electronically at *www.dvlottery.state.gov* between noon, Eastern Daylight Time (EDT) (GMT–4), Wednesday, October 1, 2014, and noon, Eastern Standard Time (EST) (GMT–5), Monday, November 3, 2014. Do not wait until the last week of the registration period to enter, as heavy demand may result in Web site delays. No late entries or paper entries will be accepted. The law allows only one entry by or for each person during each registration period. The Department of State uses sophisticated technology to detect multiple entries. Individuals with more than one entry will be disqualified.

Completing Your Electronic Entry for the DV–2016 Program

Submit your Electronic Diversity Visa Entry Form (E–DV Entry Form or DS–5501), online at *www.dvlottery.state.gov*. Incomplete entries will not be accepted. There is no cost to register for the DV Program.

You are strongly encouraged to complete the entry form yourself, without a ''visa consultant,'' ''visa agent,'' or other facilitator who offers to help. If somebody else helps you, you should be present when your entry is prepared so that you can provide the correct answers to the questions and retain the confirmation page and your unique confirmation number. It is extremely important that you retain your confirmation page and unique confirmation number. Without this information, you will not be able to access the online system that will inform you of the status of your entry. Think carefully if someone else offers to keep this information for you. You also should retain access to the email account listed in the E–DV. See the Frequently Asked Questions for more information about Diversity Visa scams.

After you submit a complete entry, you will see a confirmation screen containing your name and a unique confirmation number. Print this confirmation screen for your records. Starting May 5, 2015, you will be able to check the status of your entry by returning to *www.dvlottery.state.gov,* clicking on *Entrant Status Check,* and entering your unique confirmation number and personal information. *Entrant Status Check* will be the sole means of informing you of your selection for DV–2016, providing instructions on how to proceed with your application, and notifying you of your appointment for your immigrant visa interview. Please review the Frequently Asked Questions for more information about the selection process.

You must provide the following information to complete your E–DV entry:

1. Name—last/family name, first name, middle name—exactly as on your passport.
2. Birth date—day, month, year.
3. Gender—male or female.
4. City where you were born.
5. Country where you were born—Use the name of the country currently used for the place where you were born.
6. Country of eligibility for the DV Program—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible, please review the Frequently Asked Questions to see if there is another way you may be eligible.
7. Entrant photograph(s)—Recent photographs of yourself, your spouse, and all your children listed on your entry. See Submitting a Digital Photograph for compositional and technical specifications. You do not need to include a photograph for a spouse or child who is already a U.S. citizen or a Lawful Permanent Resident, but you will not be penalized if you do.

Group photographs will not be accepted; you must submit a photograph for each individual. Your entry may be disqualified or visa refused if the photographs are not recent, have been manipulated in any way, or do not meet the specifications explained below. See Submitting a Digital Photograph for more information.

8. Mailing Address—In Care Of
Address Line 1
Address Line 2
City/Town
District/Country/Province/State
Postal Code/Zip Code
Country
9. Country where you live today.
10. Phone number (optional).
11. Email address—An email address to which you have direct access. If your entry is selected and you respond to the notification of your selection through the *Entrant Status Check,* you will receive follow-up email communication from the Department of State notifying you that details of your immigrant visa interview are available on *Entrant Status Check.* The Department of State will never send you an email telling you that you have been selected for the DV program. See the Frequently Asked Questions for more information about the selection process.
12. Highest level of education you have achieved, as of today: (1) Primary school only, (2) Some high school, no diploma, (3) High school diploma, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate-level courses, (8) Master's degree, (9) Some doctoral-level courses, and (10) Doctorate. See the Frequently Asked Questions for more information about educational requirements.
13. Current marital status—Unmarried, married, divorced, widowed, or legally separated. Enter the name, date of birth, gender, city/town of birth, country of birth of your spouse, and a photograph of your spouse meeting the same technical specifications as your photo.

Failure to list your eligible spouse will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. You must list your spouse even if you plan to be divorced before you apply for a visa. A spouse who is already a U.S. citizen or a Lawful Permanent Resident will not require or be issued a DV visa, though you will not

be penalized if you list them on your entry form. See the Frequently Asked Questions for more information about family members.

14. Number of children—List the Name, date of birth, gender, city/town of birth, and country of birth for all living unmarried children under 21 years of age, regardless of whether or not they are living with you or intend to accompany or follow to join you should you immigrate to the United States. Submit individual photographs of each of your children using the same technical specifications as your own photograph.

- Be sure to include:
- All living natural children;
- all living children legally adopted by you; and,
- all living step-children who are unmarried and under the age of 21 on the date of your electronic entry, even if you are no longer legally married to the child's parent, and even if the child does not currently reside with you and/or will not immigrate with you.

Married children and children over the age of 21 are not eligible for the DV. However, the Child Status Protection Act protects children from ''aging out'' in certain circumstances. If your DV entry is made before your unmarried child turns 21, and the child turns 21 before visa issuance, he/she may be treated as though he/she were under 21 for visa-processing purposes.

A child who is already a U.S. citizen or a Lawful Permanent Resident is not eligible for a diversity visa, and you will not be penalized for either including or omitting such family members from your entry.

Failure to list all children who are eligible will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. See the Frequently Asked Questions for more information about family members.

See the Frequently Asked Questions for more information about completing your Electronic Entry for the DV–2016 Program.

Selection of Applicants

Based on the allocations of available visas in each region and country, individuals will be randomly selected by computer from among qualified entries. All DV–2016 entrants will be required to go to the *Entrant Status Check* using the unique confirmation number saved from their DV–2016 online entry registration to find out whether their entry has been selected in the DV program. *Entrant Status Check* will be available on the E–DV Web site at *www.dvlottery.state.gov* starting May 5, 2015, through at least June 30, 2016.

If your entry is selected, you will be directed to a confirmation page that will provide further instructions, including information on fees connected with immigration to the United States. *Entrant Status Check* will be the only means by which selectees will be notified of their selection for DV–2016. The Department of State will not mail out notification letters or notify selectees by email. U.S. embassies and consulates will not provide a list of selectees. Individuals who have not been selected also will be notified ONLY through *Entrant Status Check.* You are strongly encouraged to access *Entrant Status Check* yourself and not to rely on someone else to check and inform you.

If you are selected, in order to receive a DV to immigrate to the United States, you still must meet all eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing for natives of some countries listed in this notice including, but not limited to, countries identified as state sponsors of terrorism.

All processing of entries and issuance of DVs to selectees meeting eligibility requirements and their eligible family members must be completed by midnight on September 30, 2016. Under no circumstances can DVs be issued or adjustments approved after this date, nor can family members obtain DVs to follow-to-join the principal applicant in the United States after this date. See the Frequently Asked Questions for more information about the selection process.

Submitting a Digital Photograph (Image)

You can take a new digital photograph or scan a photographic print with a digital scanner, as long as it meets the compositional and technical specifications listed below. Test your photos through the photo validation link on the E–DV Web site, which provides additional technical advice on photo composition and examples of acceptable and unacceptable photos.

Photographs must be in 24-bit color depth. If you are using a scanner, the settings must be for True Color or 24-bit color mode. See the additional scanning requirements below.

Compositional Specifications

- Head Position: The subject must directly face the camera. The subject's head should not be tilted up, down, or to the side. The head height or facial region size (measured from the top of the head, including the hair, to the bottom of the chin) must be between 50 percent and 69 percent of the image's total height. The eye height (measured from the bottom of the image to the level of the eyes) should be between 56 percent and 69 percent of the image's height.
- Light-colored Background: The subject should be in front of a neutral, light-colored background.
- Focus: The photograph must be in focus.
- No Decorative Items: The subject must not wear sunglasses or other items that detract from the face.
- No Head Coverings or Hats: Head coverings or hats worn for religious beliefs are acceptable, but the head covering may not obscure any portion of the face. Tribal or other headgear not religious in nature may not be worn. Photographs of military, airline, or other personnel wearing hats will not be accepted.

Technical Specifications

- Taking a New Digital Image. If you take a new digital image, it must meet the following specifications:

Image File Format: The image must be in the Joint Photographic Experts Group (JPEG) format.

Image File Size; The maximum image file size is 240 kilobytes (240KB).

Image Resolution and Dimensions: Minimum acceptable dimensions are 600 pixels (width) x 600 pixels (height). Image pixel dimensions must be in a square aspect ratio (meaning the height must be equal to the width).

Image Color Depth: Image must be in color (24 bits per pixel). 24-bit black and white or 8-bit images will not be accepted.

- Scanning a Submitted Photograph. Before you scan a photographic print, make sure it meets the color and compositional specifications listed above. Scan the print using the following scanner specifications:

Scanner Resolution: Scanned at a resolution of at least 300 dots per inch (dpi).

Image File Format: The image must be in the Joint Photographic Experts Group (JPEG) format.

Image File Size: The maximum image file size is 240 kilobytes (240 KB).

Image Color Depth: 24-bit color. [Note that black and white, monochrome, or grayscale images will not be accepted.]

Frequently Asked Questions (FAQ's)

Eligibility

1. What do the terms ''Native'' and ''chargeability'' mean?

''Native'' ordinarily means someone born in a particular country, regardless

of the individual's current country of residence or nationality. ''Native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act.

Because a numerical limitation is placed on immigrants entering from a country or geographic region, each individual is ''charged'' to a country. Your chargeability'' refers to the country whose limitation you count towards. Your country of eligibility will normally be the same as your country of birth. However, you may choose your country of eligibility as the country of birth of your spouse, or the country of birth of either of your parents if you were born in a country in which neither parent was born and in which the parents were not resident at the time of your birth. These are the only three ways to select your country of chargeability.

Listing an incorrect country of eligibility or chargeability (i.e., one to which you cannot establish a valid claim) may disqualify your entry.

2. Can I still apply if I was not born in a qualifying country?

There are two circumstances in which you still might be eligible to apply. First, if your derivative spouse was born in an eligible country, you may claim chargeability to that country. As your eligibility is based on your spouse, you will only be issued a DV–1 immigrant visa if your spouse is also eligible for and issued a DV–2 visa. Both of you must enter the United States together using your DVs. Similarly, your minor dependent child can be ''charged'' to a parent's country of birth.

Second, you can be ''charged'' to the country of birth of either of your parents as long as neither of your parents was born in or a resident of your country of birth at the time of your birth. People are not generally considered residents of a country in which they were not born or legally naturalized, if they were only visiting, studying in the country temporarily, or stationed temporarily for business or professional reasons on behalf of a company or government from a different country other than the one in which you were born.

If you claim alternate chargeability through either of the above, you must provide an explanation on the E–DV Entry Form, in question #6.

Listing an incorrect country of eligibility or chargeability (i.e., one to which you cannot establish a valid claim) may disqualify your entry.

3. Why do Natives of certain countries not qualify for the DV program?

DVs are intended to provide an immigration opportunity for persons who are not from ''high admission'' countries. The law defines ''high admission countries'' as those from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the previous five years. Each year, U.S. Citizenship and Immigration Services (USCIS) tallies the family and employment immigrant admission and adjustment of status figures for the previous five years to identify the countries that are considered ''high admission'' and whose natives will therefore be ineligible for the annual diversity visa program. Since this calculation is made annually, the list of countries whose natives are eligible or not eligible may change from one year to the next.

4. How many DV–2016 visas will go to natives of each region and eligible country?

United States Citizenship and Immigration Services (USCIS) determines the regional DV limits for each year according to a formula specified in Section 203(c) of the INA. The number of visas that will eventually be issued to natives of each country will depend on the regional limits established, how many entrants come from each country, and how many of the selected entrants are found eligible for the visa. No more than seven percent of the total visas available can go to natives of any one country.

5. What are the requirements for education or work experience?

U.S. immigration law and regulations require that every DV entrant must have at least a high school education or its equivalent or have two years of work experience within the past five years in an occupation requiring at least two years of training or experience. A ''high school education or equivalent'' is defined as successful completion of a 12-year course of elementary and secondary education in the United States OR the successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Only formal courses of study meet this requirement; correspondence programs or equivalency certificates (such as the General Equivalency Diploma G.E.D.) are not acceptable. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview.

If you do not meet the requirements for education or work experience, your entry will be disqualified at the time of your visa interview, and no visas will be issued to you or any of your family members.

6. What occupations qualify for the DV program?

The U.S. Department of Labor's (DOL) O*Net OnLine database will be used to determine qualifying work experience. The O*Net Online Database groups job experience into five ''job zones.'' While many occupations are listed on the DOL Web site, not all occupations qualify for the DV Program. To qualify for a DV on the basis of your work experience, you must have, within the past five years, two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

If you do not meet the requirements for education or work experience, your entry will be disqualified at the time of your visa interview, and no visas will be issued to you or any of your family members.

7. How can I find the qualifying DV occupations in the Department of Labor's O*Net online database?

When you are in O*Net OnLine, follow these steps to find out if your occupation qualifies:

1. Under ''Find Occupations'' select ''Job Family'' from the pull down;
2. Browse by ''Job Family'', make your selection, and click ''GO'';
3. Click on the link for your specific occupation.
4. Select the tab ''Job Zone'' to find the designated Job Zone number and Specific Vocational Preparation (SVP) rating range.

As an example, select Aerospace Engineers. At the bottom of the Summary Report for Aerospace Engineers, under the Job Zone section, you will find the designated Job Zone 4, SVP Range, 7.0 to <8.0. Using this example, Aerospace Engineering is a qualifying occupation.

For additional information, see the Diversity Visa—List of Occupations Web page (*http://travel.state.gov/visa/immigrants/types/types_1319.html*).

8. Is there a minimum age to apply for the DV program?

There is no minimum age to apply, but the requirement of a high school education or work experience for each principal applicant at the time of

application will effectively disqualify most persons who are under age 18.

Completing Your Electronic Entry for the DV Program

9. When can I submit my entry?

The DV–2016 entry period will run from 12:00 p.m. (noon), Eastern Daylight Time (EST) (GMT–4), Wednesday, October 1, 2014, until 12:00 p.m. (noon), Eastern Standard Time (EDT) (GMT–5), Monday, November 3, 2014. Each year, millions of people submit entries. Holding the entry period on these dates ensures that selectees are notified in a timely manner and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance.

You are strongly encouraged to enter early during the registration period. Excessive demand at the end of the registration period may slow the system down. No entries will be accepted after noon EST Monday, November 3, 2014.

10. I am in the United States. Can I enter the DV program?

Yes, an applicant may be in the United States or in another country, and the entry may be submitted from anywhere.

11. Can I only enter once during the registration period?

Yes, the law allows only one entry by or for each person during each registration period. The Department of State uses sophisticated technology to detect multiple entries. *Individuals with more than one entry will be disqualified.*

12. May my spouse and I each submit a separate entry?

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either spouse is selected, the other is entitled to apply as a derivative dependent.

13. What family members must I include in my DV entry?

Spouse: You must list your spouse (husband or wife) regardless of whether or not he/she is living with you or intentds to immigrate to the United States. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (i.e., there is a written agreement recognized by a court or a court order). If you are legally separated, you do not have to list your spouse, though you will not be penalized if you do so. If you are divorced or your spouse is deceased, you do not have to list your former spouse.

Children: You must list ALL your living children who are unmarried and under 21 years of age at the time of your initial E–DV entry, whether they are your natural children, your stepchildren (even if you are now divorced from that child's parent), your spouse's children, or children you have formally adopted in accordance with the laws of your country. List all children under 21 years of age at the time of your electronic entry, even if they no longer reside with you or you do not intend for them to immigrate under the DV program. You are not required to list children who are already U.S. citizens or Lawful Permanent Residents, though you will not be penalized if you do include them.

Parents and siblings of the entrant are ineligible to receive DV visas as dependents, and should not be included in your entry.

If you list family members on your entry, they are not required to apply for a visa or to immigrate or travel with you. However, if you fail to include an eligible dependent on your original entry and later list them on your visa application forms, your case will be disqualified at the time of your visa interview and no visas will be issued to you or any of your family members. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse, if eligible to enter, may still submit a separate entry even though he or she is listed on your entry, as long as both entries include details on all dependents in your family (see FAQ #12 above).

14. Must I submit my own entry, or can someone else do it for me?

You are encouraged to prepare and submit your own entry, but you may have someone submit the entry for you. Regardless of whether you submit your own entry, or an attorney, friend, relative, or someone else submits it on your behalf, only one entry may be submitted in your name. You, as the entrant, are responsible for ensuring that information in the entry is correct and complete; entries that are not correct or complete may be disqualified. Entrants should keep their own confirmation number so that they are able to independently check the status of their entry using Entrant Status Check at *www.dvlottery.state.gov.* Entrants should keep retain access to the email account used in the E–DV submission.

15. I'm already registered for an immigrant visa in another category. Can I still apply for the DV program?

Yes.

16. When will E–DV be available online?

You can enter online during the registration period beginning at 12:00 p.m. (noon) Eastern Daylight Time (EDT) (GMT–4) on Wednesday, October 1, 2014, and ending at 12:00 p.m. (noon) Eastern Standard Time (EST) (GMT–5) on Monday, November 3, 2014.

17. Can I download and save the E–DV entry form into a word processing program and finish it later?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. You must fill in the information and submit it while online.

18. Can I save the form online and finish it later?

No. The E–DV Entry Form is designed to be completed and submitted at one time. You will have sixty (60) minutes starting from when you download the form to complete and submit your entry through the E–DV Web site. If you exceed the sixty minute limit and have not electronically submitted your complete entry, any information already entered is discarded. The system deletes any partial entries so that they are not accidentally identified as duplicates of a later, complete entry. Read the DV instructions completely before you start to complete the form online, so that you know exactly what information you will need.

19. I don't have a scanner. Can I send photographs to someone in the United States to scan them, save them, and mail them back to me so I can use them in my entry?

Yes, as long as the photograph meets the requirements in the instructions and is electronically submitted with, and at the same time as, the E–DV online entry. You must already have the scanned photograph file when you submit the entry online; it cannot be submitted separately from the online application. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

20. According to the procedures, the system will reject my E–DV entry form if my photos don't meet the specifications. Can I resubmit my entry?

Yes. If your photo(s) did not meet the specifications, your entry will not be accepted by the E–DV Web site, so you will not receive a confirmation notice. However, given the unpredictable nature of the Internet, you may not receive the rejection notice

immediately. If you can correct the photo(s) and re-send the Form Part One or Two within sixty (60) minutes, you may be able to successfully submit the entry. Otherwise, you will have to restart the entire entry process. You can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. Once you have received a confirmation notice, your entry is complete and you should NOT submit any additional entries.

21. How soon after I submit my entry will I receive the electronic confirmation notice?

You should receive the confirmation notice immediately, including a confirmation number that you must record and keep. However, the unpredictable nature of the Internet can result in delays. You can hit the ''Submit'' button as many times as is necessary until a complete application is received and the confirmation notice sent. However, once you receive a confirmation notice, do not resubmit your information.

Selection

22. How do I know if I am selected?

You must use your confirmation number to access the Entrant Status Check available on the E–DV Web site at *www.dvlottery.state.gov* starting May 5, 2015 through at least June 30, 2016. Entrant Status Check is the sole means by which you will be notified if you are selected, provided further instructions on your visa application, and notified of your immigrant visa interview appointment date and time. The only authorized Department of State Web site for official online entry in the Diversity Visa Program and Entrant Status Check is *www.dvlottery.state.gov.*

The Department of State will not contact you to tell you that you have been selected (see FAQ #23).

23. How will I know if I am not selected? Will I be notified?

You may check the status of your DV–2016 entry through the Entrant Status Check on the E–DV Web site at *www.dvlottery.state.gov* starting May 5, 2015, until at least June 30, 2016. Keep your confirmation number until at least September 30, 2016. (Status information for the previous year's DV program, DV–2015, is available online from May 1, 2014, through June 30, 2015.) If your entry is not selected, you will not receive any additional instructions.

24. What if I lose my confirmation number?

You must have your confirmation number to access Entrant Status Check. A tool is now available in Entrant Status Check (ESC) on the eDV Web site that will allow you to retrieve your confirmation number via the email address you registered with by entering certain personal information to confirm your identity.

U.S. Embassies and Consulates and the Kentucky Consular Center are unable to check your selection status for you or provide your confirmation number to you directly (other than through the ESC retrieval tool). The Department of State is NOT able to provide a list of those selected to continue the visa process.

25. Will I receive information from the Department of State by email or by postal mail?

The Department of State will not send you a notification letter. The U.S. government has never sent emails to notify individuals that they have been selected, and there are no plans to use email for this purpose for the DV–2016 program. If you are a selectee, you will only receive email communications regarding your visa appointment after you have responded to the notification instructions on Entrant Status Check. These emails will not contain information on the actual appointment date and time; they will simply tell you that appointment details are available and you must then access Entrant Status Check for details.

Only Internet sites that end with the ''.gov'' domain suffix are official U.S. government Web sites. Many other Web sites (e.g., with the suffixes ''.com,'' ''.org,'' or ''.net'') provide immigration and visa-related information and services. The Department of State does not endorse, recommend, or sponsor any information or material on these other Web sites.

You may receive emails from websites trying to trick you into sending money or providing your personal information. You may be asked to pay for forms and information about immigration procedures, all which are available free on the Department of State Web site or through U.S. Embassy or Consulate Web sites. Additionally, organizations or Web sites may try to steal your money by charging fees for DV-related services. If you send money to one of these scams, you will likely never see it again. Also, do not send personal information to these Web sites, as it may be used for identity fraud/theft.

26. How many individuals will be selected for DV–2016?

For DV–2016, 50,000 DV visas are available. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected

You can check the E–DV Web site's Entrant Status Check to see if you have been selected for further processing and your place on the list. Interviews for the DV–2016 program will begin in October 2015 for selectees who have submitted all pre-interview paperwork and other information as requested in the notification instructions. Selectees who provide all required information will be informed of their visa interview appointment through the E–DV Web site's Entrant Status Check four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts.

Each month, visas will be issued to those applicants who are ready for issuance during that month, visa-number availability permitting. Once all of the 50,000 DV visas have been issued, the program will end. Visa numbers could be finished before September 2016. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Being randomly chosen as a selectee does not guarantee that you will receive a visa. Selection merely means that you are eligible to apply for a Diversity Visa, and if your rank number becomes eligible for final processing, potentially to be issued a Diversity Visa. Only 50,000 visas will be issued to such applicants.

27. How will successful entrants be selected?

Official notifications of selection will be made through Entrant Status Check, available starting May 5, 2015, through at least June 30, 2016, on the E–DV Web site *www.dvlottery.state.gov.* The Department of State does not send selectee notifications or letters by regular postal mail or by email. Any email notification or mailed letter stating that you have been selected to receive a DV does not come from the Department of State and is not legitimate. Any email communication you receive from the Department of State will direct you to review Entrant Status Check for new information about your application. The Department of

State will never ask you to send money by mail or by services such as Western Union.

All entries received from each region are individually numbered, and at the end of the entry period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered; the second entry selected will be the second case registered, etc. All entries received within each region during the entry period will have an equal chance of being selected. When an entry has been selected, the entrant will be notified of his/her selection through the Entrant Status Check available starting May 5, 2015, on the E–DV Web site *www.dvlottery.state.gov.* If you are selected and you respond to the instructions provided online via Entrant Status Check, the Department of State's Kentucky Consular Center (KCC) will process the case until those selected are instructed to appear for visa interviews at a U.S. Embassy or Consulate or until those in the United States who are applying to adjust status apply at a domestic USCIS office.

28. I am already in the United States. If selected, may I adjust my status with USCIS?

Yes, provided you are otherwise eligible to adjust status under the terms of Section 245 of the INA, you may apply to USCIS for adjustment of status to permanent resident. You must ensure that USCIS can complete action on your case, including processing of any overseas spouse or children under 21 years of age, before September 30, 2016, since on that date your eligibility for the DV–2016 program expires. No visa numbers or adjustments of status for the DV–2016 program will be approved after midnight EDT on September 30, 2016, under any circumstances.

29. If I am selected, for how long am I entitled to apply for a diversity visa?

If you are selected in the DV–2016 program, you are entitled to apply for visa issuance only during U.S. Government Fiscal Year 2016, which spans from October 1, 2015, through September 30, 2016. Selectees are encouraged to apply for visas as early as possible, once their lottery rank numbers become eligible for further processing.

Without exception, all selected and eligible applicants must obtain their visa or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas by September 30, 2016 (the end of the fiscal year). Also, spouses and children who derive status from a DV–2016 registration can only obtain visas in the DV category between October 1, 2015 and September 30, 2016. Applicants who apply overseas will receive an appointment notification from the Department through Entrant Status Check on the E–DV Web site four to six weeks before the scheduled appointment.

30. If a DV selectee dies, what happens to the case?

If a DV selectee dies at any point before he or she has traveled to the United States, the DV case is automatically terminated. Any derivative spouse and/or children of the deceased selectee will no longer be entitled to a DV visa. Any visas that were issued to them will be revoked.

Fees

31. How much does it cost to enter the E DV program?

There is currently no fee charged for submitting an electronic entry. However, if you are selected and apply for a Diversity Visa, you must pay all required visa fees at the time of visa application and interview directly to the consular cashier at the U.S. Embassy or Consulate. If you are a selectee already in the United States and you apply to USCIS to adjust status, you will pay all required fees directly to USCIS. If you are selected, you will receive details of required DV and immigrant visa application fees with the instructions provided through the E–DV Web site at *www.dvlottery.state.gov.*

32. How and where do I pay DV and immigrant visa fees if I am selected?

If you are a randomly selected entrant, you will receive instructions for the DV visa application process through Entrant Status Check at *www.dvlottery.state.gov.* You will pay all DV and immigrant visa fees in person only at the U.S. Embassy or Consulate at the time of the visa application. The consular cashier will immediately give you a U.S. government receipt for payment. Do not send money for DV fees to anyone through the mail, Western Union, or any other delivery service if you are applying for an immigrant visa at a U.S. Embassy or Consulate.

If you are selected and you are already present in the United States and plan to file for adjustment of status with USCIS, the instructions page accessible through Entrant Status Check at *www.dvlottery.state.gov* contains separate instructions on how to mail DV fees to a U.S. bank.

33. If I apply for a DV, but don't qualify to receive one, can I get a refund of the visa fees I paid?

No. Visa fees cannot be refunded. You must meet all qualifications for the visa as detailed in these instructions. If a consular officer determines you do not meet requirements for the visa, or you are otherwise ineligible for the DV under U.S. law, the officer cannot issue a visa and you will forfeit all fees paid.

Ineligibilities

34. As a DV applicant, can I receive a waiver of any grounds of visa ineligibility? Does my waiver application receive any special processing?

DV applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act (INA). There are no special provisions for the waiver of any ground of visa ineligibility aside from those ordinarily provided in the Immigration and Nationality Act (INA), nor is there special processing for waiver requests. Some general waiver provisions for people with close relatives who are U.S. Citizens or Lawful Permanent Resident aliens may be available to DV applicants in some cases, but the time constraints in the DV program may make it difficult for applicants to benefit from such provisions.

DV Fraud Warning and Scams

35. How can I report internet fraud or unsolicited email?

Please visit the *www.econsumer.gov* Web site, hosted by the Federal Trade Commission in cooperation with consumer-protection agencies from 17 nations. You may also report fraud to the Federal Bureau of Investigation (FBI) Internet Crime Complaint Center. To file a complaint about unsolicited email, visit the Department of Justice Contact Us page.

DV Statistics

36. How many visas will be issued in DV–2016?

By law, a maximum of 55,000 visas are available each year to eligible persons. However, in November 1997, the U.S. Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA), which stipulates that beginning as early as DV–1999, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated DVs will be made available for use under the NACARA program. The actual reduction

of the limit began with DV–2000 and will remain in effect through the DV–2016 program, so 50,000 visas remain for the DV program described in these instructions.

37. If I receive a visa through the DV program, will the U.S. government pay for my airfare to the United States, help me find housing and employment, and/or provide healthcare or any subsidies until I am fully settled?

No. The U.S. government will not provide any of these services to you if you receive a visa through the DV program. If you are selected to apply for a DV, you will need to demonstrate that you will not become a public charge in the United States before being issued a visa. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support (Form I–134) submitted by a relative or friend residing in the United States, an offer of employment from an employer in the United States, or other evidence.

List of Countries/Areas by Region Whose Natives are Eligible for DV–2016

The list below shows the countries whose natives are eligible for DV–2016, grouped by geographic region. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for the DV–2016 program were identified by USCIS, according to the formula in Section 203(c) of the INA. The countries whose natives are not eligible for the DV program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration or ''high-admission'' countries) are noted after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt*
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
South Sudan
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

In Africa, natives of Nigeria are not eligible for this year's diversity program.

Asia

Afghanistan
Bahrain
Bhutan
Brunei
Burma
Cambodia
Hong Kong Special Administrative Region **
Indonesia
Iran
Iraq
Israel *
Japan
Jordan *
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria *
Taiwan **
Thailand
Timor-Leste
United Arab Emirates
Yemen

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kosovo
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macau Special Administrative Region**
Macedonia
Malta
Moldova
Monaco
Montenegro

* Persons born in the areas administered prior to June 1967 by Israel, Jordan, Syria, and Egypt are chargeable, respectively, to Israel, Jordan, Syria, and Egypt. Persons born in the Gaza Strip are chargeable to Egypt; persons born in the West Bank are chargeable to Jordan; persons born in the Golan Heights are chargeable to Syria.

* Persons born in the areas administered prior to June 1967 by Israel, Jordan, Syria, and Egypt are chargeable, respectively, to Israel, Jordan, Syria, and Egypt. Persons born in the Gaza Strip are chargeable to Egypt; persons born in the West Bank are chargeable to Jordan; persons born in the Golan Heights are chargeable to Syria.

** Natives of the following Asia Region countries are not eligible for this year's diversity program: Bangladesh, China (mainland-born), India, Pakistan, South Korea, Philippines, and Vietnam. Hong Kong S.A.R. (Asia region), Macau S.A.R. (Europe region), and Taiwan (Asia region) do qualify and are listed here.

** Natives of the following European countries are not eligible for this year's DV program: Great Britain (United Kingdom). Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas. Macau S.A.R. does qualify and is listed above.

Netherlands (including components and dependent areas overseas)
Northern Ireland**
Norway
Poland
Portugal (including components and dependent areas overseas)
Romania
Russia
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

North America

The Bahamas

In North America, natives of Canada and Mexico are not eligible for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of Nauru
New Zealand (including components and dependent areas overseas)
Palau
Papua New Guinea
Solomon Islands
Tonga
Tuvalu
Vanuatu
Samoa

South America, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Chile
Costa Rica
Cuba
Dominica
Grenada
Guatemala
Guyana
Honduras
Nicaragua
Panama
Paraguay
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives are not eligible for this year's diversity program: Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, Jamaica, Mexico, and Peru.

Dated: September 12, 2014.

Michele T. Bond,

Acting Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2014–22767 Filed 9–23–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21059]

Academy Express, L.L.C.—Acquisition of the Properties of Go Bus LLC and Its Affiliate, MCIZ Corp.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Authorizing Finance Transaction.

SUMMARY: Academy Express, L.L.C. (Academy Express), a motor carrier of passengers, has filed an application under 49 U.S.C. 14303 to acquire properties of Go Bus LLC (Go Bus) and its affiliate, MCIZ Corp. (MCIZ), both motor carriers of passengers.[1] The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by November 10, 2014. Applicants may file a reply by November 24, 2014. If no comments are filed by November 10, 2014, this notice shall be effective on November 11, 2014

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21059 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Academy Express's representative: Fritz R. Kahn, Fritz R. Kahn, P.C., 1919 M Street NW., 7th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn, (202) 245–0382. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Tedesco Family ESB Trust directly controls the following noncarriers: Academy Bus, L.L.C. (Academy Bus);[2] Franmar Leasing, Inc.; Franmar Logistics, Inc.; Academy Services, Inc.; and Log Re, Inc. Academy Bus directly controls the following carriers: Academy Express, Academy Lines, L.L.C., and Number 22 Hillside, L.L.C. The applicant, Academy Express, holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier primarily engaged in interstate special and charter operations (MC–413682). Go Bus and MCIZ are motor carriers licensed by FMCSA (MC–801906 and MC–161381, respectively). According to the corporate organization chart provided by Academy Express in its August 26 filing, Zev Marmurstein, an individual, Renee Marmurstein, an individual, and the ZRM Family Trust control 62–R LLC, a noncarrier, which controls Go Bus. Zev Marmurstein directly controls MCIZ.

Academy Express primarily provides charter bus and contract carrier services for associations or other groups in interstate commerce in the states of New York and New Jersey, and to a lesser extent in the District of Columbia, Virginia, Maryland, Pennsylvania, Connecticut, Rhode Island, and Massachusetts, and commuter line service between New Jersey and New York. Go Bus and MCIZ are primarily engaged in providing special and charter operations to and from places in the state of New York. Go Bus also provides regular-route service between New York, NY (New York City), and Cambridge and Newton, Mass., and commuter line service between Glen Cove, NY, and New York City. MCIZ, pursuant to a contract with the New York City Board of Education, provides transportation to students and teachers on day trips from and to places in New York for sports or other events.

[1] Academy Express filed its application for acquisition of the properties of Go Bus and MCIZ on July 23, 2014. However, the Board determined that the information provided was not sufficiently complete to provide the required notice to the Board and to the public as to the nature and effect of the proposed transaction. In a Board decision served on August 21, 2014, Academy Express was directed to supplement its application, which it did on August 26, 2014.

[2] According to the corporate charts included in the applicant's petition, the Academy Bus entity that is controlled by the Tedesco Family ESB Trust is a New York limited liability company. But another entity with the name Academy Bus, L.L.C., is owned by the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust as a Florida limited liability company. The applicant states that the Florida Academy Bus, L.L.C., was formerly Cabana Coaches, LLC, but changed its name to Academy Bus, L.L.C., on January 10, 2014. The Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust obtained authority to acquire Cabana Coaches, LLC, in *Tedesco Family ESB Trust—Purchase of Certain Assets & Membership Interests—Evergreen Trails, Inc.,* MCF 21056 (STB served Nov. 21, 2013).

Academy Express also states that MCIZ has a bus stop in New York City and licenses for two park-and-ride facilities in Nassau and Suffolk Counties, NY.

According to Academy Express, Go Bus and MCIZ have decided to cease acting as motor carriers. Under the proposed transaction, Academy Express seeks to acquire the interstate and intrastate operating authorities of Go Bus, its customer lists, telephone numbers, Web sites, and trade name, as well as MCIZ's contract with the New York City Board of Education, its bus stop in New York City and its licenses for the two park-and-ride facilities in Nassau and Suffolk Counties, NY.[3] Academy Express states that, if the transaction is approved, it would provide most, if not all, of the operations currently provided by Go Bus and MCIZ.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Academy Express has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement pursuant to 49 U.S.C. 14303(g) that the 12-month aggregate gross operating revenues of Academy Express exceeded $2 million.

With respect to the effect of the transaction on the adequacy of transportation to the public, Academy Express states that the proposed acquisition would benefit the patrons of Go Bus and MCIZ. According to Academy Express, passengers would be able to travel in newer, more comfortable, and better maintained buses, and would have more frequent service at a lower cost than was offered by Go Bus or MCIZ. Academy Express states that the proposed transaction would have little or no effect on competitive conditions in the special and charter bus markets. Academy Express states that it would compete with Greyhound Lines, Inc., Peter Pan Bus Lines, Inc., Martz Trailways, Magic Carpet Tours, and Majestic Tours, Inc., in providing service between New York City and Cambridge and Newton. Academy Express also states that it would compete with various services of the Metropolitan Transportation Authority in rendering service between Glen Cove and New York City, as well as in competing for the contract with the New York City Board of Education. Academy Express states that the proposed transaction would have no effect on total fixed charges. Further, Academy Express states that the transaction would have little or no effect upon Go Bus and MCIZ's employees, as the substantial majority of these employees would continue to be employed by the affiliate or other related entities of Go Bus, or may be offered employment with Academy Express.

On the basis of the application, the Board finds that the proposed acquisition of control is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Academy Express's application and supplemental filing, as well as Board decisions and notices, are available on our Web site at *www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective November 11, 2014, unless opposing comments are timely filed.

4. A copy of this decision will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: September 18, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–22707 Filed 9–23–14; 8:45 am]

BILLING CODE 4915–01–P

[3] According to the application, Academy Express would not acquire Go Bus and MCIZ's buses. Instead, those buses would be conveyed to a company called ABC Companies, a noncarrier.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Agency Information Collection (Restored Entitlement Program for Survivors) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0390'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0390.''

SUPPLEMENTARY INFORMATION:

Title: Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Revision of a currently approved collection.

Abstract: Survivors of deceased Veteran's complete VA Form 21–8924 to apply for Restored Entitlement Program

for Survivors (REPS) benefits. REPS benefits is payable to certain surviving spouses and children of Veterans who died in service prior to August 13, 1981, or who died as of a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 2014, at pages 33809–33810.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,800.

Dated: September 19, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–22724 Filed 9–23–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection (Eligibility Verification Reports) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 24, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0510'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0510.''

SUPPLEMENTARY INFORMATION:

Title: Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Revision of a currently approved collection.

Abstract: The data collected on VA Form 21–0571 is used to determine whether children's income can be excluded from consideration in determining a parent's eligibility for non-service connected pension. A Veteran's or surviving spouse's rate of improved pension is determined by family income. However, children's income may be excluded if it is unavailable or if including that income would cause a hardship.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 7, 2014, at page 38362.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,025 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,700.

Dated: September 19, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–22709 Filed 9–23–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 185 September 24, 2014

Part II

Securities and Exchange Commission

17 CFR Parts 229, 230, 232, et al.

Asset-Backed Securities Disclosure and Registration; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, 243, and 249

[Release Nos. 33–9638; 34–72982; File No. S7–08–10]

RIN 3235–AK37

Asset-Backed Securities Disclosure and Registration

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting significant revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities (''ABS''). The final rules require that, with some exceptions, prospectuses for public offerings under the Securities Act of 1933 (''Securities Act'') and ongoing reports under the Securities Exchange Act of 1934 (''Exchange Act'') of asset-backed securities backed by real estate related assets, auto related assets, or backed by debt securities, including resecuritizations, contain specified asset-level information about each of the assets in the pool. The asset-level information is required to be provided according to specified standards and in a tagged data format using eXtensible Markup Language (''XML''). We also are adopting rules to revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. We are also adopting new registration forms tailored to ABS offerings. The final rules also repeal the credit ratings references in shelf eligibility criteria for ABS issuers and establish new shelf eligibility criteria.

DATES: *Effective Date:* November 24, 2014.

Compliance Dates:

Offerings on Forms SF–1 and SF–3: Registrants must comply with new rules, forms, and disclosures no later than November 23, 2015.

Asset level Disclosures: Offerings of asset-backed securities backed by residential mortgages, commercial mortgages, auto loans, auto leases, and debt securities (including resecuritizations) must comply with asset-level disclosure requirements no later than November 23, 2016.

Forms 10–D and 10–K: Any Form 10–D or Form 10–K that is filed after November 23, 2015 must comply with new rules and disclosures, except asset-level disclosures.

FOR FURTHER INFORMATION CONTACT: Rolaine S. Bancroft, Senior Special Counsel, Michelle M. Stasny, Special Counsel, M. Hughes Bates, Attorney-Advisor, or Kayla Florio, Attorney-Advisor, in the Office of Structured Finance at (202) 551–3850, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 512 [1] and 601 [2] of Regulation S–K; [3] Items 1100, 1101, 1102, 1103, 1104, 1105, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1119, 1121, and 1122 [4] of Regulation AB [5] (a subpart of Regulation S–K); Rules 139a, 167, 190, 193, 401, 405, 415, 424, 430B, 430C, 433, 456, and 457,[6] and Forms S–1 and S–3 [7] under the Securities Act of 1933 (Securities Act); [8] Rules 11, 101, 201, 202, and 305 [9] of Regulation S–T; [10] and Rules 3a68–1a, 3a68–1b, 15c2–8, 15d–22, 15Ga–1, and 17g–7 [11] and Forms 8–K, 10–K, and 10–D [12] under the Securities Exchange Act of 1934; [13] and Rule 103 [14] of Regulation FD.[15] We also are adding new Items 1124 and 1125 [16] to Regulation AB, and Rule 430D,[17] Form SF–1,[18] Form SF–3,[19] and Form ABS–EE [20] under the Securities Act.

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[1] 17 CFR 229.512.

[2] 17 CFR 229.601.

[3] 17 CFR 229.10 *et al.*

[4] 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1105, 17 CFR 229.1108, 17 CFR 229.1109, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1112, 17 CFR 229.1113, 17 CFR 229.1114, 17 CFR 229.1119, 117 CFR 229.1121, and 17 CFR 229.1122.

[5] 17 CFR 229.1100 through 17 CFR 229.1124.

[6] 17 CFR 230.139a, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.193, 17 CFR 230.401, 17 CFR 230.405, 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456, and 17 CFR 230.457.

[7] 17 CFR 239.11 and 17 CFR 239.13.

[8] 15 U.S.C. 77a *et seq.*

[9] 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, and 17 CFR 232.305.

[10] 17 CFR 232.10 *et seq.*

[11] 17 CFR 240.3a68–1a, 17 CFR 240.3a68–1b, 17 CFR 240.15c2–8, 17 CFR 240.15d–22, 17 CFR 240.15Ga–1, and 17 CFR 240.17g–7.

[12] 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

[13] 15 U.S.C. 78a *et seq.*

[14] 17 CFR 243.103.

[15] 17 CFR 243.100 *et seq.*

[16] 17 CFR 229.1124 and 17 CFR 229.1125.

[17] 17 CFR 230.430D.

[18] 17 CFR 239.44.

[19] 17 CFR 239.45.

[20] 17 CFR 249.1500.

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I. Executive Summary

A. Background

The Commission addressed the registration, disclosure, and reporting requirements for asset-backed securities in 2004 when it adopted new rules and amendments under the Securities Act and the Exchange Act.[21] Among other changes, the 2004 rules updated and clarified the Securities Act registration requirements for asset-backed securities offerings and allowed modified Exchange Act reporting tailored to asset-backed securities offerings. In April 2010, we proposed revisions to the registration, disclosure, and reporting requirements for ABS offerings in an effort to improve investor protection and promote more efficient asset-backed markets.[22]

In the 2010 ABS Proposing Release we noted that the financial crisis highlighted that investors and other participants in the securitization market did not have the necessary information and time to be able to fully assess the risks underlying asset-backed securities and did not value asset-backed securities properly or accurately. This lack of understanding and the extent to which it impacted the U.S. and global economy prompted us to revisit several aspects of our regulation of asset-backed securities.[23] To address these issues, we proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. Further, we proposed a rule that asset-backed issuers provide investors with more time to consider transaction-specific information about the pool assets. We also proposed to require asset-backed issuers to file a computer program modeling the flow of funds, or waterfall, provisions of the transaction to help investors analyze the offering and monitor ongoing performance. For offerings of asset-backed securities that qualify for shelf registration, we proposed investor protection-focused shelf eligibility and offering requirements that would indicate which types of offerings qualify for delayed shelf eligibility and also proposed to remove the investment-grade ratings requirement.[24] Finally, we proposed to require disclosure provisions in unregistered ABS transaction agreements as a condition to certain safe harbors for exempt offerings and resales of ABS.

In July 2010, subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[25] which directed the Commission to prescribe several ABS related rules, some of which were included in the 2010 ABS Proposals and others of which were not. Two of the proposed shelf eligibility requirements—risk retention and continued Exchange Act reporting—were addressed by provisions of the Dodd-Frank Act. After taking the Dodd-Frank requirements into account, and considering comments received in connection with the 2010 ABS Proposing Release, in 2011 we re-proposed some of the 2010 ABS Proposals, including the shelf eligibility requirements. In that same release, we also sought additional comment on asset-level disclosure, including comment on how best to implement Section 7(c) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act, which directed the Commission to adopt regulations to require asset-level information.[26]

In February 2014, the Commission re-opened the comment period[27] on the 2010 ABS Proposals and the 2011 ABS Re-Proposals to permit interested persons to comment on an approach for the dissemination of asset-level data, which is described in a staff memorandum, dated February 25, 2014, that was posted to the public comment file.[28]

B. Problems in the ABS Markets

The financial crisis highlighted a number of concerns about the operation of our rules in the securitization market.[29] The failures of credit ratings to accurately measure and account for the risks associated with certain asset-backed securities have been well documented by lawmakers, market observers, and academics.[30] The collapse of these ''investment-grade'' rated securities was a major contributor to the financial crisis, and demonstrated the risks to investors of unduly relying on these securities' credit ratings without engaging in independent due diligence.[31] Although academic

[21] *See Asset-Backed Securities,* Release No. 33–8518 (Jan. 7, 2005) [70 FR 1506] (the ''2004 ABS Adopting Release'').

[22] *See Asset-Backed Securities,* Release No. 33–9117 (Apr. 7, 2010) [75 FR 23328] (the ''2010 ABS Proposing Release'' or the ''2010 ABS Proposal'').

[23] *See* the 2010 ABS Proposing Release at 23329.

[24] In this Release, we also refer to such offerings as shelf offerings.

[25] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[26] *See Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities,* Release No. 33–9244 (July 26, 2011) [76 FR 47948] (the ''2011 ABS Re-Proposing Release'' or the ''2011 ABS Re-Proposal'').

[27] *See Re-Opening of Comment Period for Asset-Backed Securities,* Release No. 33–9552 (Feb. 25, 2014), [79 FR 11361] (''the 2014 Re-Opening Release'').

[28] *See* Memorandum from the Commission's Division of Corporation Finance (Feb. 25, 2014), *available at http://www.sec.gov/comments/s7-08-10/s70810.shtml* (the ''2014 Staff Memorandum'').

[29] For a more detailed discussion of the issues mentioned in this section and other economic problems that affected the ABS market, see Section II.B Economic Motivations below.

[30] *See, e.g.,* H.R. Rep. No. 4173 (2010) (Conf. Rep.) (Dodd-Frank Wall Street Reform and Consumer Protection Act—Conference Report) (noting that the performance of credit rating agencies, particularly their ratings of asset-backed securities, contributed significantly to the financial crisis); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67 J. Fin. 1293–1328 (2012) (discussing discretionary out-of-model adjustments to collateralized debt obligation (''CDO'') ratings made by one nationally recognized statistical rating organization); Adam Ashcraft, Paul Goldsmith-Pinkham & James Vickery, *MBS Ratings and the Mortgage Credit Boom* (2010 Working Paper Federal Reserve Bank of New York) (arguing, among other things, that MBS ratings did not fully reflect publicly available data).

[31] *See* the 2011 ABS Re-Proposal. *See also* Federal Reserve, Report to Congress on Risk Retention 49–66 (2010) (documenting the extent of the collapse of the investment-grade ABS market); Efraim Benmelech & Jennifer Dlugosz, *The Credit Rating Crisis,* in 24 NBER Macroeconomics Ann. 161–207 (Daron Acemoglu, Kenneth Rogoff & Michael Woodford, eds., Univ. of Chicago Press, Apr. 2010) (2009) (arguing that credit rating agency models did not adequately anticipate how poorly the assets underlying many structured finance products performed during economic downturns, that the ratings models failed to account for the correlation among underlying assets (e.g., residential home prices) at the national level, and that ''ratings shopping'' by issuers exacerbated the severity of the poor performance of structured finance products during the economic downturn); Patrick Bolton, Xavier Freixas & Joel Shapiro, *The Credit Ratings Game,* 67(1) J. Fin. 85–111 (2012) (arguing that credit rating agency competition can reduce the efficiency of credit ratings, as it facilitates ''ratings shopping,'' and that ratings are more likely to be inflated during economic booms and when investors are more trusting).

research suggests that some investors might have been able to price ABS credit risk beyond what the ratings implied, there is also evidence that investors in triple-A rated tranches were less informed than investors in lower tranches.[32]

In addition, investors have expressed concern about a lack of time to analyze securitization transactions and make informed investment decisions.[33] Time to analyze an offering is necessary if investors are being encouraged to perform their own diligence and to not over rely on credit ratings. While the Commission has not generally built waiting periods into its shelf offering registration process,[34] and instead has believed investors can take the time they believe is adequate to analyze securities (and refuse to invest if not provided sufficient time), investors have indicated that this is not generally possible in the ABS market, particularly in a heated market.[35]

Investors and others have also expressed concerns about other aspects of the securitization market, including concern about a lack of effective oversight by the principal officers of the ABS issuer.[36] In particular, investors have been concerned that these officers have not conducted sufficient due diligence when reviewing the pool assets and designing the securitization structure. Additionally, investors have noted that the mechanisms for enforcing the representations and warranties contained in the securitization transaction documents are weak, and thus they are not confident that even strong representations and warranties provide them with adequate protection.[37] They have also noted that difficulties in locating fellow ABS investors have prevented them from exercising rights under the transaction agreement, including requirements that an originator or sponsor repurchase an asset if it does not comply with the representations and warranties.[38]

Market participants have also expressed a desire for expanded disclosure about the assets underlying securitizations in order to conduct an analysis of the offering.[39] The financial crisis underscored that the information available to investors about ABS may not have provided them with all the information necessary to fully understand and correctly gauge the risks underlying the securities. As a result, investors may not have been able to accurately value those securities.[40]

C. Summary of Final Rules

We are adopting significant revisions to the rules governing disclosure, reporting, registration, and the offering process for asset-backed securities. The revised rules are designed to address the problems discussed above and to enhance investor protection in the ABS market.[41] In adopting these changes, we have taken into consideration the comments and recommendations made by commenters in connection with the 2010 ABS Proposing Release, the 2011 ABS Re-Proposing Release and the 2014 Re-Opening Release, which are reflected in the changes made in the final rules.[42] We received a total of 240 comment letters in connection with the 2010 ABS Proposals, 2011 ABS Re-Proposal and the 2014 Re-Opening Release.

The final rules are intended to provide investors with timely and sufficient information, reduce the likelihood of undue reliance on credit ratings, and provide mechanisms to help to enforce the representations and warranties made about the underlying assets. These revisions are comprehensive and although they will impose new burdens on issuers, we believe they will protect investors and promote efficient capital formation. The rules cover the following areas:

- Securities Act and Exchange Act disclosures, including new requirements for certain asset classes to disclose standardized asset-level information;
- Revisions to the shelf offering process, eligibility criteria, and prospectus delivery requirements; and
- Several changes to the Asset-Backed Issuer Distribution Report on Form 10–D, the Annual Report on Form 10–K, and the Current Report on Form 8–K.[43]

In addition, we are adopting clarifying, technical, and other changes to the current rules. Some of the rules we are adopting are designed to address and improve areas that we believe have the potential to raise issues similar to those highlighted in the financial crisis. Furthermore, some of the rules we are adopting respond to Sections 939A and 942(b) of the Dodd-Frank Act.

1. Asset-Level Disclosure

Investors, other market participants, academics, and policy makers have increasingly noted that asset-level information is essential to evaluating an asset-backed security.[44] We believe that

[32] *See* Manuel Adelino, *How Much Do Investors Rely on Ratings? The Case of Mortgage-Backed Securities,* (2009 Working Paper Dartmouth College) (suggesting that investors in certain RMBS triple-A rated tranches relied more on ratings because they were less informed about the quality of the underlying assets than investors in lower tranches based on a comparison between yield spreads at securitization and actual defaults). *But see* Jie Jack He, Jun QJ Qian & Philip E. Strahan, *Are All Ratings Created Equal? The Impact of Issuer Size on the Pricing of Mortgage-Backed Securities,* 67 J. Fin. 2097–2137 (2012) (suggesting that investors did not over rely on ratings by arguing that investors were able to price the risk of large RMBS issuers receiving more inflated ratings by comparing yields on RMBS sold by large issuers against the yields on RMBS sold by small issuers).

[33] *See* discussion in Section V.B.1.a) Rule 424(h) and Rule 430D below.

[34] *See, e.g.,* Section IV.A. of *Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722] (the ''Securities Offering Reform Release'') (adopting significant revisions to registration, communications and offering process under the Securities Act and stating that Rule 159 would not result in a speed bump or otherwise slow down the offering process).

[35] *See* discussion in Section V.B.1.(a) Rule 424(h) and Rule 430D below.

[36] *See, e.g.,* letters from Better Markets dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Better Markets''), CFA Institute dated Nov. 9, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''CFA II''), Securities Industry and Financial Markets Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''SIFMA I'') (expressed views of investors only), and Vanguard dated Aug. 27, 2010 submitted in response to the 2010 ABS Proposing Release (''Vanguard'').

[37] *See* letters from Metropolitan Life Insurance Company dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Metlife II''), Prudential Investment Management, Inc. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Prudential II''), and Securities Industry and Financial Markets Association, Asset Management Group dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''SIFMA II-investors'') (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties). *See also* Section V.B.3.a)(2) Asset Review Provision below.

[38] *See* letters from CFA II and Investment Company Institute dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ICI II'').

[39] *See* discussion in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement below.

[40] *See* Sheila Bair, Bull by The Horns: Fighting to Save Main Street From Wall Street and Wall Street From Itself 52 (2012) (noting that, based on data analysis conducted by the FDIC, ABS investors did not look at the quality of the individual loans in the asset pools and lacked detailed loan-level information and adequate time to analyze the information before making an investment decision). *See also* footnote 882 and discussions in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement and Section V.B.1.a) Rule 424(h) and Rule 430D below.

[41] The rules do not affect the applicability of the Investment Company Act (15 U.S.C. 80a–1 *et seq.*) to ABS issuers, including the availability of exclusions from such Act. *See, e.g.,* Section 3(c)(1) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) (for unregistered transactions); Rule 3a–7 [17 CFR 270.3a–7] (for registered and unregistered transactions).

[42] The 2014 Re-Opening Release provided for a thirty-day comment period. In response to commenters' requests, on March 28, 2014, we extended the comment period until April 28, 2014.

[43] *See* Section I.C.5 Proposed Rules Not Being Adopted At This Time for a list of proposed rules that we are not adopting at this time.

[44] *See, e.g., The Private Mortgage Market Investment Act, Part I, Hearing on H.R. 3644 Before the Subcomm. on Capital Mkts. & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.,* 112th Cong.

Continued

all investors and market participants should have access to the information they need to assess the credit quality of the assets underlying a securitization at inception and over the life of a security. In 2010, we proposed to require standardized asset-level information in prospectuses and on an ongoing basis in periodic reports. The 2010 ABS Proposals called for ABS issuers to disclose standardized asset-level information for most asset classes.

We are adopting standardized asset-level disclosure requirements because we believe this information will allow an investor to better conduct his or her own evaluation of the ongoing credit quality of a particular asset, risk layering of assets, and overall risks in the pool underlying the ABS. In our discussion below, we refer to each individual asset-level disclosure requirement as an asset-level data point. The asset-level data will be provided at the time of the offering and on an ongoing basis. The disclosures are required to be provided in a standardized XML format, so that they are more useful to investors and markets. We have revised the required data points to address commenters' concerns about a variety of topics that we discuss further below, such as the availability of data, market practice, need for increased transparency and privacy concerns. While we are adopting asset-level disclosure requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto leases and resecuritizations of ABS that include these asset types, or of debt securities,[45] we are continuing to consider the best approach for requiring more information about underlying assets for the remaining asset classes covered by the 2010 ABS Proposal.[46]

We have modified some of the proposed data points in response to comments. The new disclosure requirements include the following standardized data points:

- Data points about the payment stream related to a particular asset, such as the contractual terms, scheduled payment amounts, basis for interest rate calculations and whether and how payment terms change over time;
- Data points that allow for an analysis of the collateral related to the asset, such as the geographic location of the property, property valuation data and loan-to-value (''LTV'') ratio;
- Data points about the performance of each asset over time, for example, data about whether an obligor is making payments as scheduled; and
- Data points about the loss mitigation efforts by the servicer to collect amounts past due and the losses that may pass on to the investors.

Other key data points we are adopting will provide data about the extent to which income and employment status have been verified, mortgage insurance coverage, and lien position.

We have also made modifications from the 2010 ABS Proposal in light of privacy concerns. As we discuss below, many commenters were concerned with the privacy implications of asset-level disclosure, particularly the risk that the information could be combined with other publicly available information to discover, or ''re-identify,'' the identities of the obligors in ABS pools, thereby revealing potentially sensitive personal and financial information about an obligor. In light of these concerns, we are omitting or modifying certain asset-level disclosures for RMBS and securities backed by auto loans and leases (collectively, ''Auto ABS'') to reduce the potential risk that the obligors could be re-identified. We refer to this risk throughout the release as ''re-identification risk''. Additionally, in response to commenters' suggestions, we have sought and obtained guidance from the Consumer Financial Protection Bureau (''CFPB'') on the application of the Fair Credit Reporting Act (''FCRA'')[47] to the required disclosures. We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about the potential re-identification risk associated with disclosing consumers' personal and financial information.[48]

2. Other Disclosure Requirements

We are also adopting other amendments to the prospectus disclosure requirements, which will require:

- A summary of statistical information about the pool of underlying assets in the prospectus summary;
- A description of the provisions in the transaction agreements about modification of the terms of the underlying assets;
- More explanatory language about the static pool disclosures and standardized delinquency presentation and, for static pool filings on Form 8–K, a new separate Form 8–K item and exhibit number;
- Expanded disclosure about transaction parties; and
- Filing of the transaction documents, by the date of the final prospectus, which is a clarification of the current rules.

3. Securities Act Registration

ABS issuers have emphasized their desire to access the capital markets quickly through shelf registration. ABS shelf registration offers significant flexibility and timing benefits to issuers, but these interests must be balanced against investors' need for adequate information and time to make informed investment decisions. Investors have expressed concerns about not having adequate time to review the prospectus in order to make a well-informed investment decision, especially in an

3 (2011) (statement of Rep. Scott Garrett, Chairman, Subcomm. on Capital Mkts. & Gov't Sponsored Enters.) (stating ''in regards to transparency and disclosure, investors should be empowered, if you will, and enabled to do their own analysis of the assets underlying the securities that they are investing in. So by disclosing more detailed loan level data, while at the same time protecting the privacy of the borrowers, and by allowing more time for the investors to study that additional information, investors will be able to conduct more due diligence and lessen their reliance on rating agencies''); *Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Secs., Ins., & Inv. of S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 39 (2009) (statement of Patricia McCoy, law professor at the University of Connecticut School of Law) (recommending that ''[t]he SEC should require securitizers to provide investors with all of the loan-level data they need to assess the risks involved'' and ''should require securitizers and servicers to provide loan-level information on a monthly basis on the performance of each loan and the incidence of loan modifications and recourse''). *See also* letters from Moody's Investors Service dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release (''Moody's I'') (suggesting increased ABS data information will restore confidence in the structured finance market), Prudential Investment Management, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Prudential I'') (supporting the SEC's proposal for investors to have access to asset-level data in order to provide investors with a better understanding of risk), and SIFMA I (suggesting that asset-level data is important to an investor's investment decision and is needed to restore investor confidence).

[45] Under the proposal, this asset class was titled ''corporate debt.'' However, we are using the term ''debt security ABS'' to provide clarification because, as we discuss below, the same set of requirements will also apply to resecuritizations.

[46] While the 2010 ABS Proposal applied across asset classes, we had also proposed specific requirements for equipment loans and leases, student loans, floorplan financings, and credit card receivables. As discussed below, Section 7(c) of the Securities Act [15 U.S.C. 77g(c)] also requires, in relevant part, that the Commission adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, information about the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.

[47] 15 U.S.C. 1681 et seq. FCRA generally regulates the use of ''consumer reports'' furnished by a ''consumer reporting agency,'' as those terms are defined in the statute. The CFPB has authority to interpret FCRA.

[48] 15 U.S.C. 77g(c).

active market.[49] This lack of time to adequately review the transaction contributed to investors placing undue reliance on the investment-grade ratings of these securities.[50] Consequently, we are adopting a requirement that ABS issuers using a shelf registration statement on new Form SF–3 file a preliminary prospectus under new Rule 424(h) containing transaction-specific information at least three business days in advance of the first sale of securities in the offering.[51] The preliminary prospectus will give investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. We had originally proposed that any material change to the preliminary prospectus, other than offering price, would require the filing of a new preliminary prospectus and re-starting the waiting period. In response to commenters' concerns, we are requiring, instead, that issuers file material changes in a prospectus supplement that provides a clear description of how the information has changed at least 48 hours before the first sale.

As noted above, while we recognize that ABS issuers have expressed the desire to use shelf registration in order to access the capital markets quickly, we believe that the shelf eligibility requirements should be designed to help ensure a certain quality and character for asset-backed securities eligible for delayed shelf registrations given the speed of these offerings. Prior to today, one of the shelf eligibility requirements for offerings of asset-backed securities was that the securities were investment-grade securities—meaning that at least one of the nationally recognized statistical rating organizations (''NRSRO'') rated them in one of its generic rating categories that signifies investment grade and is typically one of the four highest categories. As noted above, the financial crisis revealed that credit rating agencies had generally not appropriately evaluated the credit risk of the securities and that some investors may have placed too much reliance on these ratings without conducting their own analysis.[52] We proposed to replace the investment-grade ratings requirement with alternative shelf eligibility criteria. These proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue reliance on ratings and also to eliminate the appearance of an imprimatur that such references may create.[53] Additionally, Section 939A of the Dodd-Frank Act requires us to review and eliminate the use of credit ratings as an assessment of creditworthiness in our rules.[54] Consequently, we are adopting four transaction requirements for ABS shelf eligibility to indicate which types of offerings qualify for shelf registration, and we are removing the prior investment-grade ratings requirement. The four new transaction requirements are:

- A certification by the chief executive officer;
- An asset review provision requiring review of the assets for compliance with the representations and warranties upon the occurrence of certain trigger events;
- A dispute resolution provision; and
- Disclosure of investors' requests to communicate.

We believe that these new shelf eligibility and offering requirements will reduce undue reliance on credit ratings and also help to ensure that ABS issued in shelf offerings are designed and prepared with more oversight and care that make them appropriate to be issued off a shelf, which we define as being ''shelf appropriate'' securities.

(a) Certification

In the aftermath of the financial crisis, investors have expressed concern that ABS issuers were creating securitization transactions that could not support the scheduled payments due to investors.[55] We are concerned, in particular, that issuers were not adequately reviewing the disclosure provided in the prospectus, examining the assets included in the pool, and assessing the security structure and the expected pool-asset cash flows. To address this concern, we are adopting, as a shelf eligibility requirement, a certification by the chief executive officer of the depositor at the time of each takedown about the disclosures contained in the prospectus and the structure of the securitization. We believe that a certification should cause the chief executive officer to participate more extensively in the oversight of the transaction. The certification will also provide explicit evidence of the certifier's belief about the securitization at the time of the takedown.

We have made revisions to the certification in order to address commenters' concerns about the certification constituting a guarantee about future performance and possibly increased liability for certifiers. To address commenters' concerns about certifier liability, we have added a

[49] *See* the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19. *See also* the discussion in Section V.B.1.a)(1), below (discussing investors' concerns about the lack of adequate time).

[50] *See, e.g., Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 71 (2009) (statement of William W. Irving, Portfolio Manager at Fidelity Investments) (noting ''high demand [for ABS] put investors in the position of competing with each other, making it difficult for any of them to demand better underwriting, more disclosure, simpler product structures, or other favorable terms'').

[51] We use the term ''preliminary prospectus'' to mean the Rule 424(h) preliminary prospectus; similarly we use the term ''final prospectus'' to mean the Rule 424(b)(2) or (5) prospectus.

[52] *See* footnote 31. *See also, e.g.,* Joshua D. Coval, Jakub W. Jurek & Erik Stafford, *Economic Catastrophe Bonds,* 99(3) Am. Econ. Rev. 628–66 (2009) (arguing that senior CDO tranches have significantly different risk exposures than their credit rating-matched single-name counterparts, and thus should command different risk premia, and that the information provided by the credit ratings agencies to their customers is inadequate for purposes of accurately pricing these risks); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67(4) J. Fin. 1293–1328 (2012) (analyzing 916 CDOs and finding that credit rating agencies frequently made favorable pro-issuer adjustments beyond what their own risk models suggested, thereby subjectively increasing the size of triple-A tranches in the CDOs, and, subsequently, the CDOs with larger subjective adjustments experienced more severe downgrades during the economic crisis).

[53] *See, e.g., Security Ratings,* Release No. 33–9245 (July 27, 2011) [76 FR 46606] (the ''Security Ratings Release'') (amending rules and forms under the Securities Act and the Securities Exchange Act); *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–64352 (Apr. 27, 2011) [76 FR 26550] (proposing amendments to rules and one form under the Securities Exchange Act).

[54] Section 939A of the Dodd-Frank Act requires that the Commission review any regulation issued by the Commission that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. We completed this review and issued a report on July 21, 2011 (see *Report on Review of Reliance on Credit Ratings, available at http://www.sec.gov/news/studies/2011/939astudy.pdf*). We have removed references from a significant number of rules and forms both as a result of our broad ongoing effort to remove credit rating references from our rules as well as in light of the requirements in Section 939A of the Dodd-Frank Act. *See, e.g.,* Rules 15c3–1 [17 CFR 240.15c3–1], 15c3–3 [17 CFR 240.15c3–3], 10b–10 [17 CFR 240.10b–10] and 17i–8(a)(4) [17 CFR 240.17i–8(a)(4)] under the Exchange Act, Form X–17A–5, Part IIB [17 CFR 249.617] under the Exchange Act, Schedule 14A [17 CFR 240.14a–101] under the Exchange Act, Rule 100(b)(2) of Regulation FD [17 CFR 243.100(b)(2)], Rule 5b–3 [17 CFR 270.5b–3] under the Investment Company Act, Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a–1] and N–3 [17 CFR 274.11b] under the Investment Company Act, Rules 134 [17 CFR 230.134], 138 [17 CFR 230.138], 139 [17 CFR 230.139] and 168 [17 CFR 230.168] under the Securities Act and Forms S–3 (non-ABS) [17 CFR 239.13], S–4 [17 CFR 239.25], F–3 [17 CFR 239.33], F–4 [17 CFR 239.34] and F–9 (rescinded) under the Securities Act.

[55] *See, e.g.,* letters from Better Markets and Prudential I (highlighting the problem with the ''originate-to-distribute'' model where the focus is on whether the asset can be sold into a securitization rather than on its likely long-term performance).

paragraph to clarify that the certifier has any and all defenses available under the securities laws.

(b) Asset Review Provision

We have noted investors' concerns about the effectiveness of contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors and other parties to the transaction about potential breaches.[56] Commenters shared this concern [57] and, to address it, we are requiring, as proposed that the relevant transaction agreements include provisions providing for a review of the underlying assets for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger events. The rule is designed to address comments received related to the triggers and potential costs, while at the same time balance the need for stronger mechanisms to enforce underlying contract terms. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger. The first prong of the trigger is the occurrence of a specified percentage of delinquencies in the pool. If the delinquency trigger is met, the second prong of the trigger is the direction of investors by vote. The report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee in order for the trustee to determine whether a repurchase request would be appropriate under the terms of the transaction agreements, and a summary of the report must be included on the Form 10–D. We believe that this shelf requirement will address investors' concerns about the enforceability of the representations and warranties and also will incentivize the obligated parties to better consider the disclosure, characteristics, and quality of the assets in the pool.

(c) Dispute Resolution

As demonstrated by events surrounding the financial crisis, investors have not only lacked an effective mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.[58] We are requiring that the underlying transaction agreements include a provision providing that, if an asset subject to a repurchase request is not repurchased by the end of a 180-day period beginning when notice is received, then the party submitting such repurchase request would have the right to refer the matter, at its discretion, to either mediation or third-party arbitration. Under the final rule, the dispute resolution provision is a separate and distinct shelf eligibility requirement; investors will be able to take advantage of the dispute resolution provision regardless of whether they had utilized the asset review process.

(d) Investor Communication

The aftermath of the financial crisis has demonstrated that investors have also encountered difficulty in locating other investors in order to enforce rights collectively under the terms of the ABS transaction, especially those related to repurchase demands due to breaches of the representations and warranties.[59] Without an effective means for investors to communicate with each other, investors have told us that they are unable to utilize the contractual rights provided in the underlying transaction agreements. To address this concern, we are requiring as proposed that the underlying transaction agreements must include a provision to require that a request by an investor to communicate with other investors be included in ongoing distribution reports filed on Form 10–D.

(e) Other Shelf Offering Provisions

We are also adopting various other changes to the procedures and forms related to shelf offerings substantially as proposed, with some changes in response to comments, including:

- Limiting registration of continuous ABS shelf offerings to ''all or none offerings.''
- Eliminating Rule 415(a)(1)(vii) that provided shelf eligibility to certain investment-grade mortgage related securities regardless of the registration statement form.
- Permitting a pay-as-you-go registration fee alternative, allowing ABS issuers to pay registration fees at the time of filing the preliminary prospectus, as opposed to paying all registration fees upfront at the time of filing the registration statement.
- Creating new Forms SF–1 and SF–3 for ABS issuers that will replace the usage of current Forms S–1 and S–3 in order to delineate between ABS filers and corporate filers and to tailor requirements for ABS offerings.
- Eliminating the ABS investment-grade exemptive provision in Rule 15c2–8(b) so that a broker or dealer will be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale.
- Revising the current practice of providing a base prospectus and prospectus supplement for ABS issuers and instead requiring that a single prospectus be filed for each takedown (except that it would be permissible to highlight material changes from the preliminary prospectus in a separate supplement to the preliminary prospectus).

4. Other Changes to ABS Rules

In addition to the prospectus disclosure changes and shelf requirements, we are also adopting other changes related to ABS. For example, we are adopting a revision to the prefunding exception provided in the definition of ABS, which will decrease the prefunding limit from 50% to 25% of the offering proceeds. Additionally, we are adopting several changes to Forms 10–D, 10–K and 8–K.

5. Proposed Rules Not Being Adopted At This Time

We are not adopting at this time, however, several rules that we proposed in the 2010 ABS Proposing Release or the 2011 ABS Re-Proposing Release. These proposals remain outstanding. They include:

- Requiring issuers to provide the same disclosure for Rule 144A offering as required for registered offerings;
- Making the general asset-level requirements applicable to all asset classes and asset-class specific requirements for equipment loans and leases, student loans, and floorplan financings;
- Requiring grouped-account disclosure for credit and charge card ABS;

[56] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Release No. 33–9175 (Jan. 20, 2011) [76 FR 4489, 4490] (the ''Section 943 Adopting Release''). We also note, for example, that transaction agreements typically have not included specific mechanisms to identify possible breaches of representations and warranties or to resolve a question of whether a breach of the representations and warranties has occurred.

[57] *See* footnotes 1050 and 1051.

[58] *See* Alex Ulam, *Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight,* Am. Banker, June 24, 2011 (noting that many attempted put-backs have ''flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer''). *See also* Tom Hals & Al Yoon, *Mortgage Investors Zeroing in on Subprime Lender*, Thomson Reuters, May 9, 2011 (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a ''laborious'' task).

[59] *See* Katy Burne, *Banker's Latest Bet: Teamwork on Bonds,* Wall St. J., Jan. 22, 2013 (illustrating the difficulty that investors encounter in attempting to communicate with one another and noting one investor's efforts to locate other RMBS investors by publishing advertisements in national newspapers).

- Filing of a waterfall computer program of the contractual cash flow provisions of the securities;
- Requiring the transaction documents, in substantially final form, be filed by the date the preliminary prospectus is required to be filed;
- Exempting ABS issuers from current requirements that the depositor's principal accounting officer or controller sign the registration statement and in lieu requiring an executive officer in charge of securitization sign the registration statement; and
- Revising when pool disclosure must be updated on Form 8–K.

II. Economic Overview

We are mindful of the economic consequences and effects, including costs and benefits, of our rules, and we discuss them throughout this release when we explain the new rules that we are adopting. Further, Section 2(b) of the Securities Act [60] and Section 3(f) of the Exchange Act [61] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a) of the Exchange Act requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition.[62] Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[63]

To assess these economic consequences, we are using as our baseline the ABS market as it exists at the end of 2013, including applicable rules adopted by the Commission but excluding the rules adopted herein. Because activity in the ABS market has changed due to the financial crisis, we will refer to market statistics that encompass the pre-crisis period, the crisis period, and the current period as appropriate in order to provide a more comprehensive picture of the ABS market. To the extent that certain amendments are mandated by statute, the economic analysis considers the consequences and effects that stem from statutory mandates, as well as those that are affected by the discretion we exercise in implementing the mandates. We provide a qualitative, and whenever possible quantitative, discussion of the costs, benefits, and the effects on efficiency, competition, and capital formation of individual rule provisions in the corresponding sections of the release. We anticipate, however, that the elements of the rules will interact with each other and also with other regulations to generate combined economic effects. Thus, it is appropriate to expand the analysis to include disparate elements of the rule. While we make every reasonable attempt to quantify the economic impact of the rules that we are adopting, we are unable to do so for several components of the new rules due to the lack of available data.[64] We also recognize that several components of the new rules are designed to change existing market practices and as a result, existing data may not provide a basis to fully assess the rules' economic impact. Specifically, the rules' effects will depend on how issuers, their investors, and other parties to the transactions (e.g., trustees, underwriters, and other parties that facilitate transactions between issuers and investors) will adjust on a long-term basis to these new rules and the resulting evolving conditions. The ways in which these groups could adjust, and the associated effects, are complex and interrelated and thus we are unable to predict them with specificity nor are we able to quantify them at this time.

The new rules are designed to improve investor protections and promote a more efficient asset-backed market. The new transaction requirements for shelf eligibility should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. The new requirements for more asset-level information and more time for investors to review this information will provide more disclosure and greater transparency about the underlying assets. The effect of the increased disclosure on competition, efficiency, and capital formation will depend, in part, on the level of granularity and standardization of information currently available and disclosed. The remaining changes to Regulation AB that we are adopting are refinements to existing Regulation AB. We recognize that these new and amended rules that we are adopting may impose costs on asset-backed issuers, investors, servicers, and other transaction participants and may affect competition, efficiency, and capital formation. The effect of the refinements to existing Regulation AB will depend, in part, on issuers' current methods to comply with the existing rules. While we cannot predict or quantify precisely all effects the new rules will have on competition, efficiency, and capital formation, we believe that the rules we are adopting will improve the asset-backed securities market.

A. Market Overview and Economic Baseline

For many asset classes, the ABS market before the 2007–2009 financial crisis differed significantly from the one immediately after the crisis, and even from our baseline, the market that exists today, as illustrated in Figure 1. Private-label (non-U.S. agency) ABS issuers held $2.6 trillion in assets in 2004, which grew to $4.5 trillion in 2007, and declined to $1.63 trillion in 2013.[65] This distinction is most stark in the case of private-label residential mortgage-backed securities (''RMBS''), including home equity lines of credit. In 2004, prior to the crisis, new issuances of registered private-label RMBS totaled $746 billion.[66] The overwhelming majority of private-label RMBS deals issued before the crisis were registered offerings. In 2008, registered private-label RMBS issuance drastically dropped to $12 billion. Today, the private-label RMBS market remains exceptionally weak overall and consists

[60] 15 U.S.C. 77b(b).

[61] 15 U.S.C. 78c(f).

[62] 15 U.S.C. 78w(a).

[63] 15 U.S.C. 78w(a)(2).

[64] We note the lack of quantitative analysis provided by commenters about the impact of the proposals on the market. Some commenters did, however, provide us with some limited qualitative descriptions of potential impacts, which we took into consideration in adopting the final rules.

[65] *See* Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts (published quarterly), *available at http://www.federalreserve.gov/releases/z1/.* Each report contains data for the previous five years; data for earlier years can be accessed through the Federal Reserve's Data Download Program, *available at http://www.federalreserve.gov/datadownload/Choose.aspx?rel=Z.1.* We use aggregate data for private mortgage pools, consumer credit, business loans, student loans, consumer leases, and trade credit securitization.

[66] The figure and statistics in this section are based on the issuance data from AB Alert and CM Alert databases. The deals are categorized by offering year, underlying asset type, and offering type (SEC registered, Rule 144A, or traditional private offerings). Private-label RMBS include residential, Alt-A, and subprime RMBS, and ABS backed by home equity loans and lines of credit. Only private-label (non-GSE) RMBS deals sold in the United States and sponsors of such deals are counted. Auto loan ABS include ABS backed by auto loans, both prime and subprime, motorcycle loans, truck loans, and RV loans.

almost exclusively of unregistered RMBS offerings.[67] For 2013, new issuances of registered private-label RMBS totaled $4 billion, which represents 0.54% of the issuance level in 2004. Similarly, a drop in issuance level was evident with registered commercial mortgage-backed securities (''CMBS''), which totaled $74 billion in 2004, declined to $11 billion in 2008, and totaled $53 billion in 2013. The consumer finance ABS market, including credit card and auto securitizations, also declined drastically both in terms of number of deals and issuance volume after the financial crisis. For example, $85 billion of Auto ABS were issued in 2005, but after the crisis, in 2008, issuance plummeted to $32 billion. Unlike RMBS, consumer finance ABS, especially Auto ABS, has since 2008 steadily increased to $42 billion of issuance in 2011 and to $62 billion in 2013. Almost all ABS markets experienced historic downturns following the crisis, and the recovery of these markets has not been uniform.

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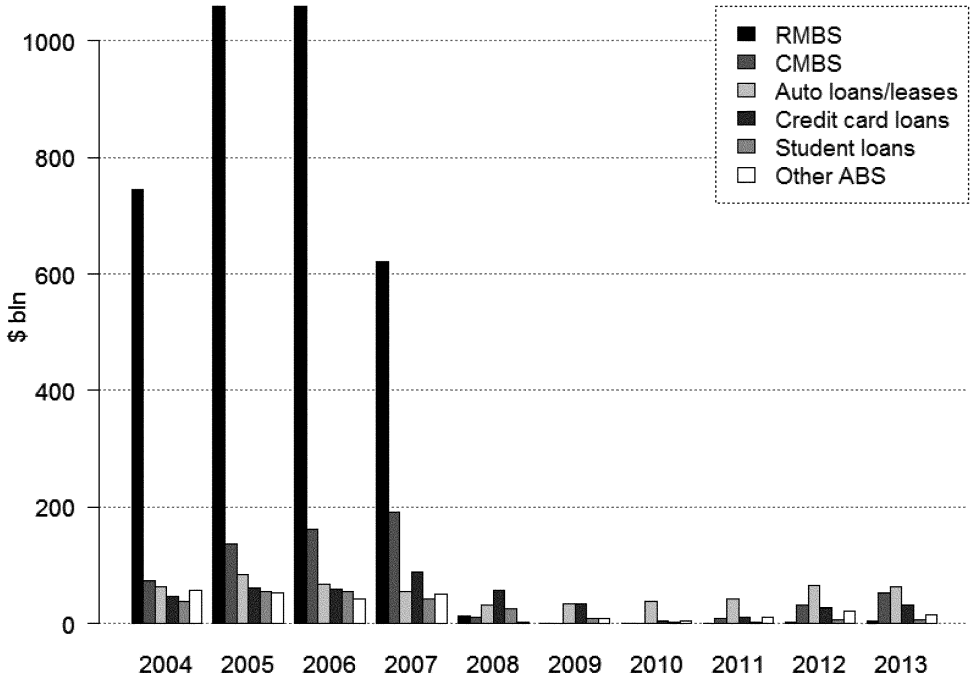
Figure 1. Issuance volume (in billions of dollars) of SEC-registered ABS deals in 2004-2013 by main asset classes. For a description of the data, see footnote 66.



The number of sponsors in the registered ABS markets has undergone changes similar to the issuance activity described above. In 2004 there were 131 sponsors of registered ABS, while currently there are 61 sponsors of registered ABS.[68] The decline in the number of sponsors is most dramatic in the RMBS segment where only a single sponsor of private-label RMBS was issuing registered securities as of the end of 2013—down from 52 sponsors in 2004. In the RMBS market, private-label RMBS issuers encounter competitive pressure from government-sponsored enterprises, whose mortgage-backed securities are guaranteed and exempt from registration and reporting requirements. As private-label issuance has declined, issuance of agency RMBS has increased. Issuances of Federal National Mortgage Association (''Fannie Mae''), Federal Home Loan Mortgage Corporation (''Freddie Mac''), and Government National Mortgage Association (''Ginnie Mae'') mortgage-related securities were $1.4 trillion in 2004, and grew to $1.9 trillion in 2013.[69]

Many factors contributed to the financial crisis, including some that involved mortgage-backed securities.[70] The low interest rate environment prior to the crisis drove investor demand for high-yield, high-credit rated products, including mortgage-backed securities.[71]

[67] As of December 2013, roughly 99% of new residential mortgage-related securitizations were government sponsored (market statistics from the Securities Industry and Financial Markets Association (SIFMA)). *See also* Tracy Alloway, ''Private-Label Mortgage Securities Take Root,'' Fin. Times (Feb. 22, 2013) (noting a recent spurt in private-label RMBS issuances but also indicating that the volume of private-label RMBS is likely to remain suppressed for some time). The outstanding private-label RMBS market fell to $1.1 trillion in the last quarter of 2013, down from $1.4 trillion in 2011 and $2.3 trillion in 2007. *See* also Diana Olick, ''Why Private Investors Are Staying Away From Mortgages,'' CNBC (Aug. 6, 2012) (citing lack of investor confidence in the quality and ratings of RMBS).

[68] For a description of the data, see footnote 66. The 2004 numbers in this release have been revised from those provided in the 2010 ABS Proposal to include CMBS sponsors from the CM Alert database.

[69] *See* SIFMA, U.S. Mortgage-Related Issuance, *available at http://www.sifma.org/research/statistics.aspx.*

[70] A report by the U.S. Government Accountability Office (''GAO'') noted that subprime and near-prime mortgages increased dramatically in popularity during the 2000's, accounting for nearly 40% of mortgage originations by 2006. The high foreclosure and default rates of these mortgages contributed precipitously to the financial crisis. *See* U.S. Government Accountability Office, *Mortgage Reform: Potential Impacts of Provisions in the Dodd-Frank Act on Homebuyers and the Mortgage Market* (July 2011) at 11.

[71] *See, e.g.,* Eamonn K. Moran, *Wall Street Meets Main Street: Understanding the Financial Crisis,* N.C. Banking Inst. 7, 14 & 35 (2009) (''Low interest rates set by the Federal Reserve, as a result, led to low returns on traditionally safe U.S. Treasury bonds. Therefore, securitized investments, which yielded a premium but many of which carried AAA-ratings even if the underlying mortgages were dubious, were quite attractive to domestic and foreign investors.'').

Among the many factors relating to mortgage-backed securities that contributed to the financial crisis, mortgage originators largely exhausted the supply of traditional quality mortgages, and to keep up with investor demand for mortgage-backed securities, subprime lending became increasingly popular.[72] During the crisis, as the default rate for subprime mortgages soared, such securities, including those with high credit ratings, lost value (up to 95% for triple-B rated and 70% for triple-A rated subprime RMBS issued in 2006), making investors reluctant to purchase these securities.[73] Some of the decline in the value began to reverse in 2010 as housing prices started to stabilize and investors gained a better understanding of the mortgage modification process. This reversal has been concentrated in the subprime RMBS tranches that were highly rated. As indicated above, activity in some parts of the ABS market continues to remain weak.

B. Economic Motivations

As described at the end of the previous section, during the financial crisis, many securitizations performed exceptionally poorly as investments. This has been attributed to the dual problems of moral hazard and asymmetric information.[74] In particular, many believe that originators and securitizers have more information about the credit quality and other relevant characteristics of the borrower than the ultimate investors; for example, they may have been aware that the underlying assets were of poor quality and, thus, presented greater risks. This leads to a potential moral hazard problem—the situation where one party (e.g., the loan originator or ABS sponsor) may have a tendency to incur risks because another party (e.g., investors) will bear the costs or burdens of these risks. Hence, when there are inadequate processes in place to encourage (or require) sufficient transparency to overcome concerns about informational differences, the securitization process could lead certain participants to maximize their own welfare and interests at the expense of other participants. Before and during the crisis, information regarding the quality of the underlying assets was not generally known by investors, and certain originators and sponsors were frequently able to transfer the financial consequences of poor origination decisions by packaging the assets in complex and often opaque securitization structures.[75] The incentives to maintain opacity were particularly acute for those securitizations where the originator and securitizer received full compensation for their services before investors could become informed about the loan quality of the underlying pool.[76]

At that time, many investors unduly relied upon the major credit rating agencies for credit analysis of these structures rather than conducting their own due diligence, and these agencies often failed to accurately evaluate and rate the securitization structures.[77] Many observers believe that inflated and inaccurate credit ratings contributed to the financial crisis in a significant way.[78] Investment in securitizations has diminished substantially since the financial crisis, in part, because investors have significantly less trust that incentives are properly aligned among originators, securitizers, independent evaluators (rating agencies), and investors.[79]

The rules we are adopting apply to private-label RMBS securitizations, and do not apply to Government Sponsored Entities (GSEs) such as Fannie Mae and Freddie Mac, whose principal and interest on issued securities is currently guaranteed, while the GSEs remain in conservatorship,[80] and otherwise may be perceived by market participants to carry an implicit guarantee.[81] Private-label RMBS securitizations are not guaranteed by the federal government and had a much higher serious delinquency rate than GSE-purchased

[72] *See id.* at 35 (noting ''voracious demand exhausted the supply of prime mortgage loan securitizations and investment bankers began seeking subprime mortgage loans to continue to generate mortgage-backed securities'').

[73] *See, e.g.,* Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention,* (Oct. 2010) at 50–51 (discussing the dramatic drop in the triple-A and triple-B ABX.HE 2006–2 index).

[74] *See,* Adam B. Ashcraft & Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit* (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (identifying at least seven different frictions in the residential mortgage securitization chain that can cause agency and adverse selection problems in a securitization transaction and explaining that given that there are many different parties in a securitization, each with differing economic interests and incentives, the overarching friction that creates all other problems at every step in the securitization process is asymmetric information).

[75] *See, e.g.,* Chris Downing, Dwight Jaffee & Nancy Wallace, *Is the Market for Mortgage-Backed Securities a Market for Lemons?,* 22(7) Rev. Fin. Stud. 2457–94 (2009) (stating that the quality of the assets sold to investors through securitizations is lower than the quality of similar assets that are not sold to investors); Amiyatosh Purnanandam, *Originate-to-Distribute Model and the Subprime Mortgage Crisis,* 24(6) Rev. Fin. Stud. 1881–1915 (2011) (stating that banks with high involvement in the originate-to-distribute market originated excessively poor-quality mortgages and noting that this evidence is consistent with the view that the originating banks did not expend resources to adequately screen the quality of their borrowers).

[76] *See also* Section C.2.b. Broad Economic Considerations of the *Credit Risk Retention,* Release No. 34–70277 (Aug. 28, 2013) [78 FR 57928] (the ''2013 Risk Retention Re-Proposing Release'').

[77] *See* footnotes 30, 31 and 52.

[78] Observers identified several weaknesses in the credit rating process, which in many instances contributed to inaccurate ratings and were made apparent in the aftermath of the financial crisis. One of the weaknesses is the availability of ratings shopping, whereby issuers can request and privately observe multiple ratings and then choose to disclose publicly only the most favorable. Complex assets that are difficult to rate and that are likely to generate differences in ratings can create incentives for issuers to shop for ratings and disclose only those ratings that are high. Competition among credit rating agencies can exacerbate the problem, by providing rating agencies with incentive to compete for business through favorable ratings and providing issuers with options to choose among the rating agencies—commonly referred to as a race to the bottom. As a result of these weaknesses in the credit rating process, overreliance on credit ratings of complex or potentially opaque assets, such as in the case with asset-backed securities, can lead to excess investment with poor risk/return characteristics. *See, e.g.,* Nat'l Comm'n on the Causes of the Fin. and Econ. Crisis in the U.S., The Financial Crisis Inquiry Report xxv, 43–44 (2011) (''Participants in the securitization industry realized that they needed to secure favorable credit ratings in order to sell structured products to investors. Investment banks therefore paid handsome fees to the ratings agencies to obtain the desired ratings.''); Vasiliki Skreta & Laura Veldkamp, *Ratings Shopping and Asset Complexity: A Theory of Ratings Inflation,* 56 J. Monetary Econ. 678–95 (2009); Bo Becker & Todd Milbourn, *How Did Increased Competition Affect Credit Ratings?,* 101 J. Fin. Econ. 493–514 (2011); John Griffin & Dragon Tang, *Did Subjectivity Play a Role in CDO Credit Ratings?,* 67(4) J. Fin. 1293–1328 (2012).

[79] Adam B. Ashcraft & Til Schuermann, *Understanding the Securitization of Subprime Mortgage Credit* (Staff Report, Fed. Reserve Bank of N.Y., Working Paper No. 318, 2008) (discussing the ways that market participants work to minimize informational frictions that arise among and between the different participants in the securitization process and providing thoughts and evidence on how this process broke down during the financial crisis); Joshua Coval, Jakub Jurek & Erik Stafford, *The Economics of Structured Finance,* 23(1) J. Econ. Persp. 3–25 (2009) (providing a detailed assessment of the relative importance of rating agency errors, investor credulity, and perverse incentives and suspect behavior on the part of issuers, rating agencies, and borrowers).

[80] In September 2008, Fannie Mae and Freddie Mac agreed to be placed under direct government control, through conservatorship.

[81] N. Eric Weiss, Cong. Research Serv., R40800, GSEs and the Government's Role in Housing Finance: Issues for the 113th Congress (2013). For the estimates of the value of the implicit government guarantee, see Wayne Passmore, *The GSE Implicit Subsidy and the Value of Government Ambiguity,* 33(3) Real Est. Econ. 465–86 (2005) (finding that GSE shareholders benefit substantially from the ambiguous government relationship, largely due to the fact that purchasers of the GSEs' debt securities believe the debt is implicitly backed by the U.S. government (despite the lack of a legal basis for such a belief)); Deborah Lucas & Robert McDonald, Valuing Government Guarantees: Fannie and Freddie Revisited, in Measuring and Managing Federal Financial Risk 131–154 (Deborah Lucas, ed., Univ. of Chicago Press, Feb. 2010) (2010) (estimating the value of the implicit guarantee on GSEs' debt issues to be approximately $28 billion).

loans, even after accounting for different underlying loan characteristics.[82] This historical performance-based evidence suggests that GSE underwriting standards offset the incentive to incur excess risk because of their capital support, at least in relation to the private-label securitizers that did not have such capital support. In particular, GSE purchased loans were six times less likely to default than private-label loans with similar characteristics.[83] The focus of the final rules is on private-label securitizations, which is the segment of the market where investors are more likely to experience losses.

We note that the rules are intended to increase transparency about the potential risks in the ABS market through greater loan-level disclosure and to provide additional recourse for investors when issues arise, thus providing better tools for investors to evaluate their capital allocation decisions. These measures should lessen the risk of overreliance on credit ratings as investors will now be able to conduct their own due diligence using more transparent and fuller disclosures regarding the assets underlying a securitization. Disclosure of higher quality and more complete data regarding the loan characteristics of the underlying collateral should result in better capital allocation decisions, improved capital formation and, ultimately, lower capital costs by making the markets more informationally-efficient.

One key objective of the final rules is to eliminate the reliance on credit ratings in the determination of shelf eligibility of asset-backed securities. Replacing the investment-grade rating requirement for the purposes of shelf eligibility may result in securitizers finding it uneconomic or unnecessary to obtain credit ratings for their securitizations, thus lowering the demand for the services of third-party evaluators. The rules do not, however, preclude investors from utilizing credit ratings in their investment analysis and decision-making, and asset-backed securities issuers are not prohibited from having their offerings rated. Thus, if there is sufficient demand for ratings due to a perception of value in the ratings, then securitizers may continue to obtain ratings and credit rating agencies would suffer a relatively small decrease in the demand for their ratings services.

The rules we are adopting are designed to work with other regulations to provide additional disclosures, further align incentives in the securitization market, and restore confidence in the ABS market. Specifically, Section 941(b) of the Dodd-Frank Act requires regulations that mandate that certain securitizers have ''skin in the game'' through the retention of a meaningful risk exposure in securitizations (at least a 5% economic loss exposure).[84] The requirement that securitizers hold risk exposure is likely to affect their decisions regarding the quality of assets to include in such structures. While we expect that the risk retention rules required by the Dodd-Frank Act, when adopted, will result in better underwriting practices, we believe that further regulation is necessary to align incentives and facilitate credit evaluation in the securitization market.[85]

In summary, the amendments to our regulations and forms for asset-backed securities are designed to enhance investor protection by reducing the likelihood of overreliance on ratings and increasing transparency to market participants.

C. Potential Effects on the ABS Market

We believe that these amendments will work together to also improve investors' willingness to invest in asset-backed securities and to help the recovery in the ABS market with attendant positive effects on informational and allocative efficiency, competition, and the level of capital formation. Enhanced ABS disclosures and the potential for improved pricing accuracy of the ABS market should ultimately benefit issuers in the form of a lower cost of capital and increased investor participation. We expect that increased transparency in the market and more certainty about the quality of underlying assets should result in lower required yields, and a larger number of investors should be willing to participate in the market because of reduced uncertainty and risk. This, in turn, would allow originators to conserve costly capital and to diversify credit risks among many investors. Further, we believe that credit risk transfer will result in greater efficiency in the lending decisions of originators, the lowering of credit costs, and ultimately greater capital availability through higher loan levels.[86]

Asset-level disclosure requirements will provide information about underlying asset quality that was not consistently available to investors prior to these rules. The new rules also standardize the reporting of asset-level information, thus lowering the cost of acquiring information and search costs for investors. The disclosure and the reduction in search costs should directly increase the transparency of the market and, thus, the informational efficiency in pricing ABS, both in the primary and secondary markets. This should lead to increased investor participation and more efficient allocation of capital.

There are important benefits to issuers from heightened disclosures of a structured finance asset base. In the absence of adequate information about the quality of assets in the ABS structure, as was the case in the RMBS market leading up to the start of the financial crisis, the market for structured products may break down.[87] The continuing problems in the CMBS

[82] *See* Joshua White & Scott Bauguess, Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission (Aug. 2013) (the ''White-Bauguess Study''), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf.*

[83] *Id.*

[84] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B)(ii). *See also Credit Risk Retention,* Release No. 34–64148 (Mar. 30, 2011) [76 FR 24090] (the ''2011 Risk Retention Proposing Release'') and the 2013 Risk Retention Re-Proposing Release (both proposed to implement the Dodd-Frank requirement).

[85] We also continue to separately consider the comments received in connection with the proposal to implement the prohibition under Section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations. *See Prohibition Against Conflicts of Interest in Certain Securitizations,* Release No. 65355 (Sept. 19, 2011) [76 FR 60320] (the ''ABS Conflicts Proposal'').

[86] *See, e.g.,* Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), *available at http://www.bis.org/publ/work255.pdf* (stating that innovation in credit risk transfer through security design (such as ABS) increase the liquidity of credit markets, lowers credit risk premia, allows for the efficient distribution of risk among investors, and offers investors an improved menu and supply of assets and hedging opportunities); A. Sinan Cebenoyan & Philip E. Strahan, *Risk Management, Capital Structure and Lending at Banks,* 28(1) J. Banking & Fin. 19–43 (2004) (finding that increasingly sophisticated risk management practices (through activities such as loan sales) in banking are likely to improve the availability of bank credit, but are unlikely to reduce bank risk); Benedikt Goderis, Ian W. Marsh, Judit Vall Castello & Wolf Wagner, Bank Behavior with Access to Credit Risk Transfer Markets (Oct. 2006) (unpublished manuscript) (finding that banks that adopt advanced credit risk management techniques (measured in their study by the issuance of at least one collateralized loan obligation) experience a permanent increase in their target loan levels of around 50%, and interpreting their findings as a confirmation of the general efficiency enhancing implications of new risk management techniques).

[87] This is commonly referred to as the ''lemons problem.'' *See, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 Q. J. Econ. 488–500 (1970) (discussing the difficulty of distinguishing good quality from bad quality in the business world and suggesting that many economic phenomena may be explained and understood as a response to the demand for the need to distinguish).

and RMBS markets may be an extended manifestation of this problem.[88] Investors that previously (and erroneously) relied on credit rating agencies to mitigate the informational asymmetry problem about asset quality can avail themselves of improved disclosures that allow them to conduct their own due diligence on an issuer's structured product. This will benefit issuers of high quality ABS because if investors are better able to independently verify the quality of and value underlying assets, they will be better able to distinguish high quality ABS issuers from other issuers, where otherwise the distinction between different types of issuers' disclosures would be obfuscated because the quality of the underlying ABS assets could not be verified. This differentiation between good and bad quality issuers would also lead to more efficient allocation of capital.

Another consequence of the final rules is the increase in availability of capital through the potential expansion of the set of ABS eligible for shelf registration. A larger set of ABS will be eligible for shelf registration if they meet the new shelf eligibility requirements, namely, non-investment grade ABS tranches that were not eligible before. This may result in greater credit availability to issuers of non-investment grade ABS that would have otherwise been difficult or more costly to obtain.

D. Potential Market Participants' Responses

We recognize that the final rules may have direct and indirect economic impacts on various market participants. Importantly, as noted above, the market practices of participants are likely to evolve in response to the final rules. While we lack the ability to predict those effects with certainty, we qualitatively consider some of the potential effects of these rules by discussing the trade-offs various market participants may face when complying with these rules.

Most of the direct costs of these rules fall onto the sponsors of ABS, since they will initially bear any increased costs of compliance and implementation of the new requirements; however, there is some uncertainty surrounding who will ultimately bear these direct compliance costs. Depending on market conditions, the degree of competition at different levels of the securitization chain, and the availability of other forms of credit, the sponsors may attempt to pass some or all of these costs on to other market participants.

One way in which the sponsors may elect to pass costs to market participants is through lower returns paid to investors in securitizations. Promised returns to investors will typically depend on the costs of creating and maintaining the securitized credit structure, including new costs associated with compliance. If investors are willing to absorb some or all of these costs and yet still expect to receive an acceptable risk-adjusted return on their investment, then investor returns could be lower on these investments than in the past. How much of the higher costs sponsors can realistically pass through to investors will depend on the risk and return opportunities available from other similar investments in the market.

We also recognize that some of the new asset-level disclosure and shelf registration costs may be passed down the chain of securitization and ultimately to borrowers. In particular, and in the short term when new reporting and data handling systems have to be developed, borrowers may ultimately bear higher credit costs to compensate sponsors for these increased compliance costs. The ability to pass costs on to borrowers will be constrained by competition from lenders that do not securitize in the registered market. If the costs of compliance are significant, the competitive position of firms that are subject to the requirements of the final rules and that rely on securitization in the public market for funding, in particular through shelf registrations, could weaken relative to other financial firms that are not subject to these requirements, or that have other sources of funding.

If asset-backed issuers are unable to pass along their shelf registration costs as described above, and thus bear all or most of these new costs, then they might choose to avoid the shelf registration process by registering their ABS on Form SF–1 or they might choose to bypass registration altogether and issue through unregistered offerings instead to avoid the new shelf registration costs. Similarly, if asset-backed issuers are unable to pass along the costs incurred to provide asset-level disclosure (for those asset classes subject to it), then they may issue through unregistered offerings. Such actions could have the effect of reducing efficiency and could impede capital formation; however, there are reasons to believe that some investors may support the market for registered ABS despite additional costs. First, because the prospectus disclosure requirements are the same for both types of registered offerings, a shift from shelf-registration to non-shelf-registration may occur only due to the new shelf registration costs, and the shift would be constrained by the speed and convenience of shelf takedowns. Moreover, the reallocation of newly issued registered ABS between shelf- and non-shelf registration should not have a substantial effect on capital formation as long as new and existing issuers of registered ABS choose to or continue to choose to issue registered ABS (and accordingly provide the same disclosures). Second, not all investors satisfy the criteria of qualified institutional buyers (''QIBs'') under Rule 144A,[89] and, although such investors might be interested in investing in Rule 144A ABS, they would not be able to do so due to inability to qualify to participate in that market. To the extent that this segment of the investor base is sufficiently large, ABS issuers might experience substantial demand for their securities from investors that are not qualified to invest in unregistered offerings. Such demand would reduce the cost of capital for public ABS issuers, creating incentives to issue through registered rather than unregistered offerings. Third, since the final rule applies to registered offerings of ABS, to the extent that there are investors willing to pay (in the form of a reduced yield) for the resolution of uncertainty regarding the asset pool quality and reduced risk of investments, there again may be a substantial enough demand to fund ABS in the registered market. Thus, we believe that the shift from the registered ABS segment to other market segments should not be substantial. The potential expansion of the registered ABS market and wider investor participation discussed previously in this section should allow ABS sponsors to recoup some of the costs introduced by these rules and, thus, should increase the attractiveness of issuing ABS through registered offerings as opposed to through unregistered offerings.

[88] *See* Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion (noting that the RMBS and CMBS markets have not recovered since the crisis, whereas the issuance of consumer finance ABS, especially Auto ABS, has steadily increased in the recent years and almost reached the pre-crisis levels).

[89] The term ''qualified institutional buyer'' is defined in Rule 144A(a)(1) [17 CFR 230.144A(a)(1)] and includes specified institutions that, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with such institutions. Banks and other specified financial institutions must also have a net worth of at least $25 million. A registered broker-dealer qualifies as a QIB if it, in the aggregate, owns and invests on a discretionary basis at least $10 million in securities of issuers that are not affiliated with the broker-dealer.

The enhancement of registered transactions could potentially reduce the degree to which credit is intermediated by banks.[90] In particular, greater availability of credit for borrowers through securitizations may result in less reliance on traditional bank loans and greater reliance on other financial intermediation mechanisms. This is especially likely to happen if and when the new capital and liquidity requirements (Basel III) result in an increase in the regulatory capital costs for financial institutions subject to regulatory capital and liquidity requirements.

One potential source of competition for private-label securitizers impacted by these rules is the GSEs in the mortgage market. As previously mentioned, the principal and interest on GSE-issued securities is currently guaranteed, while the GSEs are in conservatorship. Even upon resolution of their current status, their congressional charter and past government intervention will likely perpetuate a widely held view of an implicit federal guarantee of their securities.[91] This explicit or future implicit government support provides a competitive advantage over private-label securitizers through lower funding costs. In addition to this cost of capital advantage, GSEs will not be subject to these new rules and the costs associated with the enhanced disclosure rules,[92] which as we previously discussed are less relevant to investors of GSE securities because of the government support in the event of credit problems. Thus, to the extent that the adopted rules impose additional costs on securitizers, their offerings will either not be as competitive as those of the GSEs or potentially be crowded out of the market altogether.

The current federal guarantee of mortgage-backed securities issued by GSEs (and/or the market perception of an implicit guarantee) may explain why, among all the securitized asset categories impacted by the financial crisis, the private-label RMBS and CMBS have been the slowest to regain volume.[93] Thus, while the rules we are adopting are intended to create transparency in the market for private-label securitizations, the additional costs imposed on securitizers may be sufficiently large that, at least as long as the GSEs remain in federal government conservatorship, the cost differences between GSE and private-label securitizations may remain large enough to discourage substantial investment through the latter channel.[94] Longer-term, the competitiveness of private-label securitizations may depend as much on the ultimate fate of the GSEs as on the effectiveness of the rules we adopt.

III. Asset-Level Disclosure

We are adopting a requirement for standardized asset-level disclosures for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans, auto leases, and resecuritizations of ABS that include these asset types or of debt securities. The disclosure is required to be provided in a standardized tagged XML format. We are also adopting many of the proposed refinements to other disclosure requirements. At this time, we are not adopting our proposal for other asset classes.

A. Asset-Level Disclosure Requirement

1. Background and Economic Baseline for the Asset-Level Disclosure Requirement

Prior to these amendments, the Commission had not historically required the disclosure of asset-level data. Instead, issuers were only required to provide information about the composition and characteristics of the asset pool, tailored to the asset type and asset pool involved for the particular offering.[95] In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities, but generally there was no mandatory regulatory requirement that asset-level data be provided.[96] Furthermore, such information was generally not standardized or required to be standardized.

Many investors and other participants in the securitization market did not previously have sufficient time and information to be able to understand the risks underlying the ABS and were not able to value the ABS accordingly.[97] This lack of understanding and the extent to which it impacted the U.S. and global economies prompted us to revisit several aspects of our regulation of ABS, including the information available to investors. This review led us to determine that investors need access to more robust and standardized information about the assets underlying a particular ABS in order to allow them to make informed investment decisions. To accomplish this, we proposed in the 2010 ABS Proposing Release several changes to the disclosure requirements in Regulation AB including, subject to certain exceptions, a new requirement that issuers provide asset-level information about each asset in the pool backing the ABS. The asset-level data requirements were proposed to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures. Taken together, we believed these disclosures would provide robust data about each ABS, which would allow investors to analyze for each securitization transaction, at the time of inception and over the life of a security, the characteristics of each asset, including the collateral supporting each asset and the cash flows derived from each asset in the transaction.

Subsequent to the 2010 ABS Proposing Release, Congress passed the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires, in relevant part, that the Commission adopt regulations requiring an issuer of

[90] *See* Darrell Duffie, *Innovations in Credit Risk Transfer: Implications for Financial Stability* (Bank for Int'l Settlements Working Paper No. 255, 2008), *available at http://www.bis.org/publ/work255.pdf* (observing that financial innovations, such as ABS, designed for more efficient credit risk transfer, have facilitated a reduction in the degree to which credit is intermediated by banks).

[91] *See* footnote 81.

[92] MBS issued by these GSE's and Ginnie Mae have been and continue to be exempt from registration under the Securities Act and most provisions of the federal securities laws. For example, Ginnie Mae guarantees 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 Fannie Mae and Freddie Mac contain exemptions with respect to those entities. See 12 U.S.C. 1723c and 12 U.S.C. 1455g.

[93] *See* Figure 1 in Section II.A Market Overview and Economic Baseline and accompanying discussion.

[94] Even though the GSEs currently collect and disseminate asset-level information to the public (as discussed in Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement), the disclosure regime for GSEs would not change as a result of adopting these rules. Accordingly, the costs that GSEs incur due to their current asset-level disclosures will not change, and the GSEs will likely benefit from the cost advantage over private-label ABS issuers introduced by the rules being adopted.

[95] *See* Item 1111 of Regulation AB [17 CFR 229.1111].

[96] Under Item 1111(b)(9) of Regulation AB [17 CFR 229.1111(b)(9)] as it existed prior to this adoption, if the asset pool included commercial mortgages, certain non-standardized asset-level information about the properties underlying the mortgage was required for all commercial mortgages to the extent material. Further, for each commercial mortgage that represented, by dollar value, 10% or more of the asset pool, as measured as of the cut-off date, additional non-standardized asset-level information about the properties was required.

[97] *See* footnotes 40 and 44.

an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.[98] In July 2011, we re-proposed some of the rules proposed in the 2010 ABS Proposing Release in light of the provisions added by the Dodd-Frank Act and comments received on our 2010 ABS Proposals. In the 2011 ABS Re-Proposing Release, we requested comment on whether the asset-level disclosure requirements proposed in the 2010 ABS Proposals implemented Section 7(c) effectively and whether there were any changes or additions that would better implement Section 7(c). The Commission also requested comment on whether certain asset-level disclosures enumerated in Section 7(c) are necessary for investor due diligence.[99]

We received comments on the potential privacy implications of the proposed asset-level data requirements, including comments suggesting that the required asset-level information be provided by means other than public dissemination on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'').[100] In light of the privacy concerns about the proposed asset-level requirements, we re-opened the comment period on the 2010 ABS Proposals and the 2011 ABS Re-Proposals in February 2014 to permit interested persons to comment on an approach for the dissemination of asset-level data, which was described in the 2014 Staff Memorandum. The 2014 Staff Memorandum summarized the comments that had been received related to potential privacy concerns and outlined an approach that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file and make all of the information publicly available on EDGAR (the ''Web site approach''). The Web site approach noted various ways in which issuers could address potential privacy concerns associated with the disclosure of asset-level information, including through restricting Web site access to such information.

To assess the economic consequences of these asset-level disclosure requirements, we are using as our baseline the ABS market as it existed at the end of 2013. Today, we note that for some types of ABS, issuers have begun or have continued to provide asset-level data. For instance, some registered RMBS issuers before the financial crisis provided asset-level disclosures, although the disclosures were not standardized. Since then, there have been a limited number of registered RMBS transactions. Those transactions have provided asset-level disclosures pursuant to recently developed industry standards.[101] Further, sellers of mortgage loans to Fannie Mae and Freddie Mac are required to deliver certain asset-level data in a standardized electronic form.[102] In turn, Fannie Mae and Freddie Mac provide investors loan-level disclosures about the assets underlying their securitizations.[103] For CMBS, we note that issuers commonly provide investors with asset-level disclosures at the time of securitization and on an ongoing basis pursuant to industry developed standards.[104] For other asset classes, we remain unaware of any publicly available data standards or instances where issuers have provided asset-level data.

We also note that prudential regulators in other jurisdictions require asset-level data about certain ABS in certain instances. For instance, the European Central Bank requires asset-level information for ABS accepted as collateral in the Eurosystem credit operations.[105] Additionally, the Bank of England requires that asset-level information be provided for certain ABS submitted as collateral against transactions with the Bank of England.[106] Some asset-level data is available today through third-party data providers who collect asset-level information about agency and non-agency mortgage loans and provide, for a fee, access to the data.[107] In addition, many third-party data providers have

[98] *See* Section 7(c) of the Securities Act [15 U.S.C. 77g(c)]. Section 7(c) also requires, among other things, that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible facilitate the comparison of such data across securities in similar types of asset classes.

[99] In particular, the 2011 ABS Re-Proposing Release requested comment on whether asset-level disclosures of unique identifiers for loan brokers and originators, broker and originator compensation and the risk retention held by the originator and the sponsor are necessary for investor due diligence. As noted below, in general, most commenters did not believe those particular asset-level disclosures were necessary for investor due diligence.

[100] *See* letters from Ally Financial Inc., et al dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''VABSS I''), Ally Financial Inc. et al dated Oct. 13, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''VABSS III''), and Ally Financial Inc. et al dated Aug. 3, 2012 submitted in response to the 2011 ABS Re-Proposing Release (''VABSS IV'') (urging the Commission ''to consider whether loan-level data (or even grouped data) needs to be made publicly available or could be made available to investors and other legitimate users in a more limited manner, such as through a limited access Web site''). *See also* letters from Consumer Data Industry Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CDIA'') (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data and agree to maintain its confidentiality) and Epicurus Institute dated Aug. 1, 2010 submitted in response to the 2010 ABS Proposing Release (''Epicurus'') (stating that they believe ''that the prospectus should contain a hypertext link (with instructions for accessing a Web site to obtain the data) . . . [and only] prospective investors should have traceable access to the data, and that they never have the opportunity to download . . . raw data in any format'').

[101] Since 2010, only one sponsor has been publicly issuing private-label RMBS. This issuer has disclosed at the time of securitization asset-level data about the assets underlying the RMBS in a format developed by the American Securitization Forum (ASF). The ASF Project on Residential Securitization Transparency and Reporting (''Project RESTART'') published a disclosure and reporting package for residential mortgage-backed securities. *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), *available at http://www.americansecuritization.com/*. ASF is a securitization trade association that represents issuers, investors, financial intermediaries, rating agencies, legal and accounting firms, trustees, servicers, guarantors, and other market participants.

[102] *See* Fannie Mae Uniform Loan Delivery Dataset *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd*. *See also* Freddie Mac Uniform Loan Delivery Dataset *available at http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html*.

[103] *See* Section III.A.2.b)(1) Residential Mortgage-Backed Securities for a discussion of loan-level disclosures provided by Fannie Mae and Freddie Mac.

[104] The CRE Finance Council's Investor Reporting Package includes data points on loan, property and bond-level information for CMBS at issuance and while the securities are outstanding. Materials related to the CRE Finance Council Investor Reporting Package are available at *http://www.crefc.org/*. The CRE Finance Council is a trade organization for the commercial real estate finance industry.

[105] *See* details about the European Central Bank's loan-level for ABS accepted as collateral in Eurosystem credit operations *available at http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html*.

[106] See the market notices from the Bank of England discussing its eligibility requirements for RMBS and covered bonds backed by residential mortgages, CMBS, small-medium enterprise loan backed securities and asset-backed commercial paper, and asset-backed securities backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at: *http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf,* and *http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf*.

[107] *See, e.g.,* Blackbox Logic (providing RMBS loan-level data aggregation and processing services allowing clients to analyze both current and historical RMBS trends), *http://www.bbxlogic.com/*, Core Logic (providing data and analytic services), *http://www.corelogic.com/,* LPS McDash Online (providing access to loan-level data), *http://www.lpsvcs.com/Products/CapitalMarkets/LoanData/Products/Pages/McDashOnline.aspx* and Lewtan (providing data and analytic services), *http://www.lewtan.com/*.

developed products to analyze and model asset-level data.[108]

After considering the comments received, the ABS market and the availability and use of asset-level data regarding ABS as they exist today, we are adopting, with modifications, the proposed asset-level disclosure requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS that include these asset types, or of debt securities.[109] We provide detail on the final rules below.

As noted above, the proposed asset-level data requirements were to apply to all asset types, except ABS backed by credit cards, charge cards and stranded costs. For ABS backed by credit or charge card receivables, we proposed that issuers provide standardized grouped-account disclosures about the underlying asset pool instead of asset-level disclosures.

Asset-level information should provide investors with information that allows them to independently perform due diligence and make informed investment decisions; however, each asset class presents its own unique considerations. The response to our proposal was mixed, with some commenters supporting asset-level disclosure across asset classes and some commenters suggesting that alternative forms of disclosure were more appropriate for certain asset classes. We believe that the mix of information needed for analysis varies from asset class to asset class, and as we discuss in greater detail below, we have tailored the requirements for each asset class. While we are adopting requirements for only certain asset classes, we continue to consider the appropriate disclosure requirements for other asset classes and those proposals remain unchanged and outstanding.[110]

(a) Proposed Rule

To augment our current principles-based, pool-level disclosure requirements, we proposed to require that issuers disclose standardized asset-level information about the assets underlying the ABS at the time of offering and on an ongoing basis in Exchange Act reports.[111] Proposed Item 1111(h) and Schedule L of Regulation AB enumerated all of the data points that were to be provided for each asset in the asset pool at the time of offering. Proposed Item 1121(d) and Schedule L–D enumerated all of the data points that were to be provided in periodic reports required under Sections 13 and 15(d) of the Exchange Act. These requirements contained data points requiring general information or item requirements applicable to all asset types underlying an ABS transaction and specialized item requirements applicable to only certain asset types. For instance, the proposal included specialized data points for ABS backed by the following: residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, and debt securities and also for resecuritizations. Each proposed data point contained a title, definition, and a standardized response. The standardized response could be a date, number, text, or coded response.[112] Finally, in order to facilitate investors' use of the asset-level data, we proposed that the data be filed with the Commission on EDGAR in a standardized tagged data format using XML.

(b) Comments on Proposed Rule

Support for requiring asset-level disclosures varied across asset types, and in some cases, between issuers and investors. Some commenters, mainly investors, generally indicated broad support for asset-level disclosure across asset types.[113] In general, these commenters suggested that asset-level disclosures would lead to better informed investment decisions,[114] better evaluation of the risk profile of the securities,[115] better pricing,[116] more transparency with respect to loan servicing operations,[117] and a broader range of opinions and analysis available with respect to ABS.[118] Certain commenters noted that the disclosure of

[108] *See, e.g.,* Experian Credit Horizons (providing products to analyze consumer mortgage and non-mortgage assets), *https://www.experian.com/capital-markets/credithorizons-product.html* and Kroll Factual Data (providing data on credit, income collateral, employment, etc.), *http://www.krollfactualdata.com/Industry/Lending/Mortgage.*

[109] In the 2010 ABS Proposing Release, the debt security asset class was categorized as ''Corporate Debt.''

[110] *See* footnote 46 and accompanying text and Section I.C.5 Proposed Rules Not Being Adopted At This Time.

[111] *See* Section III of the 2010 ABS Proposing Release.

[112] If a data point required a ''coded response,'' we proposed a set of predefined responses that were coded with a number that an issuer could select in providing the information.

[113] *See, e.g.,* letters from Appraisal Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AI''), Association of Mortgage Investors dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release (''AMI''), American Securitization Forum, Auto Issuer Subforum and Auto Investor Subcommittee dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release (''ASF II'') (expressed views of loan-level investors only), California Public Employees' Retirement System dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CalPERS''), The Beached Consultancy dated July 8, 2010 submitted in response to the 2010 ABS Proposing Release (''Beached Consultancy''), Martha Coakley, Massachusetts Attorney General dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Mass. Atty. Gen.''), Metropolitan Life Insurance Company dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''MetLife I''), Prudential I, SIFMA I (expressed views of investors only), Vanguard, Americans for Financial Reform dated Apr. 21, 2014 submitted in response to the 2014 Re-Opening Release (''AFR'') (suggesting that asset-level disclosure should be required for all ABS ultimately backed by loans, including non-public ABS), Committee on Capital Markets Regulation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''CCMR''), Council of Institutional Investors dated Mar. 26, 2014 submitted in response to the 2014 Re-Opening Release (''CII''), CRE Finance Council dated Mar. 2, 2014 submitted in response to the 2014 Re-Opening Release (''CREFC III''), Lewtan dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Lewtan''), Prudential Investment Management, Inc. dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Prudential III'') (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security), Allison Schwartz dated May 21, 2014 submitted in response to the 2014 Re-Opening Release (''A. Schwartz''), Securities Industry and Financial Markets Association/Financial Services Roundtable dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''SIFMA/FSR I-dealers and sponsors''), Vantage Score Solutions LLC dated Apr. 17, 2014 submitted in response to the 2014 Re-Opening Release (''Vantage II'') (supporting industry efforts to align asset-level disclosure reporting for GSEs and private label securities), and Wells Fargo & Co. dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Wells Fargo III''). *But see* letters from ASF II (indicating that, for ABS backed by automotive loans and leases, part of their investor membership supported loan-level and part of their investor membership supported grouped account data and for ABS backed by floorplan receivables their investor members supported grouped account data), and American Securitization Forum dated Nov. 2, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ASF IV'') (indicating that for ABS backed by equipment loans and leases part of their investor membership supported loan-level, another portion supported grouped-account disclosures, and another portion supported additional pool-level disclosure).

[114] *See, e.g.,* letters from CDIA, Investment Company Institute dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ICI I''), MetLife I, and MSCI Inc. dated July 27, 2010 submitted in response to the 2010 ABS Proposing Release (''MSCI'').

[115] *See* letter from AMI (stating that the disclosures described in Schedule L and L–D are essential for investors to properly evaluate the risk profile of securities offered for purchase).

[116] *See* letter from Vanguard.

[117] *See* letter from MetLife I (referring to the loan-level templates for RMBS).

[118] *See* letters from Moody's I and Moody's Investor Service dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Moody's II'').

asset-level data is an existing market practice,[119] and some commenters noted that asset-level disclosure requirements already exist in other jurisdictions.[120] Some commenters requested that the Commission require additional asset-level data fields,[121] and one commenter noted that asset-level data is necessary for implementation of the Commission's proposed waterfall computer program.[122] While most investors supported requiring asset-level disclosure across asset types,[123] some commenters, mainly issuers or entities representing issuers, generally limited their support for asset-level disclosures to RMBS and CMBS.[124] Some commenters expressed concern about whether the materiality of the information that was proposed to be required has been considered or shown to affect the performance of the securities or the pricing of securities.[125] Some commenters suggested that we address this concern by either adopting industry standards [126] or adopting a ''provide-or-explain'' type regime.[127]

In addition to comments indicating general support or opposition to the proposal, as discussed further below, we also received comments expressing more specific concerns about the proposal, such as the costs to provide the disclosures, the value of the disclosure to investors, the liability for errors in the data, individual privacy issues, the potential release of proprietary data, and whether asset-level disclosures were necessary to evaluate ABS involving certain asset classes.

Both investors and issuers noted that the disclosure requirements will impose costs and burdens on ABS issuers. Investors, however, also believed asset-level information is necessary to properly analyze ABS, and some investors believed that the concerns about the costs and burdens of providing such data may be exaggerated. For instance, the investor membership of one trade association acknowledged that requiring asset-level disclosures will impose costs and burdens on ABS issuers, but believed the information is a ''necessary and key element of restoring investor confidence in the ABS markets.'' [128] Another investor acknowledged that the proposed asset-level disclosures, among other proposed reforms, would increase costs, but the investor believed the reforms would ''instill stronger origination and servicing of securitized assets, allow for more complete investor reviews and foster a more stable securitization market, which is a benefit to all borrowers, lenders and investors.'' [129] One investor noted that the additional costs allegedly arising from some of the proposed reforms, including asset-level disclosures, may be ''greatly exaggerated.'' [130] This investor suggested that the deficiencies in ''governance and transparency have dramatically increased the costs of securitization in the current market.'' The investor also noted that asset-level disclosures are routinely provided in various global securitization sectors, such as U.S. CMBS and Australian CMBS, and these markets have not shut down.

Several commenters did not support asset-level requirements for certain asset classes, noting that the value of the disclosures to investors or market participants may not justify the potential costs and burdens derived from the disclosures.[131] Commenters

[119] *See* letters from Lewtan, R&R Consulting dated Mar. 25, 2014 submitted in response to the 2014 Re-Opening Release (''R&R''), A. Schwartz (noting Fannie Mae has disclosed asset-level data and stating that such data is available from many commercial vendors and has not compromised borrower privacy), and SIFMA/FSR I-dealers and sponsors (noting, however, that the proposed requirements represent a dramatic departure from the type and amount of asset-level information issuers provide to investors and others under past industry asset-level practices).

[120] *See, e.g.,* letters from American Bar Association dated May 6, 2014 submitted in response to the 2014 Re-Opening Release (''ABA III'') (noting that the Bank of England requires the disclosure of anonymized loan-level data and the European Securities and Market Authority (''ESMA'') recently published a consultation paper that included draft templates for asset-level disclosures for asset-backed securities), AFR (noting that other jurisdictions, such as the European Union and the United Kingdom, are already providing asset-level information to investors), and Global Financial Markets Association/Australian Securitisation Forum dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''GFMA/AusSF'') (noting that the Bank of England, the European Central Bank, ESMA and the Reserve Bank of Australia already currently require, will soon require, or are in the process of developing templates to require asset-level disclosure at some point in the future).

[121] *See* letters from the Structured Finance Industry Group dated February 18, 2014 submitted in response to the 2011 ABS Re-Proposing Release (''SFIG I''), Jeremy Calva dated Mar. 21, 2014 submitted in response to the 2014 Re-Opening Release (''J. Calva'') (suggesting that certain asset-level data also be required in Form ABS–15G filings to identify repurchase request activity), CCMR (supporting additional disclosures, including more detailed information about obligors), and Vantage II (requesting updated credit scores and requesting that the rules not specifically refer to the FICO brand credit score or, in the alternative, refer to FICO and other credit score types, such as Vantage Score).

[122] *See* letter from A. Schwartz.

[123] *See* footnote 113.

[124] *See, e.g.,* letters from American Securitization Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ASF I'') (indicating support for asset-level disclosures for RMBS), Bank of America dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''BoA I''), Citigroup Global Markets dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Citi'') (supporting transparency and meaningful disclosure in connection with the issuance of ABS), J.P. Morgan Chase & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''J.P. Morgan I''), Wells Fargo & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Wells Fargo I''), Marc Joffe dated Mar. 27, 2014 submitted in response to the 2014 Re-Opening Release (''M. Joffe'') (suggesting asset-level requirements only for RMBS), and R&R (stating that asset-level information is necessary only for asset classes that are resecuritized, such as RMBS).

[125] *See, e.g.,* letters from BoA I (suggesting that while some investors may suspect that the asset-level information would be helpful, the ''lack of any historic reliance on some of this data suggests that it may be per se immaterial''), Citi, and SIFMA I (expressed views of dealer and sponsors only) (stating that while they support the disclosure of data that facilitates an informed investment decision, requiring information that is not material merely increases the costs to issuers of providing that information without a corresponding benefit).

[126] *See, e.g.,* letters from American Bar Association dated Aug. 17, 2010 submitted in response to the 2010 ABS Proposing Release (''ABA I''), BoA I, CMBS.Com dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CMBS.com I''), CoStar Group dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CoStar''), CRE Finance Council dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CREFC I''), Mortgage Bankers Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''MBA I''), MERSCorp, Inc. dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''MERS''), MetLife I (supporting the use of an existing CMBS industry standard), Mortgage Industry Standards Maintenance Organization dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''MISMO''), Real Analytics dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Vanguard, and Wells Fargo I.

[127] *See* letters from BoA I, Citi, SIFMA I (expressed views of dealer and sponsors only), and Securities Industry and Financial Markets Association, Dealers and Sponsors dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''SIFMA III-dealers and sponsors''). These commenters suggested that under a provide-or-explain regime if an issuer omits any asset-level data point the issuer would be required to identify the omitted field and explain why the data was not disclosed. These commenters seemed to suggest that a provide-or-explain regime should apply to any asset type required to provide asset-level data.

[128] *See* letter from SIFMA I (expressed views of investors only).

[129] *See* letter from Prudential II.

[130] *See* letter from MetLife II.

[131] *See, e.g.,* letters from ABA I, ABA III, American Financial Services Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AFSA I''), American Financial Services Association dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''AFSA II''), American Bankers Association/ABA Securities Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ABAASA I''), Capital One Financial Corporation dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Capital One II''), J.P. Morgan I (stating that the asset-level and grouped-account disclosures will impose significant costs on issuers and may, for most asset classes other than

Continued

expressed these concerns with respect to specific asset types, such as Auto ABS,[132] student loan ABS,[133] equipment ABS [134] or credit card ABS.[135] One commenter stated that for Auto ABS the proposed disclosure requirements would require significant reprogramming and technological investment.[136] Another commenter noted that the proposal would require sponsors to gather and present data in ways that differ from the way sponsors currently maintain and evaluate data.[137] This commenter also believed the preparation of such information would likely impose burdens upon sponsors' systems, auditing costs and create management oversight burdens that it believed the Commission had significantly underestimated. This commenter, however, did not quantify the amount that the Commission had underestimated these costs and burdens or provide its own estimate of these costs.[138] Also without providing a cost estimate, another commenter suggested that the Commission had not evaluated the entire cost of ongoing reporting for RMBS.[139] Another commenter expressed concern that if the new standards are not well integrated with existing industry practices, the data may be less reliable because reformatting data leads to a greater possibility for errors in the data.[140] Some commenters advised that the costs to implement the changes necessary to comply with the requirements may drive certain issuers from the market.[141] A few commenters suggested, without referencing a particular asset type, that the proposed disclosures may overwhelm investors [142] and a few commenters raised a similar concern solely with respect to the disclosures applicable to Auto ABS.[143]

Commenters also raised concerns about liability for inaccuracies.[144] Some commenters expressed concern that there will inevitably be errors in documents including typographical errors, information entered incorrectly (or not at all) into the files and other errors.[145] One concern was that some data may be difficult to objectively verify,[146] which one commenter referred to as ''soft data.'' [147] This commenter defined soft data as data that ''is often self-reported by obligors, cannot be verified by issuers at a reasonable cost, cannot be confirmed by auditors, may not be consistent with (or comparable to) information obtained or presented by other issuers and may reflect subjective judgments.'' [148] A few commenters noted that some soft data is used to calculate the response to other item requirements [149] and one of these commenters suggested issuers should have the discretion to include or exclude soft data from their disclosures.[150] In general, these commenters suggested that the materiality of individual data points should be determined on an aggregate basis across the entire asset portfolio, rather than at the level of the individual loan. Further, these commenters stated that even if an inaccuracy is material to a particular loan, the inaccuracy should not subject the issuer to the potential remedy of rescission of the entire issuance. The commenters urged that liability be based on the aggregate materiality in the context of the entire asset pool, the full offering disclosures and whether the securitization structure and documentation provide adequate remedies. Another commenter echoed this point.[151]

As noted above, some commenters did not support requiring asset-level disclosures for certain asset types. For example, several commenters, mainly

RMBS and CMBS, only provide incremental value to investors relative to what is currently disclosed), SIFMA I (expressed views of dealers and sponsors only), Equipment Leasing and Finance Association, dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''ELFA II''), IPFS Corporation dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''IPFS II''), Structured Finance Industry Group dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''SFIG II''), and Wells Fargo III.

[132] *See, e.g.,* letters from AmeriCredit Corp. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AmeriCredit''), ASF II (expressed views of dealers and sponsors only), Capital One II, Financial Services Roundtable dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''FSR''), VABSS I, Vehicle ABS Sponsors dated Nov. 8, 2010 submitted in response to the 2010 ABS Proposing Release (''VABSS II''), VABSS III, and Wells Fargo I.

[133] *See* letter from Student Loan Servicing Alliance dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''SLSA'').

[134] *See, e.g.,* letters from Equipment Leasing and Finance Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release (''ELFA I''), CNH Capital America LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CNH I''), Navistar Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Navistar''), and Wells Fargo I.

[135] *See, e.g.,* letters from BoA I, Capital One Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Capital One I''), Discover Financial Services dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Discover''), and J.P. Morgan I.

[136] *See* letter from BoA I.

[137] *See* letter from ABA I.

[138] *See* letter from ABA I (expressing concerns about the costs or even the ability to verify certain data, such as property appraisals, residual value estimates, status of occupancy of the property, the effect on competition from the public release of proprietary data, which, for some asset classes, may deter securitizations, restrict capital formation and eliminate market access for some issuers and affect the availability of consumer and business credit without providing additional benefits to investors).

[139] *See* letter from MBA I (suggesting that the Commission has not identified any costs associated with (1) initially establishing the new fields; (2) the cost of redefining many of the fields already in existence; (3) the labor cost of collecting and inputting significant new data elements into the servicing systems; (4) the costs to validate the new data on an ongoing and operational basis; (5) the cost for controls needed to ensure the data is accurate and complete; (6) the need for servicers and their data providers to build functionality within the project, to test and verify the new ongoing reporting; (7) introducing new elements not listed in proposed L–D, such as updated credit scores).

[140] *See* letter from eSignSystems dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''eSign''). *See also* letter from ABA I (stating that data point descriptions may not be entirely consistent with how information about obligors is captured or comparable to other similarly styled information and issuers should be able to provide narrative analysis of this data in order to ensure their disclosure is meaningful and not misleading).

[141] *See, e.g.,* letters from ABAASA I (noting, without further explanation, that the competitive impact on business models and potential legal risks in providing asset-level data may drive issuers from the market or make them pass these costs on to investors and borrowers) and BoA I. *See also* SIFMA I (expressed views of dealers and sponsors only) (expressing concern about the effect on small originators and that if small originators leave the securitization market, the value of portfolio of assets would drop due to lower liquidity).

[142] *See* letters from CFA Institute dated Aug. 20, 2010 submitted in response to the 2010 ABS Proposing Release (''CFA I'') and Epicurus.

[143] *See* letters from AmeriCredit and VABSS I.

[144] *See, e.g.,* letters from ASF I, ABA I, and ABAASA I.

[145] *See* letters from ABA I and ABAASA I.

[146] *See, e.g.,* letters from ABA I and ABAASA I. *See also* BoA I (noting that numerous disclosure items in proposed Schedule L relate to information that is obtained from borrowers and verified to the extent provided by an originator's underwriting policies and procedures in the application and underwriting process and such information is not subsequently updated or verified by originators or servicers in the normal course of business).

[147] *See* letter from ABA I (suggesting that the proposal contained some data points requiring empirically verifiable data, such as outstanding balances, scheduled payments, interest rates and pre-payment penalties, while other data points require data which may not be verifiable because they are ''factual representations'' or ''subjective judgments,'' such as property appraisals, residual value estimates, or status of occupancy of the property).

[148] *See* letter from ABA I.

[149] *See* letters from ABA I and ABAASA I.

[150] *See* letter from ABA I (suggesting that the Commission provide issuers the discretion to include or exclude soft data from their disclosures and, where such information is included, it should be described as information obtained from third parties and allow issuers to disclaim liability absent actual knowledge by the issuer that such information is materially incorrect). *See also* letter from ABAASA I (suggesting that the Commission clarify that for liability purposes soft data is not part of the prospectus or registration statement).

[151] *See* letter from ASF I (suggesting that the extent to which the data in any individual field or group of fields is material to a particular transaction should remain a factual matter, based on the facts and circumstances of the transaction, the underlying loans, the securities and the individual circumstances of the investor).

issuers of ABS backed by automobile loans or leases,[152] equipment loans or leases,[153] floorplan financings,[154] and student loans,[155] opposed asset-level disclosures requirements for these asset types because the disclosures would raise individual privacy concerns, result in the release of proprietary data, and the disclosures would be of limited value to investors. To alleviate these concerns, some of these commenters suggested grouped-account disclosure or a combination of grouped account and standardized pool-level disclosures.[156] For equipment ABS, some commenters suggested standardized pool-level data was sufficient.[157] As discussed below, individual privacy concerns were also raised with respect to the proposed asset level disclosures for RMBS [158] and with respect to the Web site approach described in the 2014 Staff Memorandum.[159]

(c) Final Rule and Economic Analysis of the Final Rule

As noted above, the public availability of asset-level information has historically been limited. In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities.[160] Such information is sometimes filed as part of the pooling and servicing agreement or as a free writing prospectus; however, the information provided varied from issuer to issuer and was not standardized.[161] We believe, however, that all investors and market participants should have access to information to analyze the risk and return characteristics of ABS offerings and that asset-level information about the assets underlying a securitization transaction at inception and over the life of a security provides a more complete picture of the composition and characteristics of the pool assets and the performance of those assets than pool-level information alone, and forms an integral part of ABS investment analysis.[162] Therefore, we are adopting, with modifications, a requirement that standardized asset-level data be provided, for certain asset types, in the prospectus and in Exchange Act reports. We are also adopting a requirement that the required asset-level disclosures be provided in XML, a machine-readable format.

At this time, we are adopting asset-level requirements for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or leases, and resecuritizations of ABS, or of debt securities and we continue to consider whether asset-level disclosure would be useful to investors across other asset classes. Prior to the financial crisis, RMBS and CMBS had historically represented a large portion of the registered ABS market while Auto ABS represents a large portion of the current registered ABS market. Accordingly, these disclosures should benefit the largest number of investors, especially as greater numbers of RMBS and CMBS are issued. Although comments about the asset-level requirements for Auto ABS were mixed, with some opposing any asset-level requirements for Auto ABS, Auto ABS investors have indicated in comment letters that they believe that asset-level data will strengthen the Auto ABS market and make it more resilient over the long term.[163] We also note that the European Central Bank recently began requiring the disclosure of standardized asset-level data for all Auto ABS accepted as collateral in the Eurosystem credit operations.[164] For these reasons, we prioritized our efforts to develop asset-level requirements for these asset classes.

The asset-level disclosure requirements for debt security ABS are relatively limited in scope and primarily consist of information that should be readily available to issuers. These disclosures, while consisting of only the basic characteristics of the debt security, will provide useful information to investors, such as the cash flows associated with the debt security, and identifiers, such as the SEC file number of the debt security. Using the SEC file number of the debt security, investors will be able to access other disclosures filed with the Commission about the debt security. No commenters specifically opposed these requirements.

We are also adopting asset-level disclosure requirements for resecuritization ABS. In an ABS resecuritization, the asset pool is comprised of one or more ABS. The new rules require disclosures about the ABS in the pool and, if the ABS in the asset pool is an RMBS, CMBS or Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. We are requiring disclosures about the ABS being resecuritized for the same reasons we are requiring disclosure for debt security ABS, which is to provide investors with information about the ultimate source of cash flows of assets underlying the resecuritization. As a result, we believe investors in resecuritization ABS should derive the same benefits as investors in other ABS.

Under current requirements the securities being resecuritized must be registered or exempt from registration

[152] *See, e.g.,* letters from ABA I, American Bar Association dated Nov. 16, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ABA II''), AmeriCredit, ASF II (expressed views of a portion of their investor membership only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

[153] *See, e.g.,* letters from CNH I, ELFA I, FSR, Navistar, and VABSS I.

[154] *See, e.g.,* letters from ABA I and ASF II. *See also* memorandum to comment file dated Mar. 8, 2011 regarding staff's telephone call with members of the Financial Services Roundtable with letter attached from the Captive Commercial Equipment ABS Issuers Group (''Captive Equipment Group''), and VABSS I.

[155] *See, e.g.,* letters from ABA I, Sallie Mae, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Sallie Mae I''), and SLSA.

[156] *See, e.g.,* letters from ASF II, Navistar, Sallie Mae I, and VABSS I.

[157] *See, e.g.,* letters from Captive Equipment Group, CNH I, and ELFA I.

[158] *See, e.g.,* letters from ABA I, ASF I, Consumers Union dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''CU''), MBA I, and World Privacy Forum dated Aug. 2010 submitted in response to the 2010 ABS Proposing Release (''WPF I'').

[159] *See, e.g.,* letters from ABA III, CCMR, Mortgage Bankers Association dated Mar. 28, 2014 (''MBA IV''), SIFMA/FSR I-dealers and sponsors (noting that ''[t]his puts issuers in an untenable position—the more carefully an issuer protects customer data by restricting access to its Web site, the more risk it bears of an investor suit for failing to disclose all material information''), and SFIG II. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[160] This usually included, for example, information about the principal balance at the time of origination, the date of origination, the original interest rate, the type of loan (e.g., fixed, ARM, hybrid), the obligor's debt-to-income (''DTI'') ratio, the documentation level for origination of the loan, and the LTV ratio.

[161] Under our current requirements the servicing agreement should be filed as an exhibit to the registration statement. *See* Item 601 of Regulation S–K and Section III.B.3.c of the 2004 ABS Adopting Release. *See also* Item 1108(c)(1) of Regulation AB. We remind registrants that the pooling and servicing agreement that is filed must contain all parts of the pooling and servicing agreement, including, but not limited to, any schedules, exhibits, addendums or appendices, unless a request for confidential treatment was submitted and granted to allow for the redaction of such information. *See, e.g.,* Securities Act Rule 406 [17 CFR 230.406], Exchange Act Rule 24b–2 [17 CFR 240.24b–2], and Division of Corporation Finance Staff Legal Bulletins Nos. 1 (Feb. 28, 1997) and 1A (July 11, 2001).

[162] Others have noted the importance of loan-level data to investors. *See, e.g.,* footnote 44.

[163] *See* letters from ASF II (expressed views of loan-level investors only) and Prudential III.

[164] *See* details about the European Central Bank's Auto ABS loan-level requirements at *http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html.* We have sought to address cost concerns raised by Auto ABS issuers through our changes to the Auto ABS requirements, as discussed below.

under Section 3 of the Securities Act.[165] As a result, all disclosures for a registered offering are required. Therefore, requiring asset-level data for the assets underlying resecuritizations of RMBS, CMBS, Auto ABS or debt security ABS is consistent with our current disclosure requirements, which also prevents issuers from circumventing our asset-level requirements for these asset classes. We also note that over the past several years there have been no registered resecuritizations of RMBS, CMBS or Auto ABS. We recognize, however, that such a requirement could increase the disclosure costs of resecuritizations relative to disclosure costs of ABS backed by other assets should an issuer choose to do a resecuritization of RMBS, CMBS or Auto ABS in the future because sponsors may need to collect information about underlying assets from additional sources. We have made some revisions to the proposal to address some of those costs. To the extent that the pass-through of required asset level disclosures imposes costs above that required for the original securitization, this could limit the benefits of resecuritizations and potentially inhibit the issuance of resecuritizations.

We also believe the same benefits will accrue to investors in resecuritization ABS as to investors in RMBS, CMBS, Auto ABS or debt security ABS. Similar to a direct investment in an RMBS, CMBS, Auto ABS or debt security ABS, access to this information should provide further transparency about the assets underlying the security or securities underlying the resecuritization ABS. This additional information should allow investors to analyze the collateral supporting the security being resecuritized, the cash flows derived from each asset underlying the security being resecuritized, and the risk of each asset underlying the security being resecuritized.

We acknowledge commenters' concerns about other asset classes, which we think warrant further consideration. For instance, we continue to consider commenters' concerns about how asset-level disclosures should apply where there is lack of uniformity amongst the types of collateral or terms of the underlying contracts,[166] there is a large volume of assets in a pool,[167] and there are unique features to the ABS structure.[168] For those asset classes where we are deferring action, we will continue to consider the best approach for providing more information about underlying assets to investors, including possibly requiring asset-level data in the future.

We also believe that, for most investors, the usefulness of asset-level data is generally limited unless the asset-level data requirements, which include the following components, are standardized: The definitions of each data point, the format for providing the asset-level data (e.g., XML), and the scope of the information required, such as what data is required about each obligor, the related collateral, and the cash flows related to each asset. We believe that standardizing the asset-level disclosures facilitates the ability to compare and analyze the underlying asset-level data of a particular asset pool as well as compare that pool to other recent ABS offerings involving similar assets.[169] Over time, asset-level information about past ABS offerings, including asset-level information about the performance of those offerings, will be available to further facilitate the ability for issuers to assess expected performance of a new offering based on the performance of past offerings involving similar assets.

The asset-level data required will, in general, include information about the credit quality of the obligor, the collateral related to each asset, the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time and the performance of each asset over the life of a security. This information should allow investors to better understand, analyze, and track the performance of ABS. We believe the final requirements we are adopting for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations will implement the requirements of Section 7(c) for these asset classes.[170] Some commenters expressed concern that the proposed data points require more information than necessary for investor due diligence and could increase re-identification risk.[171] As discussed in further detail below, we have modified the proposed data set for RMBS and Auto ABS in response to these concerns. We believe these modifications will help to reduce re-identification risk without materially affecting investors' ability to evaluate ABS. We believe that the disclosure requirements that we are adopting will provide investors with information they need to independently perform due diligence and make informed investment decisions.

As noted above, we believe the usefulness of the asset-level information is further increased by our formatting requirements. We believe providing standardized data definitions and requiring the data to be in a machine-readable format will provide investors the ability to download the data into software tools that can promptly analyze the asset pool. While some investors may need to obtain the software or other tools needed to analyze the data, we believe such costs would be offset by a reduction or elimination of the costs investors would incur to convert non-machine-readable data into a format that makes analyzing it easier. As a result, this should reduce the time investors need to analyze the offering. We also believe requiring the data to be in a machine-readable format addresses concerns that investors will be overwhelmed by the granularity of the data, because investors can quickly extract the data most relevant to their analysis. Section 7(c) also requires that we set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes.

The requirements of standardized asset-level information in a machine-readable format coupled with, as we discuss in Section V.B.1.a Rule 424(h) and Rule 430D, more time to consider transaction-specific information provided through the new preliminary prospectus and three-day offering

[165] *See* Securities Act Rule 190 [17 CFR 230.190]. An asset pool of an issuing entity includes all instruments which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. *See* Securities Act Rule 190(a) and (b). *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

[166] *See* letter from ELFA I.

[167] *See* letters from Sallie Mae I and ASF I.

[168] *See* letters from ABA I and ABA III.

[169] *See* Statement of Former Federal Reserve Governor Randall S. Kroszner at the Federal Reserve System Conference on Housing and Mortgage Markets, Washington, DC, Dec. 4, 2008 (stating that a necessary condition for the potential of private-label MBS to be realized going forward is for comprehensive and standardized loan-level data covering the entire pool of loans backing MBS be made available and easily accessible so that the underlying credit quality can be rigorously analyzed by market participants).

[170] *See* Section III.A.4 Requirements under Section 7(c) of the Securities Act for a discussion regarding Section 7(c) and the requirements applicable to RMBS, CMBS, debt security ABS and resecuritizations. *See* Section III.A.2.b)(3) Automobile Loan or Lease ABS for a discussion regarding Section 7(c) of the Securities Act and the requirements applicable to Auto ABS.

[171] *See* letters from ABA III and MBA IV (with respect to RMBS).

period rules that we are adopting [172] are aimed at addressing concerns, highlighted by the recent financial crisis, that investors and other participants in the securitization market may not have had the necessary time and information to be able to understand and analyze the risk underlying those securities and may not have valued those securities properly or accurately.[173] Taken together, standardized asset-level information in a machine-readable format and more time to consider the information should enable investors to analyze offerings more effectively and efficiently to better understand and gauge the risk underlying the securities. This, in turn should lead to better pricing, a reduced need to rely on credit ratings and a greater ability of investors to match their risk and return preferences with ABS issuances having the same risk and return profile. These benefits should improve allocative efficiency and facilitate capital formation.

Providing investors access to such information should reduce their cost of information gathering because they will not need to purchase the data from intermediaries or otherwise gather the information. Furthermore, requiring that a single entity, the issuer, provide the information rather than requiring each investor to collect it will reduce duplicative information-gathering efforts. Also, data accuracy may increase because issuers are incentivized to confirm the accuracy of the required asset-level disclosures provided in public filings.

Finally, we note that the public availability of standardized machine-readable data may encourage new entities to enter the ABS credit-analysis industry previously dominated by the top three largest NRSROs. This could increase competition in that industry and provide those investors who prefer not to analyze ABS themselves with more options when purchasing credit-risk assessments and reports from third parties. In addition, since asset-level information in standardized and machine-readable format will now be available, investors will have the ability to better assess the rating performance of NRSROs and other credit-analysis firms.

While we expect that the asset-level disclosure requirements we are adopting will generate the benefits described above, we also recognize that they will impose costs upon the issuers required to provide asset-level disclosures and on other market participants. We received only a few quantitative estimates of the potential costs to comply with the proposed asset-level disclosure requirements.[174] As discussed above, however, some commenters did express general concerns about the costs and burdens that would be imposed in order to comply with the requirements. After considering comments received, we acknowledge that, taken together, the asset-level disclosure requirements may result in the costs detailed immediately below.[175]

The asset-level disclosures, as commenters noted, will result in costs related to revising existing information systems to capture, store and report the data as required. These costs may be incurred by several parties along the securitization chain, including loan originators who pass the information to sponsors and ABS issuers who file the information with the Commission. As we describe later in the release, there could be significant start-up costs [176] to sponsors to comply with the asset level disclosures, but ongoing costs to sponsors likely will be significantly less than the initial costs. We recognize that our estimates may not reflect the actual costs sponsors will incur, particularly to the extent that there are differences in system implementation costs relative to our estimates. We also recognize that there are likely to be significant differences across sponsors in their current internal data collection practices and that implementation costs will depend on how the new requirements differ from the methods sponsors and ABS issuers currently use to maintain and transmit data. Additionally, we recognize that these costs will differ by asset class, depending on whether sponsors and ABS issuers within an asset class have a history of collecting and providing the asset-level information to investors. Further, in the last four years (2010–2013) only 296 registered RMBS, CMBS, Auto ABS, debt security ABS and resecuritization transactions took place. This limited issuance activity may discourage issuers and other market participants from investing in the new systems necessary to provide asset-level disclosures required by the final rules. As a result, several commenters stated that some entities may choose to exit the securitization market or not re-enter the market, which could decrease the availability of credit to consumers and increase the cost of available credit.[177] Furthermore, as we discussed earlier in this release, some sponsors may choose to issue through unregistered offerings where no asset-level disclosures are required.[178]

We also note that sponsors and ABS issuers may pass the costs they incur to comply with the requirements on to investors in the form of lower promised returns and/or originators may pass their costs on to borrowers in the form of higher interest rates or fees. We note, however, that some of these costs may be offset by a reduction in other expenses. For example, investors who previously paid data aggregators for access to relevant information may no longer be required to purchase this data and, to the extent that they do, lower data collection costs on the part of the data aggregators may flow through to investors. Many of the data gathering costs that previously were borne by several data aggregators and/or investors would be performed by the sponsor, eliminating the potential duplication of effort. Thus, the net effect of the new rules could be a reduction in the aggregate data collection costs imposed on the entire market through more efficient dissemination of relevant information. As a result, in the aggregate, the increase of the costs to investors in the form of lower returns

[172] *See* Section V.B.1a) Rule 424(h) and Rule 430D [17 CFR 230.430D].

[173] *See* footnote 40.

[174] *See, e.g.,* letter from VABSS IV (stating that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track, and report all of the proposed data points for auto loans to be approximately $2 million, and that the estimated number of employee hours needed to provide the required disclosures was approximately 12,000). *See also* letter from ELFA I (suggesting that one computer systems vendor estimated that the cost to implement a computer system to monitor and produce the required asset-level information for equipment ABS would be approximately $250,000 in direct programming costs plus the additional staff time devoted to preparing such reports and posting them).

[175] Costs related to concerns about re-identification risk are detailed separately in Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[176] *See* footnote 748.

[177] *See* letters from ABAASA I (suggesting that if the costs of the disclosure, plus the competitive impact on business models and the potential legal risks outweigh the advantages of securitization, issuers may choose to leave the market or pass along increased costs to investors and borrowers, thereby reducing the amount of credit or increasing the cost of credit), BoA I (stating that the uncertain costs and burdens associated with building the infrastructure to capture the data needs to be ''rationalized'' given the fact that the non-agency securitization markets are not currently robust), and SIFMA I (expressed views of dealers and sponsors only) (suggesting the proposed asset-level requirements would most likely prevent some securitizers, in particular smaller originators, from accessing capital through the securitization markets because they may not be able to incur the costs of overhauling their current systems and practices, and that without these smaller originators the value of portfolio assets would likely be reduced due to lower liquidity). *See also* letter from SIFMA III-dealers and sponsors.

[178] *See* Section II.D Potential Market Participants' Responses.

may be offset by the reduction of the costs that are no longer paid to third-party data providers.

The 2010 ABS Proposing Release noted that the proposed standard definitions for asset-level information for RMBS and CMBS were similar to, and in part based on, other standards that have been developed by the industry, such as those developed under the American Securitization Forum's (ASF) Project on Residential Securitization Transparency and Reporting (''Project RESTART'') or those developed by CRE Finance Council (CREFC). We continue to acknowledge that to the extent that there are differences between standards for asset-level information, additional costs would be imposed on issuers and servicers to reconcile differences between standards. Further, servicers may incur some costs in monitoring their compliance with servicing criteria and requirements under the servicing agreement given that periodic reports will now include asset-level information. As we discuss in more depth below in the discussions about the requirements applicable to each asset type, we have attempted to reduce burden and cost concerns by further aligning the disclosure requirements with industry standards where feasible. Further, as discussed below, we are providing for an extended implementation timeframe, which we also believe will reduce the burden of implementing the requirements.[179] We discuss in greater detail below in Section III.A.2 Specific Asset-Level Data Points in Schedule AL the comments received with respect to RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and the changes to the final requirements to address these comments.

To further minimize implementation costs, we also removed the ''General'' category. We incorporated the data points proposed under this category into each of the asset class-specific requirements in order to tailor the requirements for each asset class.[180] We believe removing the General category and tailoring the disclosure requirements to each asset class minimizes implementation costs because issuers will not need to respond to generic disclosure requirements that may not be applicable to the particular asset class or that may not align with how the particular asset class captures and stores data.

We also understand the asset-level data requirements may also affect other market participants. For instance, some investors may have used the services of data providers to obtain the type of data that will now be mandatory under the requirements we are adopting. As a result, these data providers may experience reduced demand for their data aggregation business as investors may no longer seek such services since these requirements may provide them access to similar data. We believe, however, that this concern is mitigated as these entities will also be able to access the publicly available data. As a result, these data providers may not need to gather this asset-level data from other sources, thereby reducing their costs to obtain the data. Further, third-party data providers have developed products to analyze and model the asset-level data. Since the asset-level data will be standardized it may increase the utility of their current products or allow them to develop new products, thus increasing demand for their data analysis business.

We note that commenters raised other concerns regarding the asset-level reporting requirements beyond the cost to implement the requirements. One concern, as noted above, is that the proposed asset-level data may result in the release of an originator's proprietary data.[181] A commenter noted that if originators determine that asset-level disclosures reveal their proprietary business model to competitors they may refrain from securitizing assets.[182] We note, however, that one commenter believed that the proprietary concerns were unfounded.[183] While we acknowledge competitive concerns still may exist, we believe that information we are requiring about the underlying assets, including information about the obligors, will provide investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are requiring to be disclosed are available to the public, for a fee, through third-party data providers.[184]

Another concern that some commenters raised was the potential for securities law liability for inaccuracies in data points that require so-called ''soft data.'' [185] The commenters suggested that soft data includes data that may originate from representations provided by an obligor at origination or may represent a subjective judgment of a third party, such as property valuations of an appraiser. We note commenters' concerns about the potential cost to verify data of this type and whether such data can be verified objectively. We are not, however, persuaded by commenters' suggestions that we address these concerns by providing issuers with the discretion to include or exclude soft data from their disclosures. As noted below, we believe the discretion to determine what data would be included or excluded from their disclosures would reduce the comparability of asset pools. Further, we note that much of the required soft data includes data that is commonly part of the universe of data that originators use to make a credit decision, and we believe that investors should have access to similar data for each loan in order to evaluate the creditworthiness of the assets that they are dependent upon for payment of the securities. We note that some soft data, as defined by commenters, has been included in pool-level information provided in prior registered offerings and thus is already subject to potential securities law liability. In some instances the data will provide investors a baseline to compare how certain characteristics of the asset have changed over time. Finally, an investor's analysis can take into account the age of such disclosures.

In addition to concerns about the accuracy of data points requiring soft data, some commenters expressed concern about potential liability cost for errors or inaccuracies in the responses provided to other data points. Assessing materiality for purposes of securities law liability for an error or inaccuracy in an individual data point would depend on a traditional analysis of the particular facts and circumstances.[186]

[179] *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[180] Under the proposal, asset pools containing only residential mortgages would need to provide, as applicable, the asset-level disclosures for residential mortgages and also the general item requirements applicable to all ABS. Under the new rules, if, for example, the asset pool contains residential mortgages, then issuers only need to provide the asset-level disclosures applicable to residential mortgages. As noted above, proposed data points in the general category remain outstanding for asset classes other than the ones we are adopting today.

[181] *See, e.g.,* letters from ABA I, AmeriCredit, ABAASA I, ASF II (expressed views of issuers only), AFSA I, BoA I, FSR, J.P. Morgan I, SIFMA I, and VABSS I (noting that for Auto ABS a competitor could take data on values such as credit score, LTV, and payment-to-income and combine it with other information (e.g., make, model, interest rate, loan maturity) to ascertain proprietary scoring models, build their own models or greatly improve the performance of their existing models).

[182] *See, e.g.,* letter from ABA I.

[183] *See* letter from AMI.

[184] *See* footnote 107 and accompanying text.

[185] *See* letter from ABA I.

[186] Whether any particular statement or omission is material will depend on the particular facts and circumstances. Information is material if ''there is

We agree with commenters that suggested that issuers should be able to provide narrative analysis of data in order to make their disclosure not misleading. Such additional explanatory disclosure can and should be added to the prospectus or the Form 10–D as may be necessary to make the asset-level disclosures, in the light of the circumstances under which they are made, not misleading.[187] Also, issuers that wish to provide other explanatory disclosure about the asset-level disclosures can provide such disclosures in a separate exhibit.[188]

We considered several possible alternatives to the new asset-level requirements we are adopting. Some alternatives we considered to address various concerns, including re-identification risk, included: Requiring more pool-level data in lieu of asset-level data, grouped account data in lieu of asset-level data, allowing a ''provide-or-explain'' type regime, only defining the type of information to be provided and allowing the registrant or other market participants to define the asset-level information or the Web site approach.[189]

We are concerned that these alternatives would be of limited benefit to investors, since they will not go far enough in providing them with information best suited to assessing the risk and return tradeoff presented by RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and to independently perform due diligence. Pool-level and grouped account data does not provide investors with the opportunity to develop the same level of understanding, because when loans or assets are aggregated into groups of information, certain characteristics of individual assets are lost. For example, investors may know how many loans fall in a particular loan-to-value range but may not know whether most loans are at the top, middle or bottom of that range.[190] This cross-sectional distribution of loans within a given loan-to-value range may have important implications for the pool's expected losses. A grouped account data approach groups loans based on certain loan characteristics, which does not allow investors to analyze the asset pool based on the loan characteristics the investors deem most important to their analysis. As a commenter noted, however, asset-level data provides investors the opportunity to analyze a broad set of loan characteristics and to assess risks based on the characteristics investors believe are most predictive of expected losses.[191] With standardized asset-level data in a machine readable format provided at issuance and over the life of a security, the data can be run through a risk model at issuance and over the life of a security to assess the risk profile of the transaction at issuance and any changes to the risk profile of the asset pool over time.

As noted above, we also considered the alternative suggested by some commenters that we require asset-level disclosure generally but allow an issuer or an industry group to define the disclosures. We also considered a provide-or-explain type regime that would permit an issuer to omit any asset-level data point and provide an explanation as to why the data was not disclosed.[192] We believe such approaches may limit the value of such disclosures. As noted above, the usefulness of asset-level data is generally limited unless the individual data points are standardized in terms of the definitions, the scope of information to be disclosed, and the format of the data points. A provide-or-explain regime may result in differing levels of disclosure provided about similar asset pools, as some may provide the required asset-level disclosures and others may exclude certain data points and only provide an explanation of why the information was excluded. This would inhibit the comparability of disclosures across ABS. Similarly, setting general asset-level disclosure requirements and allowing the issuer to define the data to be included and how the information is presented may result in differing levels of disclosure or different presentations of the data. This may limit the ability to compare across asset pools within the same asset class, which may reduce the usefulness of the data. Standardizing the information facilitates the ability to analyze the underlying asset-level data of a particular asset pool and the ability to compare the assets in one pool to assets in other pools.[193] As we note elsewhere in this release, we believe standardized disclosure requirements and making the disclosures easily accessible may facilitate stronger independent evaluations of ABS by market participants.

In addition to considering the alternatives we discussed above, we also considered adopting industry developed asset-level disclosure standards already in existence for RMBS and CMBS. We discuss in Section III.A.2.b.1 Residential Mortgage-Backed Securities and Section III.A.2.b.2 Commercial Mortgage-Backed Securities our consideration of adopting industry developed asset-level disclosure standards for these asset types.

Finally, as mentioned above, the final rules include several changes from the proposal. The changes are aimed at simplifying the requirements, addressing cost concerns and conforming our requirements, to the extent feasible, to other pre-existing asset-level disclosure templates. The discussions below address, for each asset type, the economic effects of the specific requirements, such as when the data is required and the types of

a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision. The question of materiality is an objective one involving the significance of an omitted or misrepresented fact to a reasonable investor. *See TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 448–49 (1976) (stating that to fulfill the materiality requirement, there must be a substantial likelihood that the fact ''would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available''); *see also Basic* v. *Levinson,* 485 U.S. 224, 231–32 (1988).

Courts have analyzed materiality under Exchange Act Section 10(b) and Exchange Act Rule 10b-5, and Securities Act Sections 11 and 12(a)(2) in a similar fashion. *See, e.g., In re Donald J. Trump Casino Sec. Litig.,* 7 F.3d 357, 368 n.10 (3d Cir. 1993) (noting that while there are substantial differences in the elements that a plaintiff must establish under these provisions, they all have a materiality requirement and this element is analyzed the same under all of the provisions). *See also* Securities Act Sections 11, 12(a)(2) and 17(a), Securities Act Rule 408 [17 CFR 230.408]; Securities Act Sections 11 [15 U.S.C. 77k(a)], 12(a)(2) [15 U.S.C. 77l] and 17(a) [15 U.S.C. 17(a)]; Exchange Act Section 10(b) [15 U.S.C. 78j(b)); Exchange Act Rule 10b–5 [17 CFR 240.10b–5]; and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[187] *See, e.g.,* Securities Act Rule 408 and Exchange Act Rule 12b–20 [17 CFR 229.408 and 17 CFR 240.12b–20].

[188] New Item 601(b)(103) Asset Related Documents of Regulation S–K is an exhibit that allows for explanatory disclosure regarding the asset-level data file(s) filed pursuant to Item 601(b)(102) Asset Data File. Item 601(b)(103) is required to be incorporated by reference into the prospectus. *See* Section III.B.5 New Form ABS–EE.

[189] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[190] *See* letter from A. Schwartz (noting that ''[f]rom a statistical perspective, disclosing asset-level data to investors is materially superior to providing them with statistical summaries of the asset pool, because it conveys more information'').

[191] *See* letter from Prudential II.

[192] *See* letters from BoA I, Citi, and SIFMA I (expressed views of dealers and sponsors only). Some commenters also suggested that issuers should have the flexibility to modify the disclosures to address privacy concerns. *See, e.g.,* letters from ABA III and Securities Industry and Financial Markets Association and the Financial Services Roundtable dated Apr. 28, 2014 responding to the 2014 Re-Opening Release (''SIFMA/FSR II-dealers and sponsors'').

[193] *See* letters from MetLife I (stating that the Commission should require standardized disclosure templates with the relevant fields for each ABS sector with the key benefit of standard disclosure being a significantly enhanced ability for investors to compare and contrast different ABS transactions in connection with their investment decisions and ongoing portfolio management) and Prudential I (stating that if two sponsors within the same asset class can provide information on different standards, it will be impossible for investors to efficiently compare asset-level files).

disclosures required for each asset type. We also discuss the likely costs and benefits of the new rules and their effect on efficiency, competition and capital formation.

2. Specific Asset-Level Data Points in Schedule AL

This section is divided into several parts. Each part discusses the specific requirements we are adopting today for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations and highlights, for each asset class, the significant changes from the proposal.

(a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements

In the 2010 ABS Proposing Release, we proposed, between Schedule L and Schedule L–D, 74 general data points. We believed the proposed general item requirements captured basic characteristics of assets that would be useful to investors in ABS across asset types. As discussed below in Section III.B.2 The Scope of New Schedule AL, we have condensed the information previously proposed to be provided in either Schedule L or Schedule L–D into a single schedule, titled Schedule AL. Schedule AL enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

We received a substantial number of comments directed at making technical changes to the data points and in some cases requesting we delete or add certain data points or that we change a data point to accommodate the characteristics of specified assets types.[194] Many commenters sought changes to the format of the information,[195] the range of possible responses for a particular data point, or the data point's title or definition in order to increase the usefulness of the information required, to address cost concerns or to align the data point with industry standards.[196]

To address comments that we revise data points to accommodate the characteristics of certain assets types, we integrated the proposed Item 1 General Requirements into the asset-specific requirements. This change permitted us to tailor the data points to each particular asset type and allowed us to further incorporate applicable industry standards. The data points we discuss below are incorporated into the rules for RMBS, CMBS, Auto ABS, debt security ABS and resecuritizations. In incorporating the proposed General Requirements into the requirements for each asset type, we are also making changes to the data points, based in large part on comments received, that we believe improve or clarify the disclosure, mitigate cost concerns and/or implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

Asset Number

We proposed that issuers provide a unique asset number for each asset that is applicable only to that asset and identify the source of the asset number.[197] We did not propose requiring that issuers use a specific naming or numbering convention. We asked for comment, however, about whether we should require or permit one type of asset number that is applicable to all asset types.[198] In response, several commenters urged that we recognize a specific type of asset numbering system currently in use within the industry for each asset type.[199] A few commenters were against a uniform number system that would apply across asset classes.[200] A few commenters, however, cautioned against requiring an asset number because privacy issues may arise if the asset number is associated with an individual.[201]

We are adopting, as proposed, that issuers provide for each asset in the pool a unique asset number applicable only to that asset and the source of the number.[202] We believe the use of an asset number is necessary and to the benefit of market participants, because it will allow them to follow the performance of an asset from securitization through ongoing periodic reporting. We remind issuers and underwriters that they should be mindful of the sensitive nature of the asset number and ensure that appropriate measures are taken to prevent the number from being associated with a particular person. While some commenters requested we adopt a specific type of identifier, we believe that identifiers for each asset may be generated in many ways and currently there is no single uniform asset identifier. These data points, as adopted, provide flexibility to issuers to use any numbering system, including those numbering systems that commenters recommended, and we believe this minimizes compliance costs. We are also adopting a data point, as proposed, that requires the identification of the source of the asset number. We recognize, however, that by not standardizing the numbering system, the usefulness of the data will be limited to the extent that investors intend to combine it with other data already incorporating a particular numbering system.

Underwriting Indicator

We proposed a data point that would disclose whether the loan or asset was an exception to defined or standardized underwriting criteria. The response to this data point was mixed. One commenter suggested that we correlate this data point with the then proposed Item 1111(a)(3) of Regulation AB that would have required disclosure on the underwriting of assets that deviate from the underwriting criteria disclosed in the prospectus.[203] Another commenter

[194] *See, e.g.,* letters from ASF I, ASF II, BoA I, CREFC I, Mass. Atty. Gen., MBA I, Mortgage Bankers Association dated Nov. 22, 2010 submitted in response to the 2010 ABS Proposing Release (''MBA II''), MetLife I, MISMO, SIFMA I, VABSS I, VABSS IV, Wells Fargo I and SFIG I.

[195] For example, proposed Item 1(a)(15) of Schedule L, ''Primary Servicer'' provided that the format of the response should be a ''text'' entry. Under this format the names of the servicers could be entered or some other identifier of services, such as the MERS organization identification number. One commenter suggested that the format of the response be a number entry and that we require the MERS ''Mortgage Identification Number'' or ''MIN.'' The MIN is an 18-digit number used to track a mortgage loan throughout its life, from origination to securitization to pay-off or foreclosure. We did not adopt this suggested change because there may be instances where a servicing organization may not have a MERS number. *See* letter from ASF I.

[196] For example, SIFMA I stated that the title of Item 1(a)(12) of Schedule L ''Amortization Type'' does not describe the two options, fixed or adjustable. They recommended changing the title to ''Interest rate type.'' We revised the data point title to ''Original interest rate type.'' SFIG I recommended that we add explanatory language for interest-only and balloon loans to the definition of proposed Item 1(a)(9) Original amortization term of Schedule L. *See* new Item 1(c)(5) of Schedule AL.

[197] *See* proposed Items 1(a)(1) and 1(a)(2) of Schedule L. If an issuer uses its own unique numbering system to track the asset throughout its life, disclosure of that number would satisfy this proposed item requirement.

[198] *See* the 2010 ABS Proposing Release at 23359.

[199] *See* letters from ASF I (supporting the use of CUSIP number in debt repackagings and resecuritizations and the ASF Loan Identification Number Code (''ASF LINC™'') for securitizations backed by assets other than securities), eSign, MERS, MISMO (eSign, MERS and MISMO each support the use of the MERS ''Mortgage Identification Number'' for real estate assets), and SIFMA I (supporting the use of CUSIP numbers in debt repackagings and resecuritizations).

[200] *See* letters from eSign and MISMO.

[201] *See* letters from CDIA and Epicurus (both suggesting that privacy issues could result if the asset number is published and then associated with asset records).

[202] Under this requirement each asset number should only be used to reference a single asset within the pool. If an asset in the pool is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

[203] *See* letter from ASF I. In the 2010 ABS Proposing Release we proposed to amend Item 1111(a)(3) of Regulation AB. At the time of the

suggested the data point be omitted because the time and resources to provide the disclosures were not necessary or desired.[204] This commenter also noted that if we adopt the disclosure, then we should more precisely define what is considered defined and/or standardized underwriting criteria to avoid confusion.[205] An Auto ABS commenter stated that the exception disclosure required by Item 1111(a)(8) is sufficient and therefore this data point should be eliminated, but if this data point is adopted, the Commission should instruct registrants to omit it if no exceptions to the underwriting guidelines are reported in the prospectus.[206] Another commenter stated underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria and an exercise of this discretion does not constitute an exception.[207] This commenter also noted specific concerns about the application of this data point to CMBS. The commenter stated that underwriting criteria for commercial mortgage loans are generally not clearly prescribed and the judgment of the originator is commonly used rather than an objective test based on established mathematical or financial models. Therefore, we should only require disclosure of exceptions to underwriting criteria in cases where such criteria are well defined, are fundamental to the credit analysis and are consistently applied.[208]

In contrast, one commenter requested additional disclosure because some market participants use ''exception'' to refer to loans that are unacceptable under the underwriting guidelines (i.e. they do not comply with the underwriting guidelines and do not meet the ''compensating factor'' standard set out in the guidelines to otherwise allow the approval of such loans) and at other times market participants use the term ''exception'' to refer to loans that are acceptable under the underwriting guidelines because they demonstrated sufficient compensating factors. The commenter suggested we require disclosure on an asset-level basis of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception.[209] Another commenter noted that this data point is not provided in asset-level disclosures for offerings of CMBS based on market practice and this data point should only be required if underwriting criteria become defined or standardized for commercial or multi-family mortgages.[210]

The proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB which was added to Item 1111 of Regulation AB in early 2011.[211] Item 1111(a)(8) requires issuers, in part, to disclose how the assets in the pool deviate from the disclosed underwriting criteria. Rule 193 implements Section 945 of the Dodd-Frank Act by requiring that any issuer registering the offer and sale of an ABS perform a review of the assets underlying the ABS.[212] This review provides a basis for the Item 1111(a)(8) disclosure discussed above. Under Rule 193, such review, at a minimum, must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. The release adopting Item 1111(a)(8) noted that where originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the criteria for the first level of underwriting should be disclosed. In addition, Item 1111(a)(8) requires disclosure of the loans that are included in the pool despite not meeting the criteria for this first level of underwriting criteria.

In light of comments received and the subsequent adoption of Item 1111(a)(8), we are adopting this data point with modifications.[213] As we noted when adopting the changes to Item 1111(a)(8), originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval are evaluated based on judgmental underwriting decisions. Therefore, we believe it is appropriate to base the data point on the standards of Item 1111(a)(8) and, in particular, on whether the asset met the disclosed underwriting criteria or benchmark used to originate the asset. We revised this data point to state: ''indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.'' Since originators may approve loans at a variety of levels, and the loans underwritten at an incrementally higher level of approval may be evaluated based on judgmental underwriting decisions, the data point, as defined, will capture whether the loan or asset met the criteria for the first level of underwriting. We believe aligning this data point to Item 1111(a)(8) responds to comments, including the concerns raised by a commenter with respect to CMBS, and minimizes confusion because the data point does not rely on what constitutes an exception to a defined and/or standardized set of underwriting criteria and instead focuses on whether the loan or asset met the disclosed underwriting criteria. For the same reasons, we also believe it addresses concerns that underwriting standards often contain certain elements of discretionary authority for an underwriter to vary from the stated criteria without being considered an exception or that the disclosure may release proprietary underwriting standards.[214] We are not persuaded that disclosures, on an asset-level basis, of exceptions both with and without the presence of sufficient compensating factors, the compensating factors relied upon and the specific underwriting exception, are necessary. We believe such disclosure is unnecessary because this data point, as adopted, captures

proposal, we proposed to require a description of the solicitation credit-granting or underwriting criteria used to originate or purchase the pool assets, including any changes in such criteria and the extent to which such policies and criteria are or could be overridden. We proposed to revise the requirement to also require data to accompany this disclosure on the amount and characteristics of those assets that did not meet the disclosed standards. Further, if disclosure was provided regarding compensating or other factors, if any, that were used to determine that those assets should be included in the pool despite not having met the disclosed underwriting standards, then a description of those factors and data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors would also be required. We discuss below that the proposed amendments to Item 1111(a)(3) were incorporated into Item 1111(a)(8) of Regulation AB.

[204] *See* letter from BoA I (without providing a costs estimate).

[205] *See* letter from BoA I (requesting confirmation that the proposed data point correlates to proposed Item 1111(a)(3)).

[206] *See* letter from VABSS IV.

[207] *See* letter from ABA I (suggesting that other than possibly in the context of RMBS, it would be preferable to permit textual disclosure of originators' trends in underwriting standards and risk-management activities because more specific disclosure may lead to the disclosure of proprietary underwriting standards, which may make the securitization markets unattractive and may also lead to less specific underwriting standards).

[208] *See* letter from ABA I.

[209] *See* letter from Mass. Atty. Gen.

[210] *See* letter from MBA II.

[211] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Release No. 33–9176 (Jan. 20, 2011) [76 FR 4231] (the ''January 2011 ABS Issuer Review Release'').

[212] *See* Securities Act Rule 193 [17 CFR 230.193]. *See also* the January 2011 ABS Issuer Review Release.

[213] *See* new Items 1(c)(10), 2(c)(13), 3(c)(11), 4(c)(7), and 5(c)(12) of Schedule AL. Each of these items is titled underwriting indicator.

[214] *See* footnote 207.

whether an asset met the first applicable level of underwriting criteria.

We acknowledge a commenter's position, which was provided prior to the adoption of Rule 193, that a substantial expenditure of time and resources would be required to enable issuers to provide the proposed disclosures. We anticipate that in order to provide the new disclosure, an issuer could rely, in part, on the review that is already required in order for an issuer to comply with Rule 193. Since issuers can rely, in part, on the review that is required under Rule 193, issuers should incur less cost to provide this disclosure than if Rule 193 had not been implemented. We acknowledge that the information gained through a Rule 193 review may not provide all of the information needed to provide the disclosures.

Although issuers will incur potential costs to provide this disclosure, investors should benefit from the insight these disclosures will provide about the originator's underwriting of the pool assets and the originator's ongoing underwriting practices. For instance, the disclosures should provide investors the ability to identify the particular assets in the pool that did not meet the disclosed underwriting standards. Investors can then analyze whether these assets alter the risk profile of the asset pool and monitor the performance of these particular assets. In addition, we believe this information will allow investors to compare, over time, the performance of assets that met the disclosed underwriting criteria against those assets that did not meet the disclosed underwriting criteria used to originate the assets. This should allow investors to better evaluate an originator's underwriting practices.

Information About Repurchases

We proposed a data point to capture whether an asset had been repurchased from the pool.[215] If the asset had been repurchased, then the registrant would have to indicate through additional data points whether a notice of repurchase had been received,[216] the date the asset was repurchased,[217] the name of the repurchaser,[218] and the reason for the repurchase.[219]

One commenter suggested we clarify that the repurchase notice data point is intended to track whether a repurchase request has been made before the repurchase has been completed and add an option to indicate whether a repurchase request was made but the parties later agreed that a repurchase was not required.[220] Two commenters requested we delete the repurchase notice data point.[221]

The dealer and sponsor members of one commenter suggested we delete the data point identifying the name of the repurchaser because transaction documents will contain the name of the person obligated to make repurchases based on breaches of representations and warranties.[222] The investor members of the same commenter, however, suggested we retain the data point because multiple parties could be responsible for the repurchase of individual assets.[223]

We are adopting this group of data points with revisions in response to comments to align the data points with other disclosures about asset repurchases now required pursuant to the Dodd-Frank Act. As one commenter noted, Rule 15Ga-1 was adopted subsequent to the 2010 ABS Proposing Release.[224] Unlike the aggregated disclosures under Rule 15Ga-1, these data points provide transparency about fulfilled and unfulfilled demands for repurchase or replacement on an individual asset-level basis for investors in a particular transaction. We believe these data points provide investors with a more complete picture regarding the number of assets subject to a repurchase demand, including whether repurchases occur only after the receipt of a repurchase demand and the potential effects a repurchase may have on the cash flows generated by pool assets.

To address concerns about the costs to capture and report such data and to make the disclosure most useful and effective, we are aligning the data points to the type of demands that must be reported pursuant to Rule 15Ga-1. We believe this should minimize confusion, make the disclosures consistent with Rule 15Ga-1 disclosures, and help minimize costs because sponsors will already be required to capture such data to fulfill the disclosure requirements of Rule 15Ga-1. In particular, we are revising the titles and definitions of this group of data points in order to align them with the Rule 15Ga-1 disclosure requirements.[225] We expect that the information on the asset level should feed the aggregated disclosures already required pursuant to Rule 15Ga-1.[226]

We are also adding a data point to capture the status of an asset that is subject to a demand to repurchase or replace for breach of representations and warranties.[227] A commenter suggested that we should include an option to indicate assets subject to a repurchase or replacement demand, but where the relevant parties later agreed the repurchase or replacement was not required.[228] To address this concern, we based the coded responses for this data point on the requirements of Rule 15Ga-1. To this end, the data point captures whether the asset is pending repurchase or replacement (within the cure period); whether the asset was repurchased or replaced during the reporting period;[229] and whether the demand is in dispute, has been rejected or withdrawn. Finally, while not a requirement under Rule 15Ga-1, we are also adding ''98=Other'' to the list of coded responses. We believe adding ''98=Other'' accounts for dispositions of repurchase requests that

[215] *See* proposed Item 1(i) of Schedule L–D.

[216] *See* proposed Item 1(i)(1) of Schedule L–D.

[217] *See* proposed Item 1(i)(2) of Schedule L–D.

[218] *See* proposed Item 1(i)(3) of Schedule L–D.

[219] *See* proposed Item 1(i)(4) of Schedule L–D.

[220] *See* letter from SIFMA I.

[221] *See* letters from ASF I (requesting that we not adopt the repurchase notice data point because RMBS transactions do not typically require notices in connection with repurchases) and VABSS IV (noting that repurchase notices are rarely delivered in Auto ABS).

[222] *See* letter from SIFMA I (dealer and sponsors).

[223] *See* letter from SIFMA I (investors).

[224] *See* letter from VABSS IV (asserting that a repurchase data point should not be adopted because ''securitizers have been required to disclose repurchase demands pursuant to Rule 15Ga-1 of the Securities Exchange Act since February 14, 2012). *But see* letter from J. Calva (stating that investors need loan-level data in order to verify the accuracy of disclosures made under Rule 15Ga-1). Current Exchange Act Rule 15Ga-1 requires that any securitizer of an Exchange Act ABS provide tabular disclosure of fulfilled and unfulfilled demand requests aggregated across all of the securitizer's ABS that fall within the Exchange Act definition of ABS, whether or not these ABS are Securities Act registered transactions. *See* the Rule 15Ga-1 Adopting Release. With the passage of the Jumpstart Our Business Startups Act (Pub. L. 112–103, 126 Stat. 306 (2012)) (the ''JOBS Act'') the Exchange Act definition of ABS was redesignated from section 3(a)(77) to section 3(a)(79). As a result of these statutory changes, we are adopting with this release technical amendments throughout the CFR, including in Rule 15Ga-1, to reflect this redesignation.

[225] For example, new Item 1(i) Asset subject to demand of Schedule AL requires disclosure of whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. New Item 1(i)(3) Demand resolution date of Schedule AL requires disclosure of the date the loan repurchase or replacement demand was resolved, rather than, as proposed, the date the notice was resolved. *See also* Items 2(g) and 2(g)(3), 3(h) and 3(h)(3), 4(h) and 4(h)(3), and 5(f) and (5)(f)(3) of Schedule AL.

[226] For instance, Rule 15Ga-1 requires disclosure of all demands; it is not limited to only those demands made pursuant to a transaction agreement. In cases where the underlying contracts do not require a repurchase notice to be made or where an investor makes a demand upon a trustee, consistent with Rule 15Ga-1, disclosure is required. *See* the Rule 15Ga-1 Adopting Release at 4498.

[227] *See* new Items 1(i)(1), 2(g)(1), 3(h)(1), 4(h)(1) and 5(f)(1) of Schedule AL.

[228] *See* letter from SIFMA I.

[229] If this response is provided it would indicate the asset is no longer in the pool.

may not fall into a category listed in the coded responses.

Two commenters suggested that we include a new data point to require issuers to provide the amount paid to repurchase the loan or lease from an Auto ABS transaction.[230] One of these commenters recommended that this new item replace the proposed repurchase indicator data point[231] because in Auto ABS there is not a lengthy period of time between an event requiring a repurchase and the actual repurchase as there may be in RMBS.[232] This commenter believed the repurchase amount would give timely indication that the loan has been repurchased. We believe that investors across asset classes would benefit from this data point and, therefore, we have added a repurchase amount data point to the final requirements for each asset class that is required to provide asset-level disclosures. The proposed repurchase indicator data point has been subsumed into another data point we are adopting, based on a comment received, titled ''zero balance code.''[233] The zero balance code requires the selection, from a coded list, of the reason that the loan's balance was reduced to zero. One option is to select, ''repurchased or replaced,'' which if selected would indicate the loan balance was reduced to zero because the loan was repurchased from the pool. In effect, this data point provides the same information as the repurchase indicator data point would have provided.

We also are adopting data points that capture the name of the repurchaser[234] and the reason for the repurchase or replacement.[235] Although the transaction documents will contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of individual assets may differ.[236] We believe this data point will clarify that responsibility.

Reporting Period Beginning and End Dates

We proposed that the asset-level disclosures in a preliminary prospectus be provided, unless the data point specified otherwise, as of a recent practicable date, which we defined as the ''measurement date.''[237] We proposed that asset-level disclosures in a final prospectus be as of the ''cut-off'' date for the securitization, which would be the date specified in the instruments governing the transaction. This is the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders. On an ongoing basis, the asset-level disclosures would be as of the end of the reporting period the Form 10–D covered.

A commenter believed that the proposed measurement dates were appropriate[238] and some commenters pointed out that the measurement date and cut-off date could be the same day.[239] We also received comments suggesting that some data points in proposed Schedule L were seeking data as of a date that was different than when the information was normally captured. For instance, some commenters noted that certain data points seek information as of the measurement date, but that the information is usually obtained during the underwriting process or at origination.[240] One of these commenters requested that we revise certain data points to clarify that the information was collected during the underwriting process or at origination.[241] Another commenter believed that the disclosure of data based on measurement dates and cut-off dates should be consistent with current industry practice regarding the frequency with which issuers can generate pool data.[242]

After considering comments received, we are adopting data points that require the disclosure of reporting period beginning and end dates in lieu of our proposal to require the measurement date and cut-off date.[243] We believe the date the asset-level information is provided in the prospectus should align with how information is normally captured and how it will be reported under the ongoing reporting requirements that will arise after issuance. Therefore, for a preliminary or final prospectus, the Schedule AL data is required to be provided as of the end of the most recent reporting period, unless otherwise specified in Schedule AL.[244] For periodic reports on Form 10–D, the Schedule AL data is required to be provided as of the end of the reporting period covered by the Form 10–D, unless otherwise specified in Schedule AL.

We recognize that this approach may reduce benefits to investors to the extent that some of the information disclosed may be stale. We believe, however, that this change should serve to address concerns that the proposal would require data to be captured at times different than when it is normally captured and thus result in undue issuer costs. To further address those concerns, we also revised some data points to clarify the ''as of'' date of the data required. If the data required is typically captured at a time other than the end of a reporting period, such as at origination, we revised the data point to clarify the ''as of'' date of the data required.[245] When making these changes, we either clarified the title, definition or both. These changes also help clarify whether we expect the response to a particular data point to remain static or be updated as new information becomes available. For instance, some data points request ''original'' or ''initial'' data or data as of ''origination.'' These data points require

[230] *See* letters from VABSS IV and Vanguard.

[231] *See* proposed Item 1(i) of Schedule L–D.

[232] *See* letter from VABSS IV.

[233] *See* letter from ASF I.

[234] *See* new Items 1(i)(4), 2(g)(4), 3(h)(4), 4(h)(4) and 5(f)(4) of Schedule AL.

[235] *See* new Items 1(i)(5), 2(g)(5), 3(h)(5), 4(h)(5) and 5(f)(5) of Schedule AL. We aligned the coded list to field 26 from the ASF Project RESTART RMBS Reporting Package. *See* letter from ASF I.

[236] *See* letter from SIFMA I. The dealer and sponsor members represented by this commenter suggested that we not adopt this data point because the transaction agreements would contain the identity of the party that is obligated to make repurchases based on breaches of representations and warranties, but the investor members represented by the same commenter suggested that we adopt this data point because multiple parties could provide representations and warranties for a pool of assets and the party responsible for the repurchase of an individual asset may differ.

[237] For example, proposed Item 1(a)(10) Original interest rate of Schedule L would require ''the rate of interest at the time of origination of the asset.''

[238] *See* letter from Prudential I.

[239] *See* letters from ABA I (stating that for RMBS the measurement date used for the preliminary prospectus will be the same date as the cut-off date used for the final prospectus), MBA I (noting consistency with standard CMBS industry practice as well as CMBS investor expectations), and SIFMA I.

[240] *See* letters from BoA I (noting that some disclosure items in proposed Schedule L relate to information obtained from borrowers and is verified to the extent provided by an originator's underwriting policies and procedures for the underwriting process) and Wells Fargo I (noting that some data is collected and possibly captured on an origination system).

[241] *See* letter from Wells Fargo I.

[242] *See* letter from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time).

[243] *See e.g.,* new Items 1(b)(1) and 1(b)(2), 2(b)(1) and 2(b)(2), 3(b)(1) and 3(b)(2), 4(b)(1) and 4(b)(2), and 5(b)(1) and 5(b)(2) of Schedule AL.

[244] Information should be provided through the close of business on the last day of the reporting period and not some earlier point in time on that day.

[245] *See, e.g.,* new Items 1(c)(6) Original interest rate; 1(c)(29)(xxi) HELOC draw period; 1(c)(30)(iii) Prepayment penalty total term; 1(c)(31)(ii) Initial negative amortization recast period; 1(c)(31)(viii) Initial minimum payment reset period; and 1(d)(2) Occupancy status of Schedule AL.

disclosure of data about the underlying loan at origination before any modifications.[246] The responses to these data points will be static and we do not expect updates to these responses over the life of the loan. The responses to these data points help to establish a baseline of the characteristics of each loan and will help investors monitor changes in the characteristics of an asset over the life of the loan. Therefore, unless the data point specifies a different ''as of'' date (e.g., asking for data created at origination or at some other time), the data should be as of the end of the reporting period.

Format of the Responses

We proposed that responses to the asset-level disclosure requirements be a date, number, text, or coded response. Consistent with the proposal, the final requirements we are adopting require responses as a date, a number, text, or a coded response. We received a number of comments that sought changes to the format of the information to be collected, the range of possible responses, or the data point's title or definition.[247] As noted elsewhere, we considered each of these comments and are making changes to mitigate cost and burden concerns and to implement industry standards when we believe doing so would not materially diminish the value of the disclosures to investors.

In the 2010 ABS Proposing Release, we also noted that situations may arise where an appropriate code for disclosure may not be currently available in the technical specifications. To accommodate those situations, the proposals provided a coded response for ''not applicable,'' ''unknown'' or ''other'' and many of the data points we are adopting include these potential responses. We noted in the proposing release that a response of ''not applicable,'' ''unknown'' or ''other'' would not be appropriate responses to a significant number of data points and that registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.[248] One commenter believed this language called into question the availability of Rule 409 under the Securities Act.[249] This commenter and another commenter requested that we clarify the circumstances under which issuers may rely on Rule 409 to omit responses to asset-level data points in a registered offering.[250] The rules we are adopting do not affect the availability of Rule 409 or Exchange Act Rule 12b–21. We remind issuers of the requirements of Rule 409 and, in particular, that if any required information is unknown and not reasonably available to the issuer, the issuer is to include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person who has the information and stating the result of a request made to such person for the information. Also, in situations where an issuer selects ''not applicable,'' ''unknown,'' or ''other,'' we encourage issuers to provide additional explanatory disclosure in an ''Asset Related Document'' [251] describing why such a response was appropriate along with any other relevant detail.[252]

(b) Asset Specific Disclosure Requirements and Economic Analysis of These Requirements

Each section below discusses, for each asset type for which asset-level disclosure is required, the proposal, comments and final requirements applicable to each asset class and the anticipated economic effects arising from the final requirements applicable to each asset class, including the likely costs and benefits of the requirements and their effect on efficiency, competition and capital formation. Each section also discusses changes made to each group of proposed data points, including the addition of data points to or deletion of data points from the proposed group of data points.

(1) Residential Mortgage-Backed Securities

The proposal for RMBS included a total of 362 total data points between the 74 proposed general item requirements and the 288 data points specific to RMBS in proposed Schedules L and L–D. Based on the changes described below, the final requirements for RMBS, which are set forth in Item 1 of Schedule AL, include 270 data points. As noted in the 2010 ABS Proposing Release, we took into consideration standards that have been developed for the collection and/or presentation of asset-level data about residential mortgages. For instance, ASF had published an investor disclosure and reporting package for residential mortgage-backed securities. The package is part of the group's Project RESTART. This disclosure and reporting package includes standardized definitions for loan or asset-level information and a format for the presentation of the data to investors.[253] We also noted that another organization, the Mortgage Industry Standard Maintenance Organization (''MISMO''), has been developing a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data.[254] We also considered the data that Fannie Mae and Freddie Mac receive from sellers of mortgage loans. In addition, we considered the data that the Office of the Comptroller of the Currency and the Office of Thrift Supervision receive from banks.[255]

As stated in the 2010 ABS Proposing Release, in developing the proposal, the staff surveyed the definitions used for data collected by the organizations mentioned above, as well as other industry sources. The scope of the

[246] If a loan has been modified either prior to securitization or after securitization, responses to data points titled ''original'' or that are requiring data as of origination or underwriting should consist of data about the original loan prior to any loan modification.

[247] For instance, a commenter suggested that for numbers, the format should indicate whether the number should be displayed as an integer or as a decimal; for dates, the date field should specify whether the date should be displayed as a month-year (MM/YYYY) or month-day-year (MM/DD/YYYY); and for data points requiring a ''Yes'' or ''No,'' the response should be coded as ''1=Yes, 0=No'' rather than ''1=Yes, 2=No.'' *See* letter from ASF I.

[248] *See* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b–21[17 CFR 240.12b-21].

[249] *See* letter from Citi.

[250] *See* letters from Citi and SIFMA I (expressed views of dealer and sponsors only). *See also* letters from ABA I (suggesting that the final rules should recognize that some information may not be available to the sponsor and, therefore, cannot be provided) and BoA I (suggesting that due to the significant quantity and detail of the proposed asset level data requirements that we adopt, consistent with Securities Act Rule 409, a ''comply-or-explain'' regime in which data would either be disclosed, or if not disclosed, the basis for refraining from providing the disclosure would be provided).

[251] *See* Item 1111(h)(5) of Regulation AB.

[252] For example, Item 1(c)(29)(i) Original ARM Index of Schedule AL requires the issuer to ''specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment'' and one possible response is ''98=Other.'' If the issuer selects ''Other'' for this data point we encourage the issuer to provide detail about the index used to calculate the adjustable rate. The issuer could file the disclosure in an Asset Related Document filed as an exhibit to Form ABS–EE.

[253] *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) *available at http://www.americansecuritization.com/search/issuesearch.aspx?q=disclosure%20and%20reporting%20package.*

[254] MISMO is a not-for-profit subsidiary of the Mortgage Bankers Association. The MISMO data dictionary is *available at http://www.mismo.org/Specifications/ResidentialSpecifications.htm.* MISMO standards are used to exchange standardized information about mortgages among mortgage lenders, investors in real estate and mortgages, servicers, industry vendors, borrowers and other parties.

[255] *See* ''OCC/OTS Mortgage Metrics Loan Level Data Collection: Field Definitions,'' Jan. 7, 2009, *available at http://www.occ.treas.gov/ftp/release/2009-9a.pdf.*

proposed requirements was based mainly on information required to be provided to Fannie Mae and Freddie Mac for each loan sold to them or contained in the disclosure and reporting package for residential mortgage-backed securities developed by ASF's Project RESTART. We did not, however, include every requirement included in these packages. The presentation of the asset-level information was based, in part, on how information was presented under Project RESTART because that reporting template was designed specifically for reporting asset-level data about RMBS transactions to investors.

In response to the proposal, issuers, trade associations, investors and others generally supported the Commission's effort to increase transparency in the RMBS market.[256] Commenters differed, however, on the approach to requiring standardized asset-level data. Some commenters, mainly investors, expressed their support for the proposed data points. One investor group stated the granularity of the proposed data points was necessary because the information is critical.[257] They noted that, unlike a corporate security, investors in structured finance can only look to the assets in the pool for their return and possibly to external credit enhancement if provided. Another investor stated that the proposal will enhance the ability of investors to evaluate the ongoing credit quality of mortgage loan pools and increase market efficiency.[258] This investor also noted that the disclosures will provide new transparency into loan servicing operations. Another commenter believed that granular asset-level data is essential to restoring investor confidence in the RMBS markets and a critical component in encouraging greater analysis by investors of RMBS transactions and reducing reliance on credit ratings.[259]

In addition to the concerns commenters raised with asset-level disclosure requirements that applied across asset classes, some commenters expressed concerns with certain proposed RMBS requirements. For instance, commenters were concerned with the granularity of some proposed data points,[260] with the potential for certain disclosure to compromise individual privacy,[261] and whether some of the disclosures were necessary or material to an investment decision.[262] Several commenters suggested we follow the MISMO data standards [263] and two commenters suggested we incorporate more of the reporting package developed under Project RESTART into the final requirements.[264]

After considering the comments received, we are adopting, as proposed, asset-level disclosures specific to RMBS, with some modification to individual data points, and the addition and deletion of some data points from the group of proposed data points, as described in more detail below. Under the final rules, issuers are required to disclose the information described in Item 1 of Schedule AL for each mortgage in the pool, as applicable.[265] These requirements include information about the property, mortgage, obligor's creditworthiness, original and current mortgage terms,[266] and loan performance information.[267]

We believe that the asset-level requirements we are adopting for RMBS will benefit investors and other market participants by providing them with a broader picture of the composition, characteristics and performance of pool assets, which we believe is critical to an investor's ability to make an informed investment decision about the securities. Further, while the requirements are granular, we believe the scope of the disclosures is consistent with the information that Fannie Mae and Freddie Mac require for each loan sold to them or that would likely be collected by participants in Project RESTART.[268] We believe the disclosures will facilitate investor due diligence regarding RMBS, allow investors to better understand, analyze and track the performance of RMBS, and will, in turn, allow for better pricing, reduce the need to rely on credit ratings and increase market efficiency.

The format of the final asset-level requirements remains based, at least in part, on how information was presented under Project RESTART. In developing the final requirements, we considered, however, the different formats currently available for the presentation of asset-level data about residential mortgages. For instance, we note that since the 2010 ABS Proposing Release, Fannie Mae and Freddie Mac have begun receiving asset-level data prepared in accordance with MISMO data standards for each loan they purchase.[269] As a result, we understand that a number of market participants, including mortgage

[256] *See, e.g.,* letters from the American Society of Appraisers dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''ASA''), Beached Consultancy, BoA I, Capital One I, Citi, Community Mortgage Banking Project dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''CMBP''), and MetLife I.

[257] *See* letter from AMI.

[258] *See* letter from MetLife I.

[259] *See* letter from ASF I.

[260] *See* letter from CMBP (suggesting that the following data points proposed in Schedule L fell into the category of requiring excessive detail and, without explaining why, suggesting they would not be useful to investors: Items 2(a)(18)(xv) ARM round indicator; 2(a)(18)(xvi) ARM round percentage; 2(b)(6) Original property valuation type; (2)(b)(7) Original property valuation date; 2(b)(8) Original automated valuation model name; 2(b)(9) Original AVM confidence score; 2(b)(10) Most recent property value; 2(b)(11) Most recent property valuation type; 2(b)(12) Most recent property valuation date; 2(b)(13) Most recent AVM model name; 2(b)(14) Most recent AVM confidence score). We are adopting most of these data points as we believe they provide valuable information to investors with respect to property valuations and ARM loans. *See* new Items 1(c)(29)(xiv) ARM round indicator; 1(c)(29)(xvi) ARM round percentage; 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score. *But see* letter from AI (indicating support for the Commission's proposal to increase transparency and investor understanding of loan and property level information and the ''tremendous amount of information contained in real estate appraisals today that is underutilized by investors'').

[261] *See, e.g.,* letters from ASF I, CU, and WPF I. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[262] *See, e.g.,* letters from Citi (stating that many data points had ''not been weighed for materiality or shown to affect the performance of the securities or the pricing of securities''), MBA I (suggesting that we limit the amount of ongoing information to only those items that are critical to investors) and SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered ''material'' under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws).

[263] *See, e.g.,* letters from eSign, MBA I, MERS, and MISMO.

[264] *See* letters from ASF I and Wells Fargo I.

[265] Our reference to ''as applicable'' means that if a particular data point enumerated in the requirements does not apply to the assets underlying the security, then a response to that data point is not required. For example, if the asset pool of residential mortgages consists only of fixed-rate mortgages, responses to all of the data points related to adjustable rate mortgages need not be included in the data file.

[266] This includes, but is not limited to, information about loans with adjustable-rates, interest only, balloon payment and negative amortization features.

[267] This includes, but is not limited to, information about payments scheduled and received, loan modifications and other loss mitigation activities.

[268] We are not adopting certain proposed requirements that are not required by Fannie Mae and Freddie Mac or would not likely be collected by participants in Project RESTART because some of the information is too granular and some of the same activity is captured by other data points. For example, proposed Items 2(b)(19)(i) through 2(b)(19)(xiii) related to manufactured housing and proposed Items 1(l)(2)(i) through 1(l)(2)(ii) related to pledged prepayment penalties are being omitted from the final requirements.

[269] *See* Fannie Mae Loan Delivery Data requirements *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd. See also* Freddie Mac Product Delivery requirements *available at http://www.freddiemac.com/singlefamily/secmktg/uniform_delivery.html.*

originators and servicers, likely capture, store and communicate data in a MISMO format. Therefore, we considered whether the asset-level disclosures should be provided following the MISMO format.[270]

We are not persuaded, however, that our reporting requirements should follow the MISMO format. We believe that the format for the presentation of the asset-level data we are adopting is more investor-friendly, standardizes how the information is to be provided to investors and is easier to review. Also, the reporting package developed under ASF's Project RESTART was designed with the involvement of RMBS investors and issuers, which we believe provides some indication that issuers and investors support the disclosure and reporting of asset-level data about RMBS transactions based on that format. Furthermore, we note that since the Project RESTART standards were released, the few registered offerings of RMBS that have occurred have provided data based on the standards set under Project RESTART as part of their offering materials. We also believe this provides some indication that issuers and investors support this disclosure format. We also note that investors did not submit comment letters suggesting asset-level data for RMBS be presented in a MISMO format. Finally, we also considered that asset-level information being released by Fannie Mae and Freddie Mac does not appear to be presented in a MISMO format, although we note that the disclosures are likely compiled from asset-level information submitted to them that is in a MISMO format.[271]

While some data points we are adopting have minor differences to comparable data definitions contained in MISMO's data dictionary, we believe that most data points we are adopting are consistent with the information included in the MISMO data dictionary.[272] We believe that systems could be programmed, albeit at some cost, to combine data provided in response to multiple MISMO data definitions to one of our required data points.[273] Therefore, we believe that data originating in the MISMO data format could be compiled to comply with the new rules for reporting to RMBS investors so the costs of implementing the requirements may be limited to the extent that some MISMO data definitions overlap with data points we require.

We understand, however, that requiring data points that deviate from how issuers capture and store data may raise costs for both issuers and investors because issuers will need to create new systems or adjust their current systems to provide the data to satisfy our rules. In addition, investors will need to adjust their existing tools to read and analyze the newly required data. To further minimize the need to revise systems to provide the required data, we are revising data points to better align with MISMO data definitions. If a proposed data point and a MISMO data definition require the same or similar data and aligning to the MISMO data definition would not affect the value of the information or deviate from how information is reported under the requirements, we revised the proposed data point to better align with the MISMO data definition.[274] We believe these changes will help to minimize any burden or costs that may arise from the reporting of similar information under different standards.

We also acknowledge that some disclosures we are requiring are not part of the MISMO data dictionary or provided to Fannie Mae and Freddie Mac. Many of these disclosures relate to the ongoing performance of pool assets. We are requiring these disclosures so that an investor may conduct his or her own evaluation of the risk and return profile of the pool assets at issuance and throughout the life of the investment.

We also considered the alternative of requiring asset-level data generally and allowing the industry to develop the reporting requirement. While issuers in recent RMBS offerings have been providing asset-level disclosure in line with the disclosure templates developed by Project RESTART, providing such data to investors in this format is not mandatory. As noted above, we believe that, unless asset-level disclosures are standardized across all issuers, the benefits of asset-level data is generally limited. We believe that, without requiring and standardizing the asset-level requirements, issuers may choose to not provide asset-level data to investors, provide it inconsistently, or provide it under differing standards. These alternatives would limit the ability for investors and market participants to cost-effectively compare and analyze offerings of RMBS.

Finally, we also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Other commenters made suggestions on how we could make the data points better align with an industry standard. We also received comments suggesting that certain data points should not be required if the data is derivable from other required data points.[275] We considered each of these comments, and we made changes that we believe improve or clarify the disclosure,[276]

[270] In considering this alternative, we noted that MISMO had developed a data dictionary of standardized definitions of mortgage related terms and an XML format for presenting such data. We also recognized that the MISMO package does not define what data should be provided in any particular circumstance, but instead is a dictionary of defined loan or asset-level terms that could be used in the development of a reporting standard. We also recognized that the definitions used in MISMO's data dictionary are defined for a general purpose and are not structured for a particular purpose, such as investor reporting.

[271] Currently, Fannie Mae and Freddie Mac provide on their Web sites a portion of the information they receive about the loans they purchase. At this time, Fannie Mae publicly discloses approximately 50 items of asset-level disclosure at issuance and on a monthly basis for their newly-issued single-family MBS. *See* Fannie Mae's Uniform Loan Delivery Dataset *available at https://www.fanniemae.com/singlefamily/uniform-loan-delivery-dataset-uldd.* Also, Freddie Mac currently publicly discloses approximately 85 items of asset-level disclosure at issuance and on a monthly basis for all newly issued fixed-rate and adjustable-rate mortgage participation certificate securities. *See* Freddie Mac's Loan-Level Delivery Dataset *available at http://www.freddiemac.com/singlefamily/sell/uniform_delivery.html.*

[272] *See* footnote 254. *See also* letter from MISMO (indicating that for RMBS the data points proposed in Item 1 General Requirements of Schedule L approximately 80% of the proposed data requested is a direct match to the MISMO standards, with 14% a close match and 6% with no match and that other tables applicable to RMBS had a similar pattern).

[273] For instance, we note that in many cases there is a direct match between a proposed data point and the MISMO data definition. Further, in many instances multiple fields in the MISMO data dictionary could be combined to respond to a data point. An example will best illustrate the differences between the asset-level requirements adopted today and how information would be reported under a MISMO format. For instance, we are adopting Item 1(c)(30)(iii) Prepayment penalty total term, which requires the total number of months after the origination of the loan that the prepayment penalty may be in effect. This single data point defines the information required (prepayment penalty period), how to report the information (in months) and the time frame the information represents (from origination). In contrast, we believe under MISMO, this data point would be provided through the responses to several MISMO data definitions. One MISMO data definition defines the form of count, such as the number of periods the prepayment penalty applies. A second MISMO data definition would define what constitutes a period (e.g., day, week, month, and year). A third MISMO data definition indicates, for a group of responses, whether the information was as of closing, the current reporting period, at modification or at some other time frame. This approach allows the entity reporting the information to define prepayment penalty period by day, week, month or year.

[274] *See, e.g.,* letters from eSign, MBA I, MERS, and MISMO (all suggesting that the final requirements follow the MISMO standards).

[275] *See* letters from ASF I and Wells Fargo I.

[276] For example, we proposed a data point that would require issuers to indicate the percentage of

mitigate cost and burden concerns and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors.

In addition to revising the data points to align with industry standards or to address comments received,[277] we omitted some data points that were proposed for other reasons, such as to address concerns about disclosure of sensitive information or reduce repetition. As discussed below, certain proposed data points would have required disclosure of sensitive information and could have increased the re-identification risk.[278] While the changes we are making should reduce the risk of re-identification and the related privacy concerns, we do not believe that the changes will limit investors' ability to conduct due diligence and make informed investment decisions.

As noted below, proposed Schedules L and L–D contained identical or substantially identical data points, so by aggregating the schedules we are able to omit one of the identical or nearly identical data points.[279] We also proposed data points that would have required information about ARM loans that were modified during a reporting period. This information would have included pre-modification and post-modification characteristics of the ARM loans. We are not adopting the pre-modification data points since investors will have access to pre-modification information through other asset-level data.[280] We also aggregated several data points into either one data point or fewer data points based on comments received.[281] We are omitting some proposed data points in favor of other data points that we are adding to the requirements to address comments received. For instance, as discussed further below, we replaced some data points that capture advances with data points that disclose different categories of advances and how those advances were reimbursed.[282] We are also omitting, based on comments received, data points that relate to the Home Affordable Modification Program, a temporary government program, over concerns about the value of these data points over other modification data points and about adopting data points for a temporary government program.[283] We also are not adopting a proposed data point that commenters suggested would provide limited value to investors.[284]

Some commenters, however, suggested we expand the asset-level disclosures to include more data points than proposed.[285] For instance, commenters suggested adding data points that would correlate to information captured in ASF's Project RESTART disclosure and reporting template,[286] that would capture information about government sponsored loan modification programs,[287] and debt-to-income (''DTI'') ratios or property valuations.[288] Another commenter suggested that we add data points that increase the granularity of certain obligor-related data.[289] A commenter also suggested adding data points that captured more information about the characteristics of modified loans.[290] We added those data points to the extent we believe the data point improves or clarifies the proposed requirements or aids an investor's ability to make an informed investment decision, monitor loan performance for ongoing investment decisions, or understand loss mitigation efforts without significantly increasing re-identification risk.[291] We also took into consideration whether issuers have ready access to the information and whether requiring the information in the format requested would place an undue burden on issuers or market participants. The final requirements do not include every data point that commenters recommended we add because we are concerned they could impose an undue burden and we are not persuaded that the data would aide an investor's ability to analyze or price the security or monitor its ongoing performance. We believe that, to the extent issuers want to provide additional asset-level disclosures in order to capture the unique attributes of a particular pool, issuers can provide the additional asset-level disclosures in an Asset Related Document.[292]

We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information About Payment Status and Payment History

The proposal included a group of data points that would require disclosure of information about the status of required payments. These data points would capture, both at the time of the offering and on an ongoing basis, current

mortgage insurance coverage obtained. In response to comments, we revised the data point to confirm that the percentage disclosed should represent the total percentage of the original loan balance that is covered by insurance (e.g., 40% for an insurance policy that covers payment default only from 60% of the loan balance to 100% of the balance). *See* new Item 1(f)(2) of Schedule AL.

[277] As noted elsewhere, we made revisions to the title, definition or required response of some data points, in part, based on comments received. As noted in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements, these changes include changes to the definition or title to clarify when the data should be captured. Other changes include, based on comments received, technical changes to clarify how the information should be reported. For instance, data points capturing ''Date'' were changed to ''YYYY/MM'' and data points requiring a ''%'' were changed to ''number.'' We also made revisions to make the terminology used throughout the template consistent. For example, in some instances, certain data points used the term ''note rate'' and others used ''interest rate.'' For consistency, we use ''interest rate'' throughout.

[278] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[279] *See* Section III.B.2 The Scope of New Schedule AL.

[280] The following proposed data points were omitted from Schedule AL: Items 2(e)(4) Pre-modification interest (note) rate; 2(e)(7) Pre-modification P&I payment; 2(e)(10) Pre-modification initial interest rate decrease; 2(e)(12) Pre-modification subsequent interest rate increase; 2(e)(14) Pre-modification payment cap; 2(e)(17) Pre-modification maturity date: 2(e)(19) Pre-modification interest reset period (if changed); 2(e)(21) Pre-modification next interest rate change date; and 2(e)(26) Pre-modification interest only term.

[281] For instance, a data point was added to the final requirements to capture why a loan balance was reduced to zero. *See* new Item 1(32)(g)(ii) of Schedule AL. This data point includes a coded list of reasons why the loan balance was reduced to zero, such as the loan was liquidated, repurchased, or paid off. As a result, the following proposed data points contained in Schedule L–D were omitted from the final requirements: Items 1(i) Repurchase indicator; 1(l)(1) Paid-in-full indicator; 1(j) Liquidated indicator; 1(k) Charge-off indicator; 2(h) Deed-in-lieu date; and 2(l)(7) Actual REO sale closing date.

[282] See the discussion further below in this section titled Advances: Principal, Interest, Taxes and Insurance, and Corporate.

[283] *See* proposed Items 2(e)(47) through 2(e)(47)(x) of Schedule L–D.

[284] We proposed a data point that would have required issuers to provide the date on which the original LTV ratio was calculated. *See* proposed Item 2(b)(17) of Schedule L. Some commenters suggested we not adopt this data point as this date is immaterial because the date on which the value used in the calculation was determined is more important. *See* letters from ASF I and SIFMA I. We are not adopting this data point as we agree with commenters that this date is not necessary given that the date on which the value used in the calculation was determined is required to be provided.

[285] *See, e.g.,* letters from ASF I, CU, MSCI, Wells Fargo I and SFIG I.

[286] *See* letters from ASF I and Wells Fargo I. For example, ASF I suggested that, like in Project RESTART, we include a 4506–T indicator data point, a paid-in-full amount data point and master servicer, special servicer and subservicer data points. Because these data points are consistent with our other requirements and capture information that should be readily available to issuers, we have added them. *See* new Items 1(e)(8), 1(g)(30), 1(h)(3), 1(h)(4) and 1(h)(5) of Schedule AL.

[287] *See* letter from Wells Fargo I.

[288] *See* letter from Mass. Atty. Gen.

[289] *See* letter from SFIG II (also suggesting changes to clarify certain asset-level data points).

[290] *See* letter from Wells Fargo I.

[291] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[292] *See* Section III.B.4 Asset Related Documents.

delinquency status,[293] the number of days a payment is past due,[294] and current payment status.[295] In addition, on an ongoing basis, a data point would capture the payment history over the past twelve months.[296]

One commenter suggested that we add, revise or delete data points in this group in order to align with servicing practices or to increase transparency.[297] In lieu of the proposed data points capturing current delinquency status, current payment status and the number of days a payment is past due, we are adopting, based on comments received, the following data points: Most recent 12-month pay history,[298] number of payments past due [299] and paid through date.[300] We discuss below the group of data points we are adopting. Taken together, we believe this group of data points should provide insight into the payment performance of each pool asset and allow investors to track delinquencies.

Paid Through Date

The proposed data point titled ''Number of days payment is past due'' would have required disclosure, at the time of the offering, of the number of days between the scheduled payment date and the cut-off date if the obligor did not make the full scheduled payment. The proposed ongoing disclosure requirements included a similar data point, but required the number of days between the scheduled payment date and the reporting period end date, instead of the cut-off date. A commenter indicated the final requirements should omit the proposed data point because servicers currently track delinquencies in 30-day intervals, measured on a monthly basis, rather than number of days past due at any given date, including the reporting date, and because the cost to capture the proposed information is not justifiable.[301] As an alternative, the commenter suggested the number of days past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date.

We are not adopting, as a commenter suggested, the data point titled ''Number of days payment is past due'' because the proposed data point may have required data that differs from how data is captured.[302] We believe an alternative approach may provide investors similar information with lower costs to issuers. We believe investors can derive information about the number of days payment is past due from the date through which the loan is paid. Therefore, to address the commenter's concern and provide information in each report to derive the number of days a payment is past due, we are adopting a data point titled ''Paid through date'' which requires disclosure of the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.[303] For each reporting period the response to this data point will disclose, regardless of when the last payment was made, the date the loan is paid through. The response to this data point will also indicate when a loan is paid several months in advance. We believe this approach addresses the commenter's cost concerns because the required information should be readily available.[304]

Most Recent 12-Month Pay History

The proposed data point titled ''Current delinquency status'' would have required that issuers disclose the number of days the obligor is delinquent at the time of the offering [305] and on an ongoing basis.[306] One commenter suggested that for RMBS we replace this data point with a data point contained in the Project RESTART disclosure package that required a string indicating the payment status per month over the most recent 12 months.[307] The commenter stated this string, with the addition of foreclosure and REO disclosures, would provide considerably more useful information than the proposed data point and would subsume the proposed data point instead of requiring the number of days an obligor is past due. We are persuaded that a payment history data point indicating the payment status per month over the most recent 12 months would provide more useful information than the number of days an obligor is past due. In addition, we believe, as a commenter suggested, that the payment history data point subsumes the proposed data point. Therefore, we are adopting a payment history data point and omitting the proposed current payment status data point.[308] Because this information should be readily available to issuers for the entire history of the loan, we believe any additional costs incurred from providing the disclosures in the format requested, to the extent that such format differs from how such information is collected and stored, will be limited.

Number of Payments Past Due

We also proposed a data point titled ''Current payment status'' that would capture the number of payments the obligor is past due.[309] We are revising the title to ''Number of payments past due'' to more accurately convey the information the data point requires.[310] A commenter requested we omit the proposed data point because it would be redundant with the proposed the ''Current delinquency status'' data point, which would have captured the number of days the obligor is delinquent.[311] There are many ways to present the status of payments, and the data point we are adopting will require disclosure of the number of payments an obligor is behind at any point in time. Therefore, we are not adopting the ''Current delinquency status'' data point

[293] *See* proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L–D.

[294] *See* proposed Items 1(b)(6) of Schedule L and 1(f)(13) of Schedule L–D.

[295] *See* proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L–D.

[296] *See* proposed Item 1(f)(15) of Schedule L–D.

[297] *See* letter from ASF I.

[298] *See* new Item 1(g)(33) of Schedule AL.

[299] *See* new Item 1(g)(34) of Schedule AL.

[300] *See* new Item 1(g)(28) of Schedule AL.

[301] *See* letter from ASF I.

[302] We do not agree, however, with the alternative the commenter suggested, that the number of days a payment is past due could be derived from the interest paid through date reported in proposed Item 2(a)(14) of Schedule L and the measurement date, because the interest paid through date is calculated on the payment due for that period. Therefore, in future periods where a payment is missed, the response to this data point would not provide the paid through date since no payment was made.

[303] *See* new Item 1(g)(28) of Schedule AL.

[304] We also note that this data has been provided in some RMBS offerings.

[305] *See* proposed Item 1(b)(5) of Schedule L.

[306] *See* proposed Item 1(f)(12) of Schedule L–D.

[307] *See* letter from ASF I (suggesting the adoption of field 97 of the ASF RMBS Disclosure Package—Most Recent 12-month Pay History). ASF provided this comment with respect to proposed Item 1(b)(5) Current Delinquency Status of Schedule L. They did not provide a similar comment with respect to proposed Item 1(f)(12) of Schedule L–D. We believe under the one schedule format that we are adopting the payment history string subsumes the data captured by this data point. Therefore, we are not adopting the proposed Current delinquency status data point.

[308] *See* new Item 1(g)(33) of Schedule AL. This data point requires an issuer to provide a string that indicates the payment status per month listed from oldest to most recent. The possible responses based on field 97 of ASF's RMBS Disclosure Package are: 0=Current; 1=30–59 days delinquent; 2=60–89 days delinquent; 3=90–119 days delinquent; 4=120+ days delinquent; 5=Foreclosure; 6=REO; 7=Loan did not exist in period; 99=Unknown. The value furthest to the left in the string would be the most recent month and the value furthest to the right would be the 12th month. For example, for a loan that was current in the most recent month, 30–59 days delinquent from months two to five and current from months six to twelve the string would be as follows: 011110000000.

[309] *See* proposed Items 1(b)(7) of Schedule L and 1(f)(14) of Schedule L–D.

[310] *See* new Item 1(g)(34) of Schedule AL.

[311] *See* proposed Items 1(b)(5) of Schedule L and 1(f)(12) of Schedule L–D.

which should eliminate any potential redundancy.

Information About Junior Liens and Senior Liens

We proposed data points that would require disclosure, at the time of the offering, about the junior liens and senior liens that existed at origination. For loans with subordinate liens at origination, the combined balances of all subordinate loans would be required.[312] For junior loans being securitized, the combined balances of all senior mortgages at the time the junior loan was originated would be required.[313] Where the associated most senior lien is a hybrid, the hybrid period of the most senior lien would be required.[314] Where the associated most senior lien features negative amortization, the negative amortization limit of the senior mortgage as a percentage of the senior lien's original unpaid principal balance would be required.[315] We did not propose a data point to capture the effort an originator or sponsor made to discover if the same property secures other loans, but we asked if this type of disclosure should be required.[316]

Comments on this group of data points varied. A few commenters requested that the data points capturing junior lien balances include an ''if known'' or similar qualifier to address concerns that originators may not always have knowledge of, or access to, balance information on loans not originated by them.[317] A few commenters also suggested that the combined senior loan and combined junior loan balances, if known, be captured on an ongoing basis.[318] Two commenters supported a data point capturing what effort an originator or sponsor made to discover if the same property secures other loans.[319] One of these commenters noted, however, that there may be difficulties providing this disclosure because the existence of a debt obligation may not be discovered before the required asset-level disclosures are provided.[320] The other commenter noted that the disclosure should be required because the failure to account for an additional loan will result in an inaccurately reported combined LTV ratio and, therefore, investors would want to know if the verification was made.[321]

We are adopting the group of data points described above, but with revisions to address comments received.[322] In response to comments that expressed concern that originators may not always have knowledge of, or access to, balance information on loans not originated by them, we revised this group of data points to require that the information be provided if the information was obtained or available to them. Regardless of whether the loan being securitized was originated by parties affiliated or unaffiliated to the issuer, we expect, however, that an issuer would make efforts to discern whether junior loans were originated concurrently to or immediately following the origination of the loan being securitized and the balances of those loans. We believe the review required under existing Rule 193 of the Securities Act, which requires a review of the pool assets underlying the asset-backed security may address concerns about verification. The review required under Rule 193 must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus, which includes the asset-level disclosures, is accurate in all material respects. We believe a Rule 193 review would necessarily include consideration of whether the disclosures about junior or senior liens are accurate in all material respects. We are not adopting a separate data point that would require disclosure of the effort an originator or sponsor made to discover if the same property secures other loans.[323] This data would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements.

We believe investors will benefit from ongoing disclosure about the aggregate balances of all known senior and junior lien(s) and, therefore, we are revising the data points to capture the most recent senior lien(s) and junior lien(s) balances.[324] We understand, however, that obtaining updated balances on an ongoing basis may involve some burden and cost, particularly if the junior liens are originated by parties unaffiliated with the issuer. Therefore, to address burden concerns, these data points do not require that issuers obtain updated information each month. Instead, the definitions of these data points indicate that a response is required if the most recent junior or senior mortgage balances are obtained or available.[325]

Information About the Property

We proposed a group of data points that would capture information related to the property, such as the property type, occupancy status, geographic locations and valuations.[326] Taken together, these data points would provide insight into the physical asset underlying the mortgage. The response to this group of data points varied with some commenters suggesting the group of data points was too granular[327] and others suggesting we expand the information captured about valuations.[328] We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Property Location

We proposed to require that the location of the property by Metropolitan Statistical Area, Micropolitan Statistical Area or Metropolitan Division (collectively, ''MSA'') be provided in lieu of zip code due to privacy concerns arising from providing the property's zip code.[329] The response to this

[312] *See* proposed Item 2(a)(16) of Schedule L.

[313] *See* proposed Item 2(a)(17)(i) of Schedule L.

[314] *See* proposed Item 2(a)(17)(iii) of Schedule L.

[315] *See* proposed Item 2(a)(17)(iv) of Schedule L.

[316] *See* the 2010 ABS Proposing Release at 23363.

[317] *See* letters from ASF I and SIFMA I.

[318] *See* letters from ASF I and Wells Fargo I.

[319] *See* letters from Epicurus and Mass. Atty. Gen.

[320] *See* letter from Epicurus (suggesting that, to address the problem, the attorney or title company at closing should be required to certify that a title search was completed and whether that title search identified the existence of other debts, if any, held against the property).

[321] *See* letter from Mass. Atty. Gen.

[322] *See* new Items 1(c)(12)(i) Most recent junior loan balance; Item 1(c)(12)(ii) Date of most recent junior loan balance; 1(c)(13)(i) Most recent senior loan amount; 1 (c)(13)(ii) Date of most recent senior loan amount; 1(c)(13)(iii) Original loan type of most senior lien; 1(c)(13)(iv) Hybrid period of most senior lien; and 1(c)(13)(v) Negative amortization limit of most senior lien of Schedule AL.

[323] *See* the 2010 ABS Proposing Release at 23363.

[324] *See* new Items 1(c)(12)(i) Most recent junior loan balance and 1(c)(13)(i) Most recent senior loan amount of Schedule AL. We are also adopting data points that capture the dates of the most recent loan balances. *See* new Items 1(c)(12)(ii) Date of most recent junior loan balance and 1(c)(13)(ii) Date of most recent senior loan amount.

[325] For example, if the asset in an RMBS is a senior lien, and subsequent to the securitization, a junior lien is originated by an affiliate of the depositor, the information about the junior lien would be available to the issuer and should be reported to the investors in the RMBS in an ongoing report.

[326] *See* proposed Items 2(b)(2) through 2(b)(19) of Schedule L.

[327] *See, e.g.,* letter from CMBP.

[328] *See, e.g.,* letter from Mass. Atty. Gen.

[329] MSAs are geographic areas designated by a 5-digit number defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating and publishing Federal Statistics. A Metropolitan Statistical Area contains a core urban area of at least 10,000 (but less than 50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and

Continued

approach varied. On the one hand, we received some comments suggesting we not require zip code because it would make the ability to identify an obligor within a loan pool easier.[330] On the other hand, some commenters indicated that 5-digit zip codes or 3-digit zip codes should be provided instead of MSA because zip codes provide more information about the property.[331] For instance, one commenter was concerned that disclosing only the MSA would result in less information than is currently available.[332] As another commenter noted, the zip code provides information such as whether the property is in a flood plain or earthquake zone.[333] One commenter indicated that using MSA rather than zip codes would restrict the information available to investors and, as such, issuers expect to receive substantially lower pricing for new RMBS offerings resulting in substantially higher costs for consumers of residential mortgage loans.[334] Another commenter echoed this concern.[335] Another commenter suggested that the ''County Code,'' which is a federal information processing standard code, is an appropriate alternative to other geographic location identifiers.[336]

As discussed below in response to the 2014 Re-Opening Release, several commenters stressed the importance of geography in assessing re-identification risk and recommended requiring issuers to identify assets by a broader geographic area to reduce the ability to re-identify.[337] One commenter recommended that, instead of requiring MSA as proposed, we require geography by 2-digit zip code.[338] Based on the reasons discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, we are requiring disclosure of the 2-digit zip code, which will allow investors to assess market risk associated with a particular geographic location without resulting in unnecessary re-identification risk.

Property Valuations

We proposed a group of data points that would capture information about original property valuations.[339] The comments we received on this group of data points varied with some commenters seeking more granularity and others seeking less granularity. Commenters seeking more granularity suggested expanding this group of data points to require data about recent property sales, more detail about the characteristics of the property, such as the gross living area, room count, and construction style,[340] and the disclosure of appraiser credentials and prior complaints against them.[341] A commenter also recommended including valuations captured as part of a ''valuation diligence'' process, including recalculated loan-to-value ratios and combined loan-to-value ratios based on these valuations.[342] Another commenter said there is no uniformity in how values are determined because the proposal would allow issuers to select from a long menu of valuation methods, approaches and sources for establishing property values.[343] This flexibility would allow issuers to pick-and-choose which valuation method best serves their purposes, and the proposed rule would not establish any qualification requirements or standards of care and/or competency for valuations performed in connection with mortgage-backed securities.

One commenter stated that the data captured about property valuations was too granular and not relevant to an investor.[344] With respect to the data point capturing the valuation date, a commenter suggested the purpose of disclosing the valuation date is to ensure that the loan-to-value ratio used in the underwriting process was current enough to not overstate the collateral value of the mortgaged property, particularly during periods of declining home prices.[345] The commenter stated that the precise date of the valuation may be difficult for some originators to track. As an alternative, the commenter suggested that we permit issuers to either provide the valuation date or represent in the relevant transaction agreement that the valuation was conducted not more than a specified number of days prior to the original closing of the loan. According to the commenter, such a representation would ensure that the issuer or originator is allocated the risk of stale valuation. Further, to address any concern about the effectiveness of a representation in lieu of disclosure, the commenter's suggested alternative would only apply in a transaction in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations.

As discussed in Section III.A.3 Asset-Level Data and Individual Privacy Concerns below, we are concerned that providing data about original property valuations may increase re-identification risk; therefore, we are not adopting any of the proposed data points related to original property valuations. In particular, we are concerned that data about original property valuations could provide a close approximation of sales price, and thus raise the same re-identification concern as sales price. Although we are not adopting the proposed data points related to original property valuations, we are adopting other data points, such as Original loan amount and Original loan-to-value, which will provide investors with key information that they need to perform due diligence and make an informed investment decision.

We also proposed data points requiring disclosure about the most recent property value, if an additional property valuation was obtained after the original appraised property value.[346] One commenter indicated that these data points appeared to relate only to valuations obtained by the originator.[347] The commenter suggested that we require any sponsor who obtains an alternative property valuation as part of due diligence to disclose that value to the extent it is the most recent property value. The commenter also suggested that we consider disclosure of the lowest alternative property value in the last six months (in addition to the most recent property value) to prevent the sponsor from evading the requirements

Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

[330] *See* letters from CU and WPF.

[331] *See* letter from ASF I (expressed views of investors only). *See also* letter from Beached Consultancy (suggesting use of 3-digit zip codes).

[332] *See* letter from ASF I (expressed views of investors only).

[333] *See* letter from Epicurus.

[334] *See* letter from Wells Fargo I.

[335] *See* letter from ASF I (noting that not disclosing zip codes for the property would be a step backwards in disclosure practice).

[336] *See* letter from MERS.

[337] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, the Treasurers of Royal Bank of Canada, Canadian Imperial Bank of Commerce, The Bank of Nova Scotia, The Toronto-Dominion Bank, Bank of Montreal and National Bank of Canada dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Treasurer Group''), and Wells Fargo III.

[338] *See* letter from ABA III.

[339] *See* proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L.

[340] *See* letter from AI.

[341] *See* letter from Epicurus. *See also* letter from ASA (suggesting issuers of mortgage-backed securities (and those with ongoing Exchange Act reporting requirements relative to those securities) be required to use state certified and licensed professional real property appraisers and require adherence to the Uniform Standards of Professional Appraisal Practice to value loan-level real estate and real property collateral assets).

[342] *See* letter from the Mass. Atty. Gen.

[343] *See* letter from the ASA.

[344] *See* letter from CMBP.

[345] *See* letter from ASF I.

[346] *See* proposed Items 2(b)(10), 2(b)(11), 2(b)(12), 2(b)(13), and 2(b)(14) of Schedule L.

[347] *See* letter from Mass. Atty. Gen.

by getting alternate values only when the most recent value is lower than the sponsor would like. Another commenter also suggested that the ''Most recent property value'' data point should only require property values obtained by the securitization sponsor, although the investor members of this commenter recommended that this include affiliates of the securitization sponsor.[348]

We are adopting these data points, as proposed, with revisions to address comments received.[349] In particular, we revised the definitions to require disclosure of any valuation obtained by or for any transaction party or their affiliates.[350] This revision addresses comments that these data points appear to relate to valuations obtained only by the originator. The reference to ''obtained by or for any transaction party or its affiliates'' contained in each definition should be construed broadly and should include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies, underwriters or other parties to the transaction. We also made conforming changes to the titles and definitions ''Most recent AVM model name'' and ''Most recent AVM confidence score'' because these disclosures are providing information about the most recent property value.

We also considered, as a commenter suggested, adopting data points to capture the lowest alternative property valuation obtained in the last six months by, in addition to the originator, the sponsor or its affiliates. We did not adopt these data points because we are not persuaded, at this time, that the potential benefits investors may receive from such information would justify the potential costs and burdens that may be associated with providing the data. If, however, alternative property valuations are obtained that reflect substantially lower valuations, an issuer should consider whether these valuations need to be disclosed or whether additional narrative disclosure is necessary so that the disclosure about property valuations is not misleading.[351] Originators, sponsors or other transaction parties are not required to obtain updated valuations in order to respond to the data points capturing information about recent valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other facts or circumstances required an updated valuation.

Information About the Obligor(s)

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.[352] This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and DTI ratio. In light of privacy concerns, the proposal included ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score, income or debt amount in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Use of Coded Ranges, Updated Information and Information About Co-Obligors

The comments we received on this group of data points varied. As discussed below, several commenters noted that some data points related to obligors may cause individual privacy concerns if linked to the obligor even if that information, like obligor credit score, was provided in ranges.[353] On the other hand, some commenters generally opposed coded ranges because they believe exact credit scores are necessary to evaluate risk, appropriately price the securities or verify issuer disclosures.[354]

With respect to whether updated obligor information should be required, one commenter believed that servicers should provide updated borrower information whenever such information is obtained by the servicer.[355] Other commenters, without providing a reason, also suggested updated credit score information should be provided.[356] Another commenter, however, suggested that updated credit scores are obtained infrequently, if at all, and the benefit investors may receive from updated monthly credit scores across all securitized loans would not justify the costs to provide such disclosures.[357] The commenter recommended requiring this information only if the servicer obtains the information. We also received a few comments suggesting that we eliminate the co-obligor categories for various reasons,[358] and received a comment suggesting that we provide obligor information for up to four different obligors.[359]

We are eliminating certain data about obligor income based on comments received and in light of the recent adoption by the CFPB of the ability-to-repay requirements under the Truth in Lending Act or Regulation Z, which includes minimum standards for creditors to consider in making an ability-to-pay determination when underwriting a mortgage loan.[360] We note that all originators will need to adhere to these requirements and, therefore, it is appropriate to align our disclosure requirements with how originators will be required to assess the obligor's income when considering their ability to repay a loan while not requiring the disclosure of a significant amount of potentially sensitive obligor information that could increase re-identification risk.[361] To achieve this, we omitted the data points capturing obligor and co-obligor wage income,[362] obligor and co-obligor other income,[363] all obligor wage income,[364] all obligor

[348] *See* letter from SIFMA I.

[349] *See* new Items 1(d)(5) Most recent property value; 1(d)(6) Most recent property valuation type; 1(d)(7) Most recent property valuation date; 1(d)(8) Most recent AVM model name; and 1(d)(9) Most recent AVM confidence score of Schedule AL.

[350] The final rules also require disclosure of the date on which the most recent property value was reported.

[351] *See* footnote 186 and accompanying text.

[352] *See* proposed Items 2(c)(1) through 2(c)(31) of Schedule L.

[353] *See, e.g.,* letters from ABA I, AFSA I, CDIA, CU, Epicurus, SIFMA I, TYI LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''TYI''), and WPF I. *See also* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[354] *See* letters from ASF I (expressed views of investors only), Interactive Data Corporation dated August 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Interactive''), Prudential I, and Wells Fargo I.

[355] *See* letter from MetLife I (suggesting that certain obligor information be disclosed whenever a servicer obtains updated information).

[356] *See* letters from ASF I and Wells Fargo I.

[357] *See* letter from MBA I.

[358] *See* letters from BoA I (suggesting that for proposed Items 2(c)(1)–2(c)(12), 2(c)(23) and 2(c)(26)–2(c)(31), if there are multiple borrowers the data should be aggregated (e.g., income or assets) and if the data cannot be aggregated (e.g., DTI) the most conservative value should be used) and CMBP (suggesting that separate obligor and co-obligor categories are unnecessary because total obligor income to service the debt and the nature of that income is sufficient).

[359] *See* letter from SFIG I.

[360] 12 CFR 1026. *See also Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)* (Jan. 30, 2013) [78 FR 6407], as amended by *Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)* (June 12, 2013) [78 FR 35429] and *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)* (July 24, 2013) [78 FR 44686].

[361] Accordingly, we are not requiring that obligor information such as credit score, credit score type, income verification, employment verification, asset verification and length of employment be provided for more than one obligor.

[362] *See* proposed Items 2(c)(26) and 2(c)(27) of Schedule L.

[363] *See* proposed Item 2(c)(28) and 2(c)(29) of Schedule L.

[364] *See* proposed Items 2(c)(30) of Schedule L.

total income,[365] and monthly debt.[366] A commenter suggested that we require monthly income used to calculate the DTI ratio.[367] However, as discussed below in Section III.A.3 Asset-Level Data and Individual Privacy Concerns, to help reduce re-identification risk, we are not adopting a number of data points that disclose potentially sensitive obligor information, such as debt or income.

We are also adopting data points capturing the obligor credit score, modified from the proposal.[368] The proposal would have required issuers to indicate the credit score type and score. If the score used was FICO, issuers would have been required to indicate the code that represented a range of FICO credit scores within which the score fell. The rules we are adopting require disclosure of the exact credit score used to evaluate the obligor during the origination process.[369] We are persuaded by commenters that exact credit scores are necessary to evaluate risk and to appropriately price securities.[370] We also added, in response to comments received, data points that capture the most recent credit score, credit score type and credit score date.[371] We are persuaded that updated scores should be provided, if obtained, since such information will provide investors with a picture of the obligor's ongoing ability to repay the loan. These data points do not require originators, sponsors or transaction parties to obtain updated information. Instead, this requirement is meant to capture credit scores obtained, for whatever reason, after the original score was obtained.

Length of Employment

We proposed data points requiring information about the length of time the obligor and co-obligor have been employed.[372] We received a comment that this level of detail about the obligor's length of employment is unnecessary.[373] As an alternative, the commenter stated that it would be sufficient to know if the obligor has been employed by his or her current employer for 24 months or less or more than 24 months because this is the standard demarcation in industry underwriting standards. In line with the commenter's suggestion, we revised the data point to require the issuer to indicate whether the obligor has been employed by his or her current employer for greater than 24 months as of the origination date. We believe this approach will mitigate the burden on issuers, but still provide investors with valuable information about the obligor's length of employment.

Months Bankruptcy and Months Foreclosure

We proposed a data point that would require disclosure of the number of months since any obligor was discharged from bankruptcy.[374] We also proposed a data point that would require disclosure, if the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, of the number of months since the foreclosure date.[375] We received a comment suggesting this information may be difficult or costly for many lenders to capture, and that a suitable substitute would consist of a representation designed to ensure that the obligor has not recently been discharged from bankruptcy and a representation designed to ensure that the obligor has not recently been obligated on a loan that resulted in a foreclosure sale.[376] The commenter suggested requiring representations in the relevant transaction agreements, in lieu of the disclosure of the number of months since the obligor was discharged from bankruptcy or the number of months since the foreclosure date, to the effect that at least a specified number of years have passed since any obligor was discharged from bankruptcy or was a direct or indirect obligor on a loan that resulted in a foreclosure sale.

Another commenter stated, with respect to the data point capturing the number of months since an obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, that its dealer and sponsor members believe that this data point should be limited to direct obligations, whereas its investor members believed that guaranteed or co-signed obligations should be included.[377] Both groups agreed that this disclosure should be limited to obligations on residential property that resulted in foreclosure within the last seven years (so that such foreclosure would appear on a credit report).

In response to privacy concerns, we are not adopting either proposed data point. Section III.A.3 Asset-Level Data and Individual Privacy Concerns below provides a discussion of these and other related data points that we are not adopting due to the potential re-identification risk. As noted below, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. Because we are requiring disclosure of an exact credit score, investors will receive information they need about past payment behavior to perform due diligence.

Debt-to-Income

We proposed data points that would require at the time of securitization disclosure about the total DTI ratio used

[365] *See* proposed Item 2(c)(31) of Schedule L.

[366] *See* proposed Item 2(c)(15) of Schedule L.

[367] *See* letter from Mass. Atty. Gen.

[368] *See* new Items 1(e)(2) Original obligor credit score and 1(e)(3) Original obligor credit score type of Schedule AL.

[369] The 2010 ABS Proposal required a coded response representing ranges of FICO score, if FICO was used. If another type of credit score was used, an exact score would have been required.

[370] *See* letters from ASF I (requesting exact credit score be required because it has historically been provided on a loan-level basis and stating that investor members were concerned that moving from disclosing precise scores to score ranges ''would represent a significant step backwards in loan-level transparency''), ASF II (noting that actual FICO score has been provided for some time in the RMBS industry and that loan-level investors ''believe that it would be extremely useful in the auto space as well'') Capital One I (stating that current FICO scores would be very useful for an investor's credit analysis), Interactive (stating that providing FICO score ranges would reduce precision by assuming that all loans within a certain band will behave the same), MetLife I (requesting specific FICO score for each loan), Prudential I (stating that ranges of FICO scores or grouped data disclosure are not sufficient to appreciate the linkages between collateral characteristics), Prudential III (discussing the importance of certain data points, such as credit score, to an investor's credit risk analysis and asserting that predictive risk factors, such as FICO score must be evaluated in conjunction with other factors, as the combination of individual loan characteristics and economic environment can add or diminish the risk of a given loan), Vanguard (stating that providing investors with specific data, such as FICO scores, that is updated periodically should foster independent analysis in the ABS market and improve pricing), and Wells Fargo I (expressing its concern that by providing investors with ranges of credit scores, issuers would receive substantially lower pricing for new offerings, which would lead to substantially higher costs for consumers). In addition, Ginnie Mae, Fannie Mae and Freddie Mac all disclose exact credit scores. We understand that certain asset-level information about an obligor, including credit score, may be considered a ''consumer report'' subject to regulation under FCRA. As discussed below, the CFPB has provided guidance to the Commission stating that FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is ''necessary for investors to independently perform due diligence,'' in accordance with the mandate of Securities Act Section 7(c). For a discussion of the importance of credit scores to predicting delinquency, see Section III.A.3 below.

[371] *See* new Items 1(e)(4) Most recent obligor credit score, 1(e)(5) Most recent obligor credit score type and 1(e)(6) Date of most recent obligor credit score of Schedule AL. *See* letters from ASF I, MetLife I, and Wells Fargo I.

[372] *See* proposed Items 2(c)(22) and 2(c)(23) of Schedule L.

[373] *See* letter from CMBP.

[374] *See* proposed Item 2(c)(24) of Schedule L.

[375] *See* proposed Item 2(c)(25) of Schedule L.

[376] *See* letter from ASF I.

[377] *See* letter from SIFMA I.

by the originator to qualify the loan.[378] In addition, at the time of securitization and on an ongoing basis the front-end and back-end DTI[379] ratios would be required for any modified loans.[380]

One commenter suggested DTI ratio disclosure provided at origination include both front-end and back-end DTI ratios.[381] The commenter also suggested we require the DTI ratio for an ARM loan to be recalculated using the fully indexed interest rate and that we require disclosure of any subsequent calculations.[382]

The data points we are adopting today require, as proposed and consistent with the comment received, front-end and back-end DTI ratios calculated during the loan origination process and at the time of any loan modification.[383] We believe both front-end and back-end DTI ratios provide important data about the total debt load of the obligor, which provides insight into the obligor's ability to repay the loan. We are not adopting, as one commenter recommended, data points capturing information about the DTI ratio recalculated using the fully indexed interest rate. We believe the DTI figures provided in response to this data point will be adequate for investors to use, in part, to assess a borrower's ability to repay. We also note that our approach is generally consistent with Regulation Z, which requires all loans covered by Regulation Z to consider DTI ratios calculated using the fully indexed interest rate.

Information About Servicer Advances

Servicer Advances

We made various changes to the group of data points capturing information about servicer advances. The proposal included information about the servicer's responsibility, if any, to advance principal or interest on a delinquent loan, the method of those advances, the outstanding cumulative balance advanced and how those advances were subsequently reimbursed. The requirements we are adopting today include the information proposed and described above, but also include the addition and deletion of some data points capturing advances to address comments received. We discuss immediately below the various changes to the group of data points capturing information about servicer advances.

Advancing Method

The final rule includes a data point suggested by a commenter titled ''Advancing method.''[384] The data point includes a coded list that indicates the servicer's responsibility for advancing principal or interest on delinquent loans. We believe that the response to this data point will help investors understand the servicer's responsibility with respect to advances for each particular loan and the pool as a whole.

Advances: Principal, Interest, Taxes and Insurance, and Corporate

We proposed a general disclosure data point that would require, if amounts were advanced by the servicer during the reporting period, the disclosure of the amount advanced.[385] One commenter[386] suggested that for RMBS, we split this information into three categories that would capture principal and interest advances,[387] tax and insurance advances,[388] and corporate advances because these categories of information are more useful.[389] In addition, the investor membership of another commenter requested disclosure about the servicer's methodologies regarding advances of interest and principal on delinquent loans, the reimbursement of those advances,[390] and, for modified loans, disclosure about non-capitalized and capitalized advances.[391] The commenter also suggested aggregating the data points capturing, for liquidated loans, the various advances the servicer had made to cover expenses incurred due to concerns that the information was too granular and the information is immaterial to investors.[392]

In light of these comments, we have split the final data points into the following four categories: Principal advances, interest advances, taxes and insurance advances, and corporate advances. While one commenter recommended aggregating the principal advances and interest advances into one data point, the final rule includes data points capturing interest and principal advances separately since that is consistent with how other information that relates to principal and interest is captured in Schedule AL.

We agree with commenters that requiring disclosures about advances made by the servicer, the outstanding cumulative balance advanced and how those advances were subsequently reimbursed or addressed will provide investors insight into the payment status of a particular asset within the pool and the potential losses that may pass on to the trust. Therefore, in order to capture how these advances were reimbursed, the final rule includes additional data points that capture for these same categories of advances, the cumulative outstanding advanced amount or, if these advances were subsequently reimbursed, how they were reimbursed or resolved, such as through the obligor becoming current on payments, or being reimbursed at the time the loan was liquidated. Since this information is likely readily available to issuers, we believe the cost to provide this data should be low.

We have omitted from the final requirements, as a commenter recommended, proposed data points that would have required the disclosure of the amount of various expenses advanced and reimbursed, such as property inspection expenses, insurance premiums, attorney fees and property taxes paid for liquidated loans. Since the asset-level reporting requirements do not require that advances be reported in this fashion at each reporting period, we are uncertain at this time whether this level of granularity about outstanding advances at loan liquidation would be beneficial to

[378] *See* proposed Item 2(c)(16) of Schedule L.

[379] The front-end DTI is calculated by dividing the obligor's total monthly housing expense by the obligor's total monthly income. The back-end DTI is calculated by dividing the obligor's total monthly debt expense, which includes expenses such as mortgage payments, car loan payments, child support and alimony payments, credit card payments, student loans payments and condominium fees, by the obligor's total monthly income.

[380] *See* proposed Items 2(a)(21)(iv)–(v) of Schedule L and Items 2(e)(23) and 2(e)(25) of Schedule L–D.

[381] *See* letter from Mass. Atty. Gen.

[382] *Id.* (also requesting other updated information be provided, for instance, any values that have been corrected as a result of due diligence process, such as monthly income and DTI, as well as any post-modification DTI ratios).

[383] *See* new Items 1(e)(9) Originator front-end DTI, 1(e)(10) Originator back-end DTI, 1(m)(12) Modification front-end DTI, and 1(m)(13) Modification back-end DTI of Schedule AL.

[384] *See* new Item 1(g)(5) Advancing method of Schedule AL. *See* letter from ASF I.

[385] *See* proposed Item 1(g)(4) of Schedule L–D.

[386] *See* letter from ASF I.

[387] *Id.* (noting that principal and interest advances consist of due but unpaid principal and/or interest on the loan for the period, as required by the methodology specified in the transaction agreements).

[388] *Id.* (stating that tax and insurance advances consist of due but unpaid escrow amounts for payment of property taxes and insurance payments with respect to the mortgaged property).

[389] *Id.* (defining corporate advances as consisting of property inspection and preservation expenses with respect to defaulted loans).

[390] *See* letter from SIFMA I (suggesting that we amend current pool-level disclosure requirements so that more disclosure is provided about a servicer's methodologies for advancement of principal and interest and the reimbursement of advances).

[391] *Id.* (referring to the disclosures required under proposed Items 2(e)(45) Reimbursable modification escrow and corporate advances (capitalized) and 2(e)(46) Reimbursable modification servicing fee advances (capitalized) of Schedule L–D).

[392] *See* proposed Items 2(m)(1)(iv) through 2(m)(1)(xii) of Schedule L–D.

investors. In general, we believe these expenses are captured by other data points that detail reimbursements at loan liquidation for advances of taxes and insurance and corporate expenses.[393]

Information About Modified Loans

We proposed a group of data points that would capture information about modified loans. The responses to this group of data points would provide data about whether a loan has been modified, the modification terms and the loan characteristics that were modified. We received comments suggesting we add[394] or delete[395] data points from this group of data points, and comments suggesting we revise certain data points within this group.[396] A commenter suggested adding a requirement for data that details the number of modification requests that are granted and denied and the average time that elapses between a borrower's request for a loan modification and a determination of that application.[397] The commenter also requested disclosure of the number and percentage of modified loans which have re-defaulted.

We are adopting most of this group of proposed data points,[398] as well as additional data points, mainly based on comments received to provide further transparency around modifications, including any change in loan characteristics or other loan features.[399] For instance, the final requirements include, in addition to the proposed data points, data points that capture information about step provisions,[400] the actual and scheduled ending balances of the total debt owed,[401] the date a trial modification was violated,[402] and the interest rate and amortization type after modification.[403] For loans that remain an adjustable rate mortgage after a modification, additional data points capture information, such as the index look-back, the post-modification initial interest rate, the maximum amount a rate can increase or decrease and information about negative amortization caps.[404] We did not add, as a commenter suggested, requirements about the number of modification requests received, the average time that elapses between a borrower's request for a loan modification and when a determination is made, or the number and percentage of modified loans which have re-defaulted.[405] We are not persuaded these disclosures would provide a clear benefit to investors, especially in light of the costs issuers would incur to provide such information.

Most Recent Loan Modification Event Type

We also proposed a data point as part of the ongoing disclosure requirements that would require the issuer to specify, if the loan has been modified, the code that describes the type of action that has modified the loan terms.[406] The proposed codes were: 1=capitalization-fees or interest have been capitalized into the unpaid principal balance; 2=change of payment frequency; 3=construction to permanent; and 4=other. One commenter requested we delete this data point because the coded list only describes a subset of possible loan modifications and the type of modification can be determined based on a comparison of pre-modification and post-modification characteristics.[407] Another commenter recommended we expand the coded list to add forgiveness of principal, rate reductions, maturity extensions and forgiveness of interest to the list of possible responses.[408]

We are adopting this data point because we believe this disclosure will allow investors to focus on what terms may have changed due to a modification, which should allow investors to quickly assess whether changes in the terms of an asset will affect future cash flows or the risk profile of the asset pool.[409] We added, as a commenter recommended, additional codes to the coded list.[410] We also note that a loan may go through several loan modifications. Therefore, we revised the data point to clarify that information about the most recent loan modification is required each time the disclosure is filed.[411]

Effective Date of the Most Recent Loan Modification

We proposed a data point titled ''Loan modification effective date,'' which is the date on which the most recent modification of the loan has gone into effect. A commenter suggested omitting this data point from the RMBS requirements because loan modifications are effective on the mortgage loan's next due date after entry.[412] While we acknowledge that may be current practice, we are adopting this data point as we are mindful that other practices regarding loan modifications may develop. Further, since responses to this data point will be provided on an ongoing basis after a loan is modified, we believe this date will provide a clear indication about the length of time that has passed since the loan was last modified. We are adopting this data point with a revision to clarify that only information about the most recent loan modification is required because, as noted above, a loan

[393] *See* new Items 1(t)(1)(iii) Servicer advanced amounts reimbursed—principal; 1(t)(1)(iv) Servicer advanced amounts reimbursed—interest; 1(t)(1)(v) Servicer advanced amount reimbursed—taxes and insurance; and 1(t)(1)(vi) Servicer advanced amount reimbursed—corporate of Schedule AL.

[394] *See* letters from ASF I and Wells Fargo I.

[395] *See* letter from ASF I.

[396] *See* letter from SIFMA I.

[397] *See* letter from CU.

[398] We are not adopting certain items related to a modification that would be captured elsewhere in the requirements, such as information on servicer advances. *See, e.g.,* proposed Items 2(e)(44) through 2(e)(46) of Schedule L–D.

[399] *See* letters from ASF I and Wells Fargo I.

[400] *See* new Items 1(m)(24)(i) Post-modification interest rate step indicator; 1(m)(24)(ii) Post-modification step interest rate; 1(m)(24)(iii) Post-modification step date; 1(m)(24)(iv) Post-modification—step principal and interest; and 1(m)(24)(v) Post-modification—number of steps of Schedule AL.

[401] *See* new Items 1(m)(19) Actual ending balance—total debt owed and 1(m)(20) Scheduled ending balance—total debt owed of Schedule AL.

[402] *See* new Item 1(n)(3) Most recent trial modification violated date of Schedule AL.

[403] *See* new Items 1(m)(4) Post-modification interest rate type and 1(m)(5) Post-modification amortization type of Schedule AL.

[404] *See, e.g.,* new Items 1(m)(21)(vi) Post-modification index look-back; 1(m)(21)(vii) Post-modification ARM round indicator; 1(m)(21)(viii) Post-modification ARM round percentage; 1(m)(21)(xi) Post-modification ARM payment recast frequency; 1(m)(21)(xx) Post-modification ARM interest rate teaser period; 1(m)(21)(xxiii) Post-modification ARM negative amortization cap; 1(m)(22)(ii) Post-modification interest only last payment date; 1(m)(24)(ii) Post-modification step interest rate and 1(m)(24)(iv) Post-modification—step principal and interest. The group of data points capturing data about modifications include some data points beyond those proposed or those that commenters suggested be added. These additional data points were added to make the required disclosure about modified ARM loans consistent with the required disclosure about original ARM loans. *See* new Items 1(m)(21)(ii) Post-modification ARM Index; 1(m)(21)(ix) Post-Modification initial minimum payment; 1(m)(21)(xiv) Post-modification initial interest rate increase; 1(m)(21)(xvii) Post-modification subsequent interest rate decrease; and 1(m)(21)(xix) Post-modification payment method after recast of Schedule AL.

[405] *See* letter from CU.

[406] *See* proposed Item 2(a)(21)(ii) of Schedule L.

[407] *See* letter from ASF I.

[408] *See* letter from SIFMA I.

[409] *See* new Item 1(m)(1) Most recent loan modification event type of Schedule AL.

[410] The coded list was revised to also include the following possible responses: 4=forgiveness of principal, 5=rate reductions, 6=maturity extensions and 7=forgiveness of interest. If, however, the type of action that has modified the loan terms is not identified in the list of possible responses, the issuer should select the code ''other'' and we encourage the issuer to provide explanatory language in an Asset Related Document. *See* Section III.B.4 Asset Related Documents for a discussion on providing additional explanatory disclosure about the asset-level disclosures.

[411] Because asset-level data will be provided monthly, investors will be able to track previous loan modifications.

[412] *See* letter from ASF I.

may go through several modifications.[413]

(2) Commercial Mortgage-Backed Securities

Between Schedule L and Schedule L–D, we proposed 108 data points that relate specifically to CMBS. The data points we proposed to require in Schedule L and Schedule L–D were primarily based on the data template included in the CREFC Investor Reporting Package (''CREFC IRP''), current Regulation AB requirements, and staff review of current disclosure. We did not propose, however, to include every piece of information exactly as specified in the CREFC IRP for two reasons. First, some of the disclosures required by the CREFC IRP would have already been captured by proposed data points in the Item 1 General Requirements, and we believed that those data points would apply to all types of ABS. Second, we did not believe the level of detail in the CREFC IRP was necessary for investor analysis because we believed that the most important data for CMBS is data that relates to the loan term and the property.

The response to the proposal indicated a general preference for CREFC IRP in lieu of the proposed requirements.[414] The preference applied to both information in the prospectus and ongoing reporting.[415] For asset-level reporting at the time of securitization, commenters seemed to favor initial reporting schedules commonly attached by issuers to the prospectus (typically referred to as Annex A) that frequently contain asset-level data based on the specific types of commercial mortgages in the transaction. Some of these commenters suggested that the proposed requirements would duplicate the data provided in the Annex A schedules provided with the prospectus[416] and the existence of duplicative data may confuse investors.[417] One commenter, who supported requiring Annex A in lieu of the proposed Schedule L disclosures, suggested that Schedule L does not reflect the practices that CMBS market participants have developed to provide ''CMBS investors with clear, timely and useful disclosure specifically tailored for use by those investors.''[418] Finally, one investor believed it is reasonable to require the disclosures because much of the same information is currently provided in Annex A of the offering documents.[419] The investor suggested, however, that additional disclosure items to improve current industry disclosure practices, such as requiring disclosure of actual versus underwritten property performance metrics, including disclosure of the same performance metrics for the preceding three years, complete tenant information versus top three tenant information, rent rolls, full indebtedness information for each property and standardized tenant and borrower information.

For ongoing reporting, commenters indicated a preference for previously established industry standards in lieu of the proposal for several reasons.[420] For instance, one commenter was concerned that requiring data points unrelated to CMBS, such as those found in the general requirements, would cause undue programming burdens without a material benefit to investors.[421] Another commenter stated that ''IRP guidelines identify which data points are restricted (i.e., only available to certain users), while the SEC data filings to be contained in Schedule L–D would be public information.''[422] The commenter then stated that publicly disclosing certain sensitive information could put the underlying properties at a competitive disadvantage, which could negatively influence the securities. Other commenters also believed that proprietary information should be considered sensitive information, and therefore CMBS issuers should not be required to publicly disclose such information on EDGAR.[423] Commenters also noted that based on current requirements, investors would receive CREFC IRP disclosures 15 days prior to the required filing date of the Schedule L–D disclosure.[424] One of these commenters also stated that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, and therefore, any particular reporting date may not reflect information for the current reporting period.[425] One investor suggested, in lieu of adopting our ongoing disclosure proposal, that we require disclosure of complete rent rolls at least once per year, the alternatives evaluated with respect to modifications, all terms related to a modification or assumption and that we require the format of the industry reporting standard to be in XML.[426]

After considering the comments we received, we are adopting a requirement that issuers of CMBS provide the disclosures contained under Item 2 of Schedule AL. We believe that investors and market participants should have access to information to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of a security. While we recognize the current market practice is to include provisions in CMBS transactions that provide investors with asset-level data for each pool asset, we note that this market practice is not a mandatory requirement and is subject to change. As such, we believe the asset-level disclosure requirements that we are adopting will require a minimum level of standardized asset-level

[413] *See* new Item 1(m)(2) Effective date of the most recent loan modification of Schedule AL.

[414] *See, e.g.,* letters from ABA I (suggesting that we conform Schedule L data points to IRP standards and the Schedules L and L–D standards should be a ''guideline'' and that the ''traditional standards of materiality'' should be the overriding factor in determining the appropriateness of the disclosure in the offering document), BoA I (suggesting that we require asset-level disclosure generally, but allow the industry to set the requirements for disclosure in the prospectus because requiring a separate Schedule L would be repetitive of the relevant information already provided in CREFC's Annex A), CREFC I (suggesting that we conform proposed Schedule L asset-level data disclosure to the then-current ''Annex A'' data points formulated by the CREFC ''Annex A'' Committee and/or consider that the Schedule L filing requirement be satisfied if the issuer files a Schedule L with the data points identical to the then-current form of ''Annex A'' adopted by CREFC), CREFC III, MBA I (suggesting that to the extent we believe more standardized terminology and a defined core of shared data points for Schedule L would be benefit investors, that we adopt the core disclosures in the current industry Annex A schedules and leverage the definitions already provided in CREFC's IRP), MBA IV, and Wells Fargo I (suggesting that proposed Schedule L asset-level data disclosure conform to the then-current ''Annex A'' data points contained in CREFC's IRP).

[415] *See* letters from ABA I, BoA I, CMBS.com I (suggesting that we establish rules consistent with existing standards where possible to limit disruptions and costs), CoStar, CREFC I, CREFC III, MBA I, MBA IV, MetLife I, and Wells Fargo I.

[416] *See* letters from BoA I, MBA I, and MBA IV.

[417] *See* letter from MBA I (urging that we consider any increase in cost to be incurred by the issuer to provide the additional data and cautioning against including duplicative or extraneous data points at securitization that may hinder rather than enhance investor review of the loans in the pool).

[418] *See* letter from Wells Fargo I.

[419] *See* letter from MetLife I.

[420] *See* letters from CREFC I (suggesting that we tailor Schedule L–D to take into consideration the data already captured by the IRP), CREFC III, CoStar, MBA I, MBA IV, MetLife I, and Wells Fargo I (suggesting that all of the data captured by Schedule L–D is either captured by the IRP or is not applicable to CMBS with the exception of only two data points, which they indicated would be added to what is captured by the IRP).

[421] *See* letter from CREFC I.

[422] *See* letter from Wells Fargo I.

[423] *See* letters from CREFC III (stating that ''the CRE Finance Council's member constituencies, including investment-grade investors, believe that most—if not all—of the information on Schedule L and Schedule L–D should be considered sensitive, and therefore should continue to be hosted on the issuer's (or trustee's or third-party's) Web site''), MBA IV, and SFIG II.

[424] *See* letters from CREFC I, MetLife I, MBA IV, and Wells Fargo I.

[425] *See* letter from Wells Fargo I.

[426] *See* letter from MetLife I.

disclosures in the prospectus and over the life of a security regardless of market practices. We acknowledge commenters' concerns that requiring asset-level disclosures that deviate from the data template in the CREFC IRP may raise costs for both issuers and investors because users are accustomed to working with the CREFC IRP data templates. We also understand that investors are involved in the ongoing development of the CREFC IRP. For these reasons, we made efforts to align our requirements, as much as possible, with pre-established industry codes, titles and definitions to allow for the comparability of future offerings with past offerings and to minimize the burden and cost of reporting similar information in different formats.

The requirements that we are adopting contain several revisions from the proposal aimed at aligning our standards with the CREFC IRP. We reconsidered and are not adopting some data points that do not correspond to the CREFC IRP or are typically disclosed in Annex A because they are no longer necessary due to other changes we made, such as aggregating Schedules L and L–D, or because we are adding data points based on the CREFC IRP to capture the same or similar information.[427] Some data points that we are adopting, however, do not correspond exactly to data captured by the CREFC IRP, but we believe the responses to these data points will improve or clarify the requirements, or aid an investor's ability to make an investment decision.[428] We are also adding some data points that correspond to data captured by the CREFC IRP based on comments received, because the responses to these data points clarify other data points or they add more granularity to the data captured by other data points.[429] In total, the proposal for CMBS included a total of 182 data points between the proposed general item requirements of Schedules L and L–D and the data points specific to CMBS in proposed Schedules L and L–D. Based on the changes described above, the final requirements include 152 data points.

Finally, we are adjusting the codes, titles, and definitions of many of the data points to make them largely comparable to the data definitions set in the CREFC IRP.[430] We believe that through these changes and by making the asset-level data requirements for CMBS largely align with the CREFC IRP many of the disclosures provided under the CREFC IRP can be used to provide the required disclosures. As a result, we believe we have mitigated, to a great extent, cost and burden concerns expressed by commenters and the concern that CMBS investors will not be able to compare the data with the data from past deals.

We also considered concerns raised by commenters as well as alternatives to the final rules. For instance, one commenter suggested that the proposed ongoing reporting requirement would add no value to investors since the industry standard is to make ongoing asset-level disclosures available earlier than when the proposal would require them.[431] We are not persuaded by this comment. We believe that many transaction agreements, while they provide investors with access to asset-level disclosures on an ongoing basis, they do not guarantee that these disclosures will remain available or continue. We believe that requiring asset-level disclosures, which to a large extent aligns with how data is currently provided to investors, to be filed on EDGAR will preserve the information and result in greater transparency in the CMBS market.

We also considered the concerns raised by some commenters about requiring disclosure of proprietary information due to the sensitive nature of the entire data set.[432] While we acknowledge this concern, we believe that information about the underlying properties, including information about the borrowers, will provide CMBS investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.[433]

We considered, as an alternative to the final rules, that issuers provide standardized asset-level disclosures based solely on an industry standard, such as the CREFC IRP. We are not persuaded that this alternative is appropriate because as market practices evolve the consistency of the data provided by each transaction may differ since there is no mandatory requirement that all transactions provide the same type of data. Therefore, we believe adopting a standardized set of asset-level disclosures helps ensure that investors and other market participants will always have access to a minimum set of asset-level disclosures, both at the time of the offering and on an ongoing basis. While we have tailored the asset-level disclosure requirements for each asset class, we also understand from comments received that certain commercial mortgages in a pool may have unique features and that the standardized set of requirements may not capture all of the unique attributes of a particular asset or pool due to the various types of commercial properties.[434] Although we are not adopting all of the data points in the CREFC IRP, CMBS issuers may provide

[427] *See, e.g.,* proposed Items 1(a)(17) Servicing fee—flat dollar; 1(b)(5) Current delinquency status; 1(b)(6) Number of days payment is past due; 3(a)(9) Current hyper-amortizing date of Schedule L and 1(f)(3) Actual principal paid; 1(f)(4) Actual other amounts paid; 1(f)(14) Current payment status; 1(g)(5) Cumulative outstanding advanced amount; 1(g)(8) Other loan level servicing fee(s) retained by servicer; 1(g)(9) Other assess but uncollected servicer fees; 1(l)(2)(ii) Pledged prepayment penalty waived; 1(l)(2)(iii) Reason for not collecting pledged prepayment penalty; 3(a)(4)(i) Rate at next reset; and 3(a)(4)(iii) Payment at next reset of Schedule L–D.

[428] *See* new Items 2(a)(1) Asset number type; 2(b)(1) Reporting period begin date; 2(b)(2) Reporting period end date; 2(c)(1) Originator; 2(c)(2) Origination date; 2(c)(11) Original interest-only term; 2(c)(13) Underwriting indicator; 2(c)(25) Prepayment premium indicator; 2(d)(15) Valuation source at securitization; 2(e)(16)(i) Servicing advance methodology; 2(f)(1) Primary servicer; 2(g) Asset subject to demand; 2(g)(3) Demand resolution date; 2(g)(4) Repurchaser; 2(g)(5) Repurchase or replacement reason; 2(k)(5) Post-modification maturity date and 2(k)(6) Post-modification amortization period of Schedule AL.

[429] *See, e.g.,* new Items 2(c)(18) Scheduled principal balance at securitization; 2(d)(2) Property address; 2(d)(3) Property city; 2(d)(4) Property state; 2(d)(5) Property zip code; 2(d)(6) Property county; 2(d)(13) Year last renovated; 2(d)(28)(i) Date of financials as of securitization; 2(d)(28)(xiv) Most recent debt service amount; 2(d)(28)(xxi) Date of the most recent annual lease rollover review; 2(e)(3) Reporting period beginning scheduled loan balance; 2(e)(10) Unscheduled principal collections; 2(e)(14) Paid through date; 2(e)(16)(iv) Total taxes and insurance advances outstanding; 2(e)(16)(v) Other expenses advance outstanding; 2(e)(17) Payment status of loan; 2(e)(18)(i) ARM index rate; 2(f)(2) Most recent special servicer transfer date; 2(f)(3) Most recent master servicer return date; 2(h) Realized loss to trust; 2(i)(1) Liquidation/Prepayment code; 2(i)(2) Liquidation/Prepayment date; 2(k)(2) Modification code of Schedule AL. We are also adopting a few data points that do not correspond to data captured by the CREFC IRP because our data points clarify the requirements or we received comments requesting the data points be added and we believe the data points aid an investor's ability to make an informed investment decision. *See, e.g.,* new Items 2(d)(19) Most recent valuation source; 2(e)(1) Asset added indicator; 2(g)(1) Status of asset subject to demand; and 2(g)(2) Repurchase amount of Schedule AL.

[430] *See, e.g.,* new Items 2(c)(28)(xi) Rate of reset frequency; 2(d)(7) Property type; 2(d)(11) Number of units/beds/rooms at securitization; 2(d)(15) Valuation source at securitization; 2(d)(24) Defeasance status; 2(d)(28)(vii) Operating expenses; and 2(d)(28)(xii) Net operating income/net cash flow indicator at securitization.

[431] *See* letter from Wells Fargo I.

[432] *See* letters from CREFC III, MBA IV, SFIG II, and Wells Fargo I. Commenters did not identify specific data points that should be revised or eliminated to help address potential competitive harm.

[433] *See, e.g.,* Trepp (providing CMBS data and analytics services), *https://www.trepp.com/cmbs/.*

[434] *See* letter from CREFC I.

those data points as additional asset-level disclosures in an Asset Related Document, as appropriate.[435]

With respect to ongoing reporting, we are not adopting a commenter's suggestion that disclosures about alternatives evaluated related to a modification or disclosure of all terms related to a modification or assumption be provided. We believe this information would be difficult to capture in a standardized way, and we are uncertain, at this time, whether this information is best captured within these particular asset-level requirements. We are adopting as proposed, with revisions to address comments received, expanded disclosures about tenants. We discuss the comments received on tenant disclosures below. We are also requiring that asset-level disclosures be provided in XML. We discuss the requirement that asset-level disclosures be provided in XML in Section III.B.3 XML and the Asset Data File.

Tenant Disclosures

We proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant. Several commenters suggested that we expand the scope of these disclosures.[436] For instance, one commenter, an investor, suggested the initial reporting requirements include a requirement to capture rent roll information (i.e., detailed schedules of lease payments for each tenant over time) and additional tenant and operating performance information, full indebtedness information and a way to identify borrowers and tenants.[437] This commenter also suggested that we require full rent rolls for every property in a transaction at least once per year. Other commenters also supported requiring full rent roll and tenant information.[438]

We are adopting as proposed data points about the three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant.[439] While some commenters requested several changes to the tenant disclosures for CMBS, the consensus among commenters was that rent roll information for each property supporting the mortgages underlying the CMBS was needed. We are not adopting a requirement within the asset-level requirements to require rent roll information at this time because it is not clear how to standardize detailed schedules of lease payments for each tenant over time on an asset-level basis, and we did not receive comment suggesting how this could be done.

Valuations

Proposed Schedule L and Schedule L–D both included data points aimed at capturing valuation information on the properties underlying the commercial mortgages.[440] The valuation data points contained in Schedule L would provide disclosure of the most recent property valuation as of the measurement date in the prospectus. The valuation data points contained in Schedule L–D would require the most recent property valuation available as of the reporting period that the Schedule L–D covered. One commenter suggested that the final rule should capture data on periodic updating and monitoring of commercial real estate assets because periodic (annual) appraisal and evaluation ''updates'' of commercial real estate are commonly performed.[441]

We are adopting, with some revisions, data points that capture the most recent appraisals or valuations available at the time of the securitization and on an ongoing basis.[442] While the information required by these data points is substantially similar to information captured by the CREFC IRP, the data points that we are adopting specifically require, in line with revisions made to RMBS property valuation data points, disclosure of any valuation ''obtained by or for any transaction party or its affiliates.'' The reference to ''obtained by or for any transaction party or its affiliates'' contained in each definition should be construed broadly to include, but not be limited to, valuations obtained as part of any due diligence conducted by credit rating agencies, underwriters or others parties to the transaction. We are also adopting data points that identify the source of the property valuation and the date of the valuation.[443] These data points do not require that originators, sponsors or transaction parties obtain updated valuations. Instead, this requirement is meant to capture valuations conducted subsequent to the original valuation for whatever reason, such as updated valuations obtained in the normal course of their business or because other circumstances require an updated valuation. We believe providing investors updated valuation information will allow them to understand changes in the value of collateral that is meant to protect against losses. Furthermore, since we are requiring issuers to disclose the information only if it is already available to them, we believe that the disclosures will not be unduly burdensome.

(3) Automobile Loan or Lease ABS

Between Schedule L and Schedule L–D, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. These proposed data points were comprised of a combination of data points, some of which were proposed to apply to all

[435] *See* Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

[436] *See* letters from CMBS.com I, CoStar, MetLife I, and Realpoint LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Realpoint'').

[437] *See* letter from MetLife I (suggesting that we also require: (1) A minimum 3-year history of operating performance for each underwriting performance metric such as NOI, NCF, etc.; (2) complete tenant information versus providing information on just the top three tenants; (3) rent rolls for every property detailing lease terms for every tenant; (4) full indebtedness information for each property and terms for any other debt that is serviced with the cash flows from the property regardless of the ranking of such other debt in relation to the securitized debt and the conditions under which borrowers are permitted under the transactions documents to place additional debt on the same property in the future; and (5) a practical way to quickly identify borrowers and tenants, perhaps through a standardized convention to allow investors to more easily be able to identify their portfolio level exposures). *See also* letters from CMBS.com I and Realpoint (suggesting that we require similar information).

[438] *See* letters from CoStar (suggesting that we require disclosures of the full rent roll rather than just the largest three tenants and that these disclosures should include: (1) Tenant name (unless a residential property); (2) tenant business line; (3) lease start date; (4) lease amount including any concessions or associated expenses such as tenant improvements; (5) expense sharing arrangements; (6) co-tenancy clauses; and (7) lease renewal options), CMBS.com I, and Realpoint (suggesting that we require disclosure of either the entire rent roll, or at least the largest tenants and all other tenants with lease expiration dates that occur within five years of the cut-off date, and that these disclosures should include: (1) Base rent; (2) pass-through expense reimbursements (taxes, insurance, repairs, maintenance, utilities and other operating expenses); and (3) capital improvement reimbursements because these disclosures would permit them to conduct testing of gross rents, net operating income, net cash flow, debt service coverage ratio and other financial metrics).

[439] *See* new Items 2(d)(25)(i) Largest tenant; 2(d)(25)(ii) Square feet of largest tenant; 2(d)(25)(iii) Date of lease expiration of largest tenant; 2(d)(26)(i) Second largest tenant; 2(d)(26)(ii) Square feet of second largest tenant; 2(d)(26)(iii) Date of lease expiration of second largest tenant; 2(d)(27)(i) Third largest tenant; 2(d)(27)(ii) Square feet of third largest tenant and 2(d)(27)(iii) Date of lease expiration of third largest tenant of Schedule AL.

[440] *See* proposed Items 3(b)(7), 3(b)(8) and 3(b)(9) of Schedule L.

[441] *See* letter from AI.

[442] *See* Items 2(d)(14) Valuation amount at securitization and 2(d)(17) Most recent value of Schedule AL.

[443] *See* Items 2(d)(15) Valuation source at securitization, 2(d)(16) Valuation date at securitization, 2(d)(18) Most recent valuation date, and 2(d)(19) Most recent valuation source of Schedule AL.

asset types and others which were proposed to apply only to auto loans or auto leases. The proposed data points were derived from the aggregate pool-level disclosure that has been commonly provided in Auto ABS prospectuses. The proposal also included data points related to obligor and co-obligor income, assets, employment and credit scores.

For Auto ABS, support for the proposal varied between issuers and investors. Many investors supported the asset-level model with certain modifications from the proposal.[444] Investor commenters stated that ''the provision of loan-level data will strengthen the Auto ABS market and make it more resilient over the long term.'' [445] We note, however, that even the investors that support asset-level disclosure have suggested various modifications and limitations to address issues such as privacy and competitive concerns. One investor commenter acknowledged that the incremental benefit of some proposed fields may be difficult to justify as compared to the costs of providing such information.[446] In light of standard industry practices and issuer concerns about costs and the disclosure of proprietary information, investor commenters recommended adopting fewer data points than were originally proposed.[447]

Issuers typically commented that asset-level reporting was not necessary for Auto ABS because they claimed that the Auto ABS market continues to be robust and active despite no material changes to disclosure practices.[448] One group of issuers also raised concerns that asset-level data requirements would push certain investors [449] and issuers [450] out of the Auto ABS market. They were also concerned that the auto industry could be affected if Auto ABS sponsors have to pass increased costs to automobile purchasers because Auto ABS sponsors are unable to access more cost-effective financing through the Auto ABS market.[451] These issuer commenters noted that several Auto ABS sponsors estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the proposal. The average cost estimated by those sponsors was approximately $2 million, and the average number of employee hours was approximately 12,000.[452] This group of issuer commenters also argued that Congress never intended to require asset-level data for Auto ABS by pointing to a Senate report published three months prior to the adoption of the Dodd-Frank Act.[453] One trade association commented that such requirements were not necessary for Auto ABS because ''most investors have been able to adequately underwrite auto loan transactions—including during the economic downturn—on the basis of current disclosure, due to the conservative nature of the structure, the deleveraging and granularity of the underlying assets, and their understanding of the issuer's servicing capabilities.'' [454] One group of issuer commenters noted possible re-identification risks.[455] These same commenters also expressed concern about the potential release of proprietary information.[456]

Issuer commenters generally noted that, if any data reporting was to be required, alternative models such as grouped account data, more robust pool-level reporting or some combination of the two would be sufficient.[457] Several commenters argued that alternatives such as grouped account data or expanded pool stratification would provide additional meaningful information to investors while at the same time addressing individual privacy concerns and proprietary concerns.[458] One group of issuer commenters suggested we consider conditioning the provision of asset-level reporting to compliance with potential risk retention rules.[459] These commenters also stated that certain data points are often the same for all assets in an Auto ABS.[460] They suggested that, if we adopt asset-level reporting for Auto ABS such data points should not be required if (1) the responses would be identical for each asset in the pool [461] and (2) adequate pool-level disclosure is given in the prospectus. In response to the 2014 Re-Opening Release, some commenters expressed opposition to asset-level requirements for Auto ABS.[462]

[444] *See* letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard. There were, however, other investors who did not support the asset-level model. *See* letters from ASF II (expressed views of grouped-account investors only) (supporting a grouped account approach for Auto ABS) and Capital One II (noting that they invest in more senior tranches of Auto ABS and recommending that no additional asset-level disclosure be adopted for Auto ABS).

[445] *See* letter from ASF II (expressed views of loan-level investors only).

[446] *See* letter from MetLife I.

[447] *See* letters from ASF II (expressed views of loan-level investors only), MetLife I, and Vanguard.

[448] *See* letter from VABSS IV.

[449] *See* letter from VABSS IV (stating that they ''understand that some investors who do not have the internal resources to analyze data at the loan-level may choose not to invest in Auto ABS because they perceive that they would be at an informational and analytic disadvantage to other investors or because they believe they have a potential risk of liability to their own investors for not being able to utilize all the available data in their analysis'').

[450] *See* letter from VABSS IV (stating that they ''believe that loan-level disclosure requirements could act as a barrier to entry for smaller finance companies that may not have the necessary systems, personnel or resources to capture, track and report loan-level data, thus discouraging the entry of new issuers into the Auto ABS market . . . [and] that these sponsors that are unable to access the Auto ABS markets due to concerns about loan-level disclosure could be placed at a competitive disadvantage to banks and more highly-rated sponsors that are able to either comply with loan-level disclosure or access other less burdensome sources of funding (e.g., bank deposits)'').

[451] *See* letter from VABSS IV.

[452] *Id.*

[453] *See* letter from VABSS III (quoting a portion of the Committee on Banking, Housing, and Urban Affairs' discussion of Section 942 of the Dodd-Frank Act in Senate Report No. 111–176: ''The Committee does not expect that disclosure of data about individual borrowers would be required in cases such as securitizations of credit card or automobile loans or leases, where asset pools typically include many thousands of credit agreements, where individual loan data would not be useful to investors, and where disclosure might raise privacy concerns'').

[454] *See* letter from ASF II (expressed views of issuer members and grouped account investors only).

[455] *See* letter from VABSS IV.

[456] *See* letter from VABSS IV (noting that Auto ABS sponsors make ''considerable investments in technology and human capital to capture, maintain and analyze [the asset-level] data, and to build proprietary credit scoring models and models that predict residual value of leased vehicles'' and stating that making such data publicly available could harm them in the marketplace).

[457] *See, e.g.,* letters from ABA I, AmeriCredit, ASF II (expressed views of dealers and sponsors only), BoA I, Capital One I, VABSS I, and Wells Fargo I.

[458] *See* letters from ABA I and VABSS IV (in which the commenters also conceded that ''presenting grouped data is in many ways more difficult, as it required more time and resources to gather the loan-level data and then compile it for presentation as grouped data).

[459] *See* letter from VABSS IV (suggesting that we consider ''an outright exemption from all loan-level data requirements for any Auto ABS sponsor that satisfies the final risk retention requirements adopted by the Commission'' or, at the very least, ''an exemption for Auto ABS sponsors who retain a horizontal or first-loss position as required by the final risk retention requirements given the direct alignment of interests of sponsors, servicers and investors in Auto ABS and the absorption of all possible losses on these structures by the horizontal 'slice' retained by the sponsor'').

[460] *See* letter from VABSS IV.

[461] These commenters also suggested that a response to a data point may be omitted if no more than 1% of the securitized pool would have a different response. *See* letter from VABSS IV.

[462] *See, e.g.,* letters from AFSA II (opposing requirements for Auto ABS for several reasons including its belief that the Auto ABS market is liquid, many proposed data points would not apply to Auto ABS and for proprietary concerns), Capital One II (opposing requirements for Auto ABS by suggesting that asset-level data is not necessary for investor due diligence, and also noting that the benefits for Auto ABS do not outweigh the costs), SFIG II (noting auto loan ABS has not traditionally included asset-level disclosures), and Wells Fargo III (suggesting that asset-level data for Auto ABS

As we developed the standards we are adopting today, we took into consideration how the proposed data points relate to how information is collected, tracked and reported in the Auto ABS marketplace, as well as how auto loans and leases differ from RMBS and CMBS, and how those differences impact the type of information available for collection and the utility of such information to investors. We also considered potential impacts on the automobile industry if Auto ABS sponsors pass down higher financing costs to consumers. After considering the comments received, we are adopting, as proposed, with some modification to individual data points and some reduction in the amount of data required to be provided, asset-level disclosures specific to Auto ABS. We did consider, as an alternative, whether asset-level reporting should be required in Auto ABS at all. We considered the legislative history of Section 942 of the Dodd-Frank Act, which was cited by commenters.[463] We also considered whether an alternative reporting model, such as grouped account data, pool stratifications or some combination of the two, would provide adequate information to investors. In the end, we concluded that none of these alternatives provide the benefits that we believe investors should receive. We agreed with investors that ''[g]rouped data is preset, which prohibits a customizable analysis of pool information by an investor and presupposes that critical credit metrics and indicators do not change over time . . . [while] the transparency afforded by loan-level data will allow all investors to evaluate, in any market and on an independent basis, whether the pools and structures are robust and the ratings assigned are appropriate.'' [464] We also do not agree that Auto ABS sponsors should be exempt from providing asset-level data if that sponsor has retained a certain amount of risk. As stated in Section II.A Economic Motivations, while we expect risk retention rules will result in better underwriting practices, we believe that more is needed to fully restore incentive alignment and credit screening in the securitization market. If sponsors are exempt from asset-level disclosure based on compliance with risk retention requirements, investors and market participants would have fewer Auto ABS pools available for asset-level comparisons. Finally, we are not making any data points optional on the basis that such data point may be the same across an Auto ABS pool. While we understand that commenters intended to consolidate repetitive data points, we believe that the asset-level presentation of data in a standardized format is an important tool to investors who want to make asset-to-asset comparisons across different Auto ABS pools. If responses to certain data points are omitted, an investor wanting to make pool-to-pool comparisons would first have to locate the omitted information in one or more prospectuses and then recreate portions of the asset-level data files before accurate comparisons could be made.

We believe that the requirements we are adopting for Auto ABS will provide a better picture of the composition and characteristics of the pool assets, which is critical to an investor's ability to make an informed investment decision about the securities. We have considered commenters' concerns that Auto ABS is, in many ways, different from RMBS and CMBS, including that Auto ABS generally fared better during the recent financial crisis. We do not believe, however, that the grouped account data model proposed by commenters would provide information in sufficient detail for investors to compare and evaluate various Auto ABS pools and structures. With asset-level data, users would not have to rely on pre-determined groupings of information, and instead would be able to compare and evaluate the underlying assets using the individual pieces of information they consider to be material.[465]

While we are requiring that Auto ABS issuers provide asset-level data, we have significantly reduced the scope of the asset-level data required from the amount proposed. In doing so, we considered an estimate provided by several Auto ABS sponsors that, if we only adopted the data points proposed in their comment letter,[466] the average costs and employee hours necessary to reprogram systems and otherwise comply with the asset-level disclosures would be approximately $750,000 and 3,500, respectively.[467] In line with this suggestion, we have attempted to reduce burden and cost concerns by reducing the scope of the asset-level data required to align with the smaller scope of information that commenters, including investors, believed should be required for Auto ABS. While the final rules do not exactly mirror the scope of information the group of Auto ABS sponsors suggested be required, we believe that the significantly smaller scope of information we are requiring, coupled with revisions to align the data points with current industry standards should lead to substantially lower costs versus what was originally proposed. These substantially lower costs should also reduce any potential impact on the automobile industry. We also believe that the smaller scope of information and the revisions we made to the data points still provide investors with sufficient information to evaluate the security. Under the final requirements we are adopting, issuers are required to disclose the information described in Item 3, with respect to auto loans, and Item 4, with respect to auto leases, of Schedule AL for each auto loan or lease in the pool, as applicable. As noted above, we proposed 110 data points that relate to ABS backed by auto loans and 116 data points that relate to ABS backed by auto leases. In addition to the data points that were eliminated when Schedules L and L–D were condensed,[468] 40 of the proposed data points for auto loans are not being adopted and 57 of the proposed data points for auto leases are not being adopted. We are adopting 12 new data points for auto loans and 15 new data points for auto leases.[469] Accordingly, the final rules will require issuers to provide 72 data points for ABS backed by auto loans and 66 data points for ABS backed by auto leases. Fewer data points should reduce the cost of providing asset-level data for Auto ABS issuers and also should help to address

would provide little to no incremental value to investors).

[463] We note that we first proposed asset-level disclosure requirements for Auto ABS prior to the enactment of the Dodd-Frank Act. While we believe the asset-level disclosure requirements being adopted today are consistent with the mandate in Section 7(c) of the Securities Act, as added by Section 942 of the Dodd-Frank Act, we do not view that mandate as limiting our long standing authority to prescribe disclosure standards, as necessary and appropriate, for purposes of federal securities laws.

[464] *See* letter from ASF II (expressed views of loan-level investors only).

[465] *Id. See also* letter from Prudential I.

[466] *See* letter from VABSS IV. For ABS backed by auto loans, these commenters proposed that 29 data points should be adopted unconditionally (i.e., for each asset regardless of the response or the structure of the transaction) and 28 data points be adopted conditionally (i.e., they may be omitted if certain conditions are met, such as homogenous responses). For ABS backed by auto leases, these commenters proposed that 30 data points should be adopted unconditionally and 26 data points be adopted conditionally.

[467] The estimate of $750,000 and 3,500 hours is in contrast to this commenter's estimate of $2 million and 12,000 hours for all of the Auto ABS data points as originally proposed.

[468] When the Schedules L and L–D were condensed (as discussed in Section III.B.2 The Scope of New Schedule AL), we eliminated 10 repetitive data points for ABS backed by auto loans and 8 repetitive data points for ABS backed by auto leases.

[469] Data points that have been added since the proposing release were either based on comments or added for purposes of clarity or consistency.

individual privacy concerns.[470] We also believe that this reduction in scope should help address competitive concerns that were raised by issuers. While we acknowledge that some competitive concerns may still exist, we believe that the information we are requiring about the underlying assets will provide Auto ABS investors and potential investors with information they need to perform due diligence and make informed investment decisions and therefore should be disclosed. We also note that some of the asset-level data that we are adopting is available to the public, for a fee, through third-party data providers.[471]

We are not adopting a significant number of data points where we agreed with commenters that the data point was not applicable to Auto ABS or where we are concerned that the benefits investors may receive from the disclosures may not justify the potential costs and burdens to issuers to provide the disclosures.[472] Solely with respect to ABS backed by auto leases, we are also not adopting several data points that were part of the general schedule of data points proposed for all asset classes because the information required to be provided in the items is not something that is relevant for auto leases (for example, items that require issuers to provide interest, principal or amortization information would not be relevant because auto leases do not have amortization, interest, interest rates or principal balances).[473]

As with RMBS and CMBS, we believe that, unless the individual data points are standardized across all issuers of Auto ABS, the utility of asset-level data is generally limited. While commenters have pointed out several areas where there is a difference between how we have proposed that data be presented and how information is generally collected in Auto ABS,[474] we are unaware of any publicly available investor reporting data standards for Auto ABS. We also received many comments directed at individual data points, many of which were seeking changes to the format of the information, the range of possible responses for a particular data point, or the data point's title or definition. Some commenters also made suggestions on how we could make the data point better align with common business practices. Accordingly, we considered each of these comments, and we made changes that we believe improve or clarify the disclosure, mitigate cost concerns, and/or implement industry standards when doing so would not materially diminish the value of the disclosures to investors. We discuss below the significant comments we received about individual data points along with the revisions we have made in response to those comments.

Information About the Obligors

We proposed a group of asset-level data points that would provide data about an obligor's credit quality.[475] This group of data points was intended to capture information about the obligor(s) income, debt, employment, credit score and assets. In light of privacy concerns, the proposal proposed ranges, or categories of coded responses instead of requiring disclosure of an exact credit score, income or amount of assets in order to prevent the identification of specific information about an individual. We discuss below the significant comments we received about this group of data points and the revisions we have made in response to those comments.

Obligor Income and Payment-to-Income Ratio

We proposed ten obligor income data points (five for auto loans and five for auto leases) that would require issuers to provide responses to various data points that relate to the obligor's income.[476] Several commenters suggested that these proposed obligor income data points be replaced with a new payment-to-income ratio data point, where the issuer would specify the code indicating the scheduled monthly payment amount as a percentage of the total monthly income of all obligors at the origination date while providing its methodology for determining monthly income in the prospectus.[477] We agree that the new payment-to-income ratio data point provides investors with sufficient information about the obligor's income, and accordingly, we are not adopting any of the ten proposed obligor income data points and instead are adopting the new payment-to-income ratio data point proposed by commenters.[478]

Obligor Income and Employment Verification

We proposed data points that would require issuers to indicate the codes describing the extent to which the obligor's income and employment have been verified.[479] One group of issuer commenters stated that it is standard industry practice for obligors to self-report income and employment on the credit application and this information is only verified for the riskiest customers, but then went on to say that Auto ABS sponsors do not systematically capture this information in their origination files, and if they do, they do not keep it for more than 90 days.[480] We cannot reconcile these two comments. If most income and employment information is self-reported on the credit application, then that information should be captured in the loan file. Furthermore, if it is standard industry practice to not verify the self-reported information except for the riskiest customers, we assume that such verification is part of the loan or lease approval process that goes to the creditworthiness of the obligor or lessee. These same commenters also argued that obligor income and employment verification data points would only provide marginal additional value if other data points, such as obligor FICO

[470] See Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

[471] *See* letter from VABSS II (stating that there are relatively inexpensive databases containing car owner information linked to vehicle make, model, year, and more). New and used vehicle values can also be obtained for free via publicly available sources. *See, e.g., www.kbb.com.*

[472] For all Auto ABS, these include the following Schedule L data points: Item 1(a)(3) Asset group number; Item 1(a)(9) Original amortization term; Item 1(b)(6) Number of days payment is past due; Item 1(b)(7) Current payment status; Items 4(b)(1) and 5(b)(1) Geographic location of dealer; Items 4(c)(13) and 5(c)(13)—Length of employment: obligor; and Items 4(c)(11) and 5(c)(11) Obligor asset verification. And the following Schedule L–D data points: Item 1(c) Asset group number; Item 1(f)(8) Current scheduled asset balance; Item 1(f)(13)—Number of days payment is past due; Item 1(f)(14) Current payment status; Item 1(f)(15) Pay history; Item 1(f)(16) Next due date; Item 1(g)(5) Cumulative outstanding advance amount; Item 1(g)(7) Stop principal and interest advance date; Item 1(j) Liquidated indicator; Item 1(k) Charge-off indicator; Item 1(k)(2) Charged-off interest amount; Item 1(l)(1) Paid-in-full indicator; Item 1(l)(2)(i) Pledged prepayment penalty paid; Item 1(l)(2)(ii) Pledged prepayment penalty waived; and Item 1(l)(2)(iii) Reason for not collecting pledge prepayment penalty.

[473] For ABS backed by auto leases, these include the following additional Schedule L data points: Item 1(a)(11) Interest type; Item 1(a)(12) Amortization type; Item 1(a)(13) Original interest only term; and Item 1(b)(3) Current interest rate. And the following Schedule L–D data points: Item 1(f)(2) Actual interest paid; Item 1(f)(3) Actual principal paid; Item 1(f)(4) Actual other amounts paid; Item 1(f)(17) Next interest rate; and Item 1(k)(1) Charged-off principal.

[474] *See* letter from VABSS IV.

[475] *See* proposed Items 4(c)(1) through 4(c)(21) and Items 5(c)(1) through 5(c)(21) of Schedule L.

[476] *See* proposed Items 4(c)(6), 4(c)(15), 4(c)(17), 4(c)(19) and 4(c)(20) of Schedule L–D for auto loans and proposed Items 5(c)(6), 5(c)(15), 5(c)(17), 5(c)(19) and 5(c)(20) of Schedule L–D for auto leases.

[477] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[478] *See* new Items 3 (e)(6) and 4 (e)(6) of Schedule AL.

[479] *See* proposed Items 4(c)(7) and 4(c)(9) of Schedule L–D for auto loans and proposed Items 5(c)(7) and 5(c)(9) of Schedule L–D for auto leases.

[480] *See* letter from VABSS IV.

score, payment-to-income ratio and LTV ratio, were provided. Investor commenters stated that obligor income and employment verification data points would provide valuable information.[481] Accordingly, we are adopting these data points substantially as proposed.[482]

Co-Obligor Items

We proposed a total of eighteen co-obligor data points (nine for auto loans and nine for auto leases) that would require issuers to provide information about co-obligors such as credit score data[483] and data about income, employment and assets used for qualification purposes.[484] Several commenters suggested that all eighteen of the proposed co-obligor data points be deleted as they are not particularly relevant to the analysis of Auto ABS[485] and that providing all of these co-obligor data points is not warranted given the additional time and expense associated with gathering the information.[486] These commenters suggested that the proposed co-obligor data points be replaced with a data point that would indicate whether the loan or lease has a co-obligor.[487] A group of commenters representing Auto ABS investors commented that it is sufficient to note the presence of a co-obligor, which would indicate that the primary obligor was not creditworthy enough to sustain the loan or lease on its own.[488] We agree, and we are not adopting any of the eighteen proposed co-obligor data points and instead are adopting only the co-obligor (or co-lessee, as applicable) present indicator data point suggested by commenters.[489]

Information About Terms of the Loan or Lease and Payment Activity

We proposed a group of data points that would capture information related to the terms of the loan or lease and payment activity, such as original and current loan or lease terms, interest rates, prepayments, interest paid-through dates and servicer advances. Taken together, the responses to these data points would provide insight into how the loan or lease has performed versus how it was intended to perform when originated. Commenters' response to this group of data points varied, with some commenters suggesting that some data points in this group were unnecessary or redundant and others advising that these data points provide valuable information about the loan or lease. We discuss below the significant comments we received about this group of data points and the revisions we have made to data points within this group.

Original and Current Terms and Initial Grace Periods

We proposed data points that would require issuers to indicate original and current loan terms in months.[490] One group of issuer commenters noted that, for marketing reasons, auto loans and leases are occasionally offered with first payment dates that are deferred for up to 90 days, during which time interest or financing fees accrue but no payments are due.[491] These commenters proposed that these items should be reported to reflect the number of scheduled payments due or remaining (converting non-monthly pay loans to monthly pay) to clearly indicate the payments on the loan in order to avoid odd month terms.[492] We believe it is important for investors to be provided the actual number of months in the term, even if such number includes a grace period where no payments are being made. We agree with commenters, however, that any grace period should be accounted for. Therefore, in addition to adopting the original and current term data points (with minor revisions for timing clarifications, as detailed in other sections of this release), we are also adopting a new initial grace period data point, which requires the issuer to indicate the number of months during which interest accrues but no payments are due from the obligor (or, for auto leases, the number of months during the term of the lease for which financing fees are calculated but no payments are due from the lessee).[493] If there is no initial grace period for an auto loan or lease, the response to this new data point would be zero.

Original Interest Rate

We proposed a data point that would require issuers to provide the rate of interest at the time of origination.[494] One group of issuer commenters believed that this item is generally not readily available or easily trackable by Auto ABS sponsors because it is industry practice to track only the current interest rate on auto loans.[495] Although we understand that there may be some costs to the sponsor or issuer associated with tracking the original interest rate, we believe it is important for investors to be able to compare the current interest rate to the original interest rate and we note that any costs associated with tracking the original interest rate would be one-time costs, as the response to this data point would be static. Therefore, we are adopting the original interest rate data point for ABS backed by auto loans substantially as proposed, with minor clarifying modifications as described elsewhere in this release.[496] Because auto leases do not have interest rates in the same manner as auto loans, we are not adopting this data point for ABS backed by auto leases.

Scheduled Payments and Actual Amounts Collected

We proposed data points that would require issuers to provide the principal and interest payments that were scheduled to be collected for the reporting period[497] and provide any unscheduled principal or interest adjustments during the reporting period.[498] We also proposed data points that would require issuers to indicate actual amounts collected during the reporting period.[499] As suggested by commenters, we are not adopting data points that separate interest and principal payment streams for ABS backed by auto leases.[500] Instead, for ABS backed by auto leases, we are adopting one data point that will capture the payment amount that was scheduled to be collected for the

[481] *See* letter from ASF II (expressed views of loan-level investors only) (''Verifying a borrower's income and employment can offset not having a top credit score. Conversely, not verifying these items can exacerbate an average or below average credit score.'').

[482] *See* new Items 3(e)(3), 3(e)(4), 4(e)(3), and 4(e)(4) of Schedule AL.

[483] *See* proposed Items 4(c)(4), 4(c)(5) and 4(c)(6) of Schedule L–D for auto loans and proposed Items 5(c)(4), 5(c)(5) and 5(c)(6) of Schedule L–D for auto leases.

[484] *See* proposed Item 4(c)(8), 4(c)(10), 4(c)(12), 4(c)(14), 4(c)(16) and 4(c)(18) of Schedule L–D for auto loans and proposed Item 5(c)(8), 5(c)(10), 5(c)(12), 5(c)(14), 5(c)(16) and 5(c)(18) of Schedule L–D for auto leases.

[485] *See* letter from VABSS IV.

[486] *See* letter from ASF II (expressed views of loan-level investors only).

[487] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[488] *See* letter from ASF II (expressed views of loan-level investors only).

[489] *See* new Items 3 (e)(5) and 4 (e)(5) of Schedule AL.

[490] *See* proposed Items 1(a)(7) and 1(a)(8) of Schedule L and Item 1(f)(18) of Schedule L–D.

[491] *See* letter from VABSS IV.

[492] *Id.*

[493] *See* new Items 3(c)(12) and 4(c)(8) of Schedule AL.

[494] *See* proposed Item 1(a)(10) of Schedule L.

[495] *See* letter from VABSS IV.

[496] *See* new Item 3(c)(5) of Schedule AL.

[497] *See* proposed Items 1(f)(10) and 1(f)(11) of Schedule L–D.

[498] *See* proposed Items 1(f)(5) and 1(f)(6) of Schedule L–D.

[499] *See* proposed Items 1(f)(2), 1(f)(3) and 1(f)(4) of Schedule L–D.

[500] *See* letter from VABSS IV.

reporting period and another requiring issuers to provide the total of any other amounts collected during the reporting period.[501] With respect to ABS backed by auto loans, a group of issuer commenters stated that the scheduled payment data points are not relevant because auto loans are simple interest loans which have no scheduled principal or interest payment amounts and are not subject to principal or interest adjustments.[502] These same commenters stated that data points relating to actual amounts collected should only be required to be disclosed if a transaction is structured with separate interest and principal waterfalls or separate allocations of other amounts paid to the investors.[503] One investor commenter asked that both the scheduled payment and actual amounts collected data points be included for ABS backed by auto loans.[504] We believe that the scheduled interest amount, scheduled principal amount and other principal adjustments data points provide valuable information about payments that are expected to be received, and we are adopting these data points as proposed. The scheduled interest amount and scheduled principal amount data points will require the issuer to provide the amount of interest and principal, respectively, that were due to be paid during the reporting period, which will show quantitatively how far in advance a loan was paid or how far behind the obligor is in making payments.[505] The other principal adjustments data point would show the amount of any adjustments that are made to the principal balance of the loan, including but not limited to prepayments.[506] We agree with the issuer commenters that the other interest adjustment data point is unnecessary as interest adjustments would be reflected between responses to the original interest rate data point and the current interest rate data point. Accordingly, we are not adopting the other interest adjustment data point. We also believe that the actual payments collected data points provide relevant information about how each asset is performing, regardless of whether the transaction is structured with separate principal and interest waterfalls or a single waterfall. Furthermore, only requiring that responses to these data points be provided for transactions that have separate principal and interest waterfalls runs counter to the goal of facilitating investors' ability to compare the underlying asset-level data of a particular asset pool with other pools. Therefore, we are adopting each of these proposed data points for ABS backed by auto loans.

Prepayment and Interest Paid Through Date

One commenter suggested we add a new ''voluntary prepayment'' data point.[507] We agree that an asset-level prepayment data point will provide valuable information to investors about how prepayments will alter the timing of expected cash flows. Accordingly, we have slightly modified this commenter's suggestion for clarification purposes and to better coordinate with other asset-level requirements. For ABS backed by auto loans, we are adopting an interest paid through date data point that requires issuers to provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.[508] For ABS backed by auto leases, we are adopting a similar data point which requires issuers to provide the date through which scheduled payments have been made, which is the effective date from which amounts due will be calculated for the application of the next payment.[509]

Servicer Advanced Amount

We proposed a data point that would require issuers to specify the amount advanced by the servicer during the reporting period (if any such amounts were advanced).[510] One group of issuer commenters stated that this information was already provided under the proposed current delinquency status data point.[511] We do not agree that the responses to these two data points provide the same information, as servicing advances can be made if payment on a loan or lease is less than 30 days late (depending on when payments to investors are due in relation to the due date of the loan or lease payment). The current delinquency status data point only provides information to investors after the loan or lease becomes more than 30 days delinquent. Therefore, we are adopting the servicer advanced amount data point as proposed.[512]

Modifications and Extensions

We proposed a data point that would require issuers to indicate whether an asset was modified from its original terms during the reporting period.[513] A group of investor commenters suggested that this data point be replaced with a new modification type data point.[514] As suggested by commenters, the modification type data point would require issuers to indicate the code that describes the reason for the modification and would only be required if the asset was modified.[515] A group of issuer commenters suggested that the modification indicator data point be replaced with a new payment extension data point.[516] The payment extension data point would require issuers to indicate the number of months the loan was extended during the reporting period and would only be required if the loan or lease was extended beyond its original terms during the applicable reporting period.[517] Investor commenters also suggested that we replace the proposed lease term extension indicator data point[518] with a lease extension data point that would require the issuer to indicate whether the lease has been extended and would capture any incremental lease payments to the trust.[519] We agree with the commenters that these new and modified items are both useful and applicable to Auto ABS. We believe that it is important to include the proposed modification indicator data point so that investors can easily confirm whether the loan was modified during the reporting period. We also believe that the suggested modification type data point provides valuable information to investors based on the concerns that were raised by issuer commenters. If, in fact, modifications other than payment and term extensions are rare and usually lead to a repurchase, investors should

[501] *See* new Items 4(f)(13) and 4(f)(15) of Schedule AL.

[502] *See* letter from VABSS IV.

[503] *Id.*

[504] *See* letter from Vanguard.

[505] *See* new Items 3(f)(13) and 3(f)(14) of Schedule AL.

[506] *See* new Item 3(f)(15) of Schedule AL.

[507] *See* letter from Vanguard.

[508] *See* new Item 3(f)(23) of Schedule AL.

[509] *See* new Item 4(f)(18) of Schedule AL.

[510] *See* proposed Item 1(g)(4) of Schedule L–D.

[511] *See* letter from VABSS IV.

[512] *See* new Items 3(f)(22) and 4(f)(17) of Schedule AL.

[513] *See* proposed Item 1(h) of Schedule L–D.

[514] *See* letter from ASF II (expressed view of loan-level investors only).

[515] *Id.*

[516] *See* letter from VABSS IV. This commenter opposed including the modification type data point suggested by loan-level investors, stating that ''[o]ther than payment extensions and term extensions, there simply are not a material number of credit-related modifications to auto loans [and leases] where the auto loan [or lease] is not required to be repurchased by the servicer and therefore remains in the Auto ABS transaction.''

[517] *Id.*

[518] *See* proposed Item 5(h) of Schedule L–D.

[519] *See* letter from ASF II (expressed views of loan-level investors only).

be alerted to loans or leases that have these rare modifications. Accordingly, we are adopting the proposed modification indicator data point for all Auto ABS, as well as the modification type data point and the payment extension data point for ABS backed by auto loans and the lease extension data point for ABS backed by auto leases (rather than adopting the lease term extension indicator data point as proposed).[520]

Lease-Specific Data Points

We proposed several data points that only apply to ABS backed by auto leases that relate to information such as residual values, termination, wear and tear, mileage, sale proceeds, and extensions.[521] Commenters also pointed out several proposed data points in the general item requirements that were not applicable to ABS backed by auto leases. For instance, a group of issuer commenters noted that the securitization value, which is widely used in the lease securitization industry, is the correct valuation of the size of the lease.[522] The same group of commenters also suggested that the proposed original asset amount data point[523] be revised to an acquisition cost data point that requires the issuer to provide the original acquisition cost of the lease.[524] We agree with both comments, so we are adopting the securitization value and securitization value discount rate data points,[525] rather than the asset balance data points,[526] and are adopting the acquisition cost data point[527] rather than the proposed original asset amount data point.

With respect to the residual value of the lease, we proposed several data points that require the issuer to provide the base and updated residual values of the vehicle and provide the source of such residual values.[528] Both issuer and investor commenters agreed that the base residual value data point should be adopted (although one group of issuer commenters suggested that the data point be amended to capture ''the securitized residual value of the leased vehicle, as determined by the sponsor and described in the prospectus'').[529] Investor commenters also stated that it is important for the issuer to disclose how the base residual value is calculated.[530] One group of issuer commenters stated that neither the updated residual value nor the source of the updated residual value data points should be adopted because the Auto ABS structure for leases is set up based on an original residual value that does not change, that it is enhanced to withstand residual losses and any gains just benefit investors while the costs and burdens to provide this information would be high.[531] While investor commenters did not specifically comment on either the updated residual value or the source of the updated residual value data points, they did request that we adopt a contractual residual value data point, as it would be valuable in determining the likelihood that the lessee will purchase the vehicle at the end of the lease or turn it back in.[532] Issuer commenters noted that the contractual residual value data point suggested by investor commenters is not as relevant as the base residual value or securitization residual value.[533] We agree with investors that the base residual value data point, the source of the base residual value data point and the contractual residual value data point each provide different and valuable information about a lease. Therefore, we are adopting the base residual value and source of base residual value data points as proposed as well as the new contractual residual value data point as suggested by investor commenters.[534] We are not adopting the proposed updated residual value data point or the source of updated residual value data point as these data points do not provide enough additional beneficial information to investors to justify the additional costs that would be imposed upon issuers.

(4) Debt Security ABS

We proposed that issuers of debt security ABS provide responses to the general data points enumerated in Item 1 of Schedule L and the nine data points specific to debt security ABS.[535] The comment we received on the proposal suggested that we require the disclosure of the CUSIP number, ISIN number, or other industry standard identifier of the debt security.[536]

As noted above, under the final rule we are integrating the general item requirements into the requirements for each asset type. Therefore, under the final rule, issuers of debt security ABS are only required to provide the asset-level disclosures required under new Item 5 Debt Securities. After integrating the proposed general data points, the final requirements for debt security ABS have been reduced from 83 possible proposed data points to 60 data points.

Also, in response to comments received, we have revised the asset number data point to require a standard industry identifier assigned to the security be provided for each security, if such number is available. Public access to the responses to these data points and to the responses to other data points that require disclosure of the SEC file number and Central Index Key (''CIK'') number for the debt security will provide investors, including secondary market investors, access to more information about each debt security in the pool. As proposed, the final rules will require that issuers provide more standardized information to investors about the debt securities underlying the ABS. The disclosures we are adopting today require the title of the underlying security, origination date, the minimum denomination of the underlying security, the currency of the underlying security, the trustee, whether the security is callable, the frequency of payments that will be made on the security and whether an underlying security or agreement is interest bearing along with other basic characteristics of the debt securities. At a minimum, these asset-level disclosures will provide investors with

[520] *See* new Items 3(f)(3), 3(j)(1), 3(j)(2), 4(f)(3), and 4(j)(2) of Schedule AL.

[521] *See* proposed Items 5(b)(9) through 5(b)(10) of Schedule L and Items 5(b) through 5(h) of Schedule L–D.

[522] *See* letter from VABSS IV.

[523] *See* proposed Item 1(a)(6) of Schedule L.

[524] *See* letter from VABSS IV.

[525] *See* new Items 4(f)(5) and 4(f)(6) of Schedule AL.

[526] *See* proposed Items 1(f)(7) and 1(f)(8).

[527] *See* new Item 4(c)(3) of Schedule AL.

[528] *See* proposed Items 5(b)(9) and 5(b)(10) of Schedule L and Items 5(b) and 5(c) of Schedule L–D.

[529] *See* letters from ASF II (expressed views of loan-level investors only) and VABSS IV.

[530] *See* letter from ASF II (expressed views of loan-level investors only).

[531] *See* letter from VABSS IV.

[532] *See* letter from ASF II (expressed views of loan-level investors only) (suggesting that under this contractual residual value data point, issuers would provide the stated amount that a lessee needs to pay to purchase the vehicle at the end of the lease term).

[533] *See* letter from VABSS IV.

[534] *See* new Items 4(d)(8), 4(d)(9), and 4 (d)(10) of Schedule AL.

[535] The asset-level requirements for debt security ABS were proposed under the title ''corporate debt.'' ABS backed by corporate debt securities are typically issued in smaller denominations than the underlying security and the ABS are typically registered under Section 12(b) of the Exchange Act for trading on an exchange. Additionally, a pool and servicing agreement may also permit a servicer or trustee to invest cash collection in corporate debt instruments which may be securities under the Securities Act. An asset pool of an issuing entity includes all other instruments provided as credit enhancement or which support the underlying assets of the pool. If those instruments are securities under the Securities Act, the offering must be registered or exempt from registration if the instruments are included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. *See* Securities Act Rule 190(a) and (b). *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

[536] *See* letter from SIFMA I.

the basic characteristics of the underlying debt securities in a standardized format.

Public availability of all of the asset-level information we are requiring to be disclosed regarding debt security ABS should reduce the burden on investors, including secondary market investors, to obtain this information, which should reduce investors' costs of conducting their own independent analysis and, thereby, reduce their need to rely on credit ratings. In addition, we believe that having an issuer collect and report asset-level information will improve efficiency, since a single entity, as opposed to multiple investors, will incur the information gathering costs.

We recognize that although investors will benefit from receiving these asset-level disclosures, issuers will face an increase in information gathering and reporting costs, including costs related to system re-programming and technological investment. We recognize that the costs registrants may face will depend on the extent to which the information required to be disclosed is already available to issuers or will have to be newly collected, as well as the extent to which the information is already being disclosed to investors in some transactions. Although we are unable to estimate the magnitude of these costs with any precision, we believe the costs registrants will incur to provide the data should be nominal since the data that is required should already be readily available to registrants, especially since the asset-level disclosures required primarily relate to the performance of the security and the basic characteristics of the security, such as the title of the security, payment frequency, or whether it is callable. A description of each data point required for debt security ABS is provided in Item 5 of Schedule AL.

(5) Resecuritizations

In a resecuritization, the asset pool is comprised of one or more ABS. We proposed that issuers of a resecuritization provide, at the time of the offering and on an ongoing basis, asset-level data for each ABS in the pool and for each asset underlying each ABS in the pool. Under the proposal, resecuritizations would provide the same data as required for debt security ABS for each ABS in the asset pool. In addition, issuers would provide asset-level data for the assets underlying each ABS in the asset pool in accordance with the asset-level disclosure applicable to that particular asset class.

We received several comments that expressed concern about the proposal. Some commenters expressed concern over the cost and burden to provide the asset-level disclosures for the assets underlying the securities in comparison to what they believed to be a limited benefit.[537] One of these commenters was concerned about securities law liability for the asset-level disclosures of the assets underlying the securities.[538] Other commenters were concerned that asset-level data may not be available for the assets underlying an ABS that was originated prior to the compliance date of the rule.[539] Finally, to address some of these concerns, some commenters suggested exemptions from the asset-level disclosure requirements for some resecuritizations.[540]

After considering the comments received, we are adopting the proposal with revisions. For each registered resecuritization, issuers must provide, at the time of the offering and on an ongoing basis for each ABS in the asset pool, the same disclosures that are required for debt security ABS. Therefore, information about the security, such as the title of the security, payment frequency, whether it is callable, the name of the trustee and the underlying SEC file number and CIK number is required.[541] If a resecuritization consists of securities where we have adopted asset-level disclosure requirements (i.e., RMBS, CMBS, or Auto ABS), then a second tier of asset-level information is required. The second tier of asset-level disclosure is about the assets (such as each mortgage, loan or lease) underlying the ABS being resecuritized. For instance, in an offering where the asset pool includes RMBS, then the data points in Item 5 of Schedule AL would be required for every RMBS security in the asset pool, as well as the data points in Item 1 for each loan underlying each RMBS security. Accordingly, if asset-level disclosures are not required for a particular asset type, then an issuer is only required to provide the debt security ABS disclosures for each ABS in the underlying asset pool.

We are adopting an exemption from the new requirement to provide asset-level disclosure about the underlying ABS if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements. We noted concerns about the cost to provide the disclosures, whether the information would be available, securities law liability for information provided by third parties and the other concerns raised by commenters. We acknowledge that investors will not have access to asset-level data for the resecuritized ABS for some period of time. We do not believe that providing this exemption would negatively affect investors because the resecuritization will still be subject to existing disclosure requirements, including pool-level disclosure requirements and the exemption will be limited over time by the underlying ABS becoming subject to the asset-level disclosure requirements. We also note that there have been no registered resecuritization offerings in the last few years. Further, as noted above, existing Securities Act Rule 190 requires that all information about the underlying ABS be disclosed in accordance with our registration rules and forms.[542] Therefore, if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements, investors in a resecuritization will receive updated and current information about pool data, static pool, risk factors,

[537] *See, e.g.,* letters from MBA I (stating that asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the underlying loan pool and do not correlate to specific classes of ABS) and Wells Fargo I (suggesting that the asset-level data required for a resecuritization would be of little benefit to investors in cases where a resecuritization involved a mixture of bonds because investors would have to understand the payment structure of each underlying ABS and the effort involved in doing this would likely be prohibitive for most investors in such cases). *See also* SIFMA I (expressing concerns about the cost to provide the information without providing their own cost estimate).

[538] *See* letter from Wells Fargo I (suggesting that with respect to the proposed ongoing disclosure requirements that subjecting the issuer, underwriter or any other resecuritization transaction party to securities law liability for such information is not appropriate because (i) such information has already been filed, subject to securities law liability, with respect to the underlying transactions, and (ii) there is no practical way for the resecuritization parties to do the due diligence with respect to the underlying filings that would need to be done to accept securities law liability for them).

[539] *See, e.g.,* letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I (with respect to RMBS), and SIFMA I. *See also* letter from Citi (indicating that issuers will often be unable to meet the disclosure requirements because they generally do not have access to the underlying asset-level files).

[540] *See* letters from SIFMA I (suggesting an exemption from the proposed asset-level disclosures requirements for (1) resecuritizations with ''seasoned'' pool assets or (2) resecuritizations where the underlying securities fall below some percentage of the asset pool (e.g., 10 percent as supported by the dealers and sponsor members or ''a substantially lower percentage'' as supported by the investor members)) and Wells Fargo I (suggesting an exemption from the proposed asset-level disclosures requirements for ''all bonds that are re-securitized that are from transactions which closed prior to the effective date of Regulation AB'' because a failure to do so ''would eliminate the availability of re-securitizations as an important tool for investors to prudently restructure or de-risk legacy positions'' and it ''could impair the value of such positions due to the resultant illiquidity'').

[541] *See* Section III.A.2.b)(4) Debt Security ABS.

[542] *See* Securities Act Rule 190. *See also* Section III.A.6.a of the 2004 ABS Adopting Release.

performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades.

The final requirement to provide asset-level data in the prospectus and in periodic reports will require that issuers provide more information to investors about resecuritizations than previously required. The asset-level disclosures about the ABS in the asset pool will provide investors, at a minimum, with the basic characteristics of a resecuritization. Further, by requiring disclosure of the SEC file number and CIK number for ABS being resecuritized, it will be easier for investors to locate more information about each resecuritized ABS. Public access to such information, including, when applicable, access to information about the assets underlying the ABS being resecuritized, should reduce investors' burden to obtain this information, and reduce their need to rely on credit ratings because investors will have access to the information in order to conduct their own independent analysis. In turn, this will allow for a more effective and efficient analysis of the offering and should help foster more efficient capital formation.

We do not agree with a commenter's view that there is a limited correlation between loan performance and bond performance and, as a result, there is little benefit from investors receiving asset-level data about the assets underlying the ABS being resecuritized. Specifically, the commenter believed that the asset-level data about the underlying ABS would not be useful because only certain classes of an ABS are resecuritized, and the loans backing a particular class are typically supported by the entire underlying loan pool, and therefore do not correlate to any specific classes of ABS. We disagree and believe that to determine the performance of any particular resecuritization, an understanding of each loan in the underlying loan pool is necessary in order to analyze how the underlying loans impact the cash flows to the resecuritization.

In addition, with respect to the availability of information, Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty.[543] As a result, ABS issuers with Exchange Act Section 15(d) reporting obligations will be required to report asset-level information, thereby easing concerns that the asset-level information for residential mortgages, commercial mortgages, auto loans, auto leases, or debt securities underlying the ABS in the resecuritization would not be available on an ongoing basis.

With respect to the cost and burden to provide the disclosures and concerns about securities law liability for information obtained from third parties, we believe the existing ability to reference third party information, in part, addresses these concerns. As is the case today, issuers may satisfy their disclosure requirements by referencing third-party reports if certain conditions are met.[544] New Forms SF–1 and SF–3 require that the asset-level information be filed on Form ABS–EE and incorporated into the prospectus.[545] Similarly, revised Form 10–D requires incorporation by reference to Form ABS–EE.[546] If the underlying ABS is of a third-party, we will permit issuers to reference the third-party's filings of asset-level data provided that they otherwise meet the existing third-party referencing conditions. Consequently, reports of all third parties, not only those that are significant obligors, may be referenced. Because issuers are not incorporating third-party filings by reference, but instead merely referencing these filings, we believe we have addressed concerns about issuers' filing burdens and securities law liability for asset-level information filed by third parties.

While some commenters raised concerns about the cost to implement such requirements, commenters did not provide any quantitative cost estimates to comply with this requirement. Implementation of this requirement, even if a registrant can reference third-party filings, will require system re-programming and technological investment. In addition, registrants will incur a nominal cost to provide data about the securities being resecuritized. In general, the data about the securities, which track the debt security ABS requirements, should include data already readily available to issuers, especially since the requirements primarily include basic characteristics of the security, such as the title of the security, payment frequency, and whether it is callable. Registrants will incur a nominal cost to provide this data in the format requested. If asset-level data is required for the assets underlying the securities being resecuritized, registrants will, to the extent they cannot otherwise incorporate by reference or reference third-party filings, incur costs to obtain the data required about the assets underlying the securities being resecuritized or to convert data available to them into the required format. These costs were discussed earlier in the release in the context of complying with asset-level disclosure for RMBS, CMBS and Auto ABS. We believe such costs are appropriate because investors should receive information about the securities that will allow them to conduct their own independent analysis. In addition to the items noted above that mitigate cost concerns, we also believe the extended timeframe for compliance of 24 months lowers the overall burden placed on registrants and market participants and should provide ample time for registrants and market participants to assess the availability of the asset-level information required for resecuritizations and to put the information in the format required.

3. Asset-Level Data and Individual Privacy Concerns

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release and as the staff noted in the 2014 Staff Memorandum, we are sensitive to the possibility that certain asset-level disclosures may raise concerns about the underlying obligor's personal privacy. In particular, we noted that asset-level data points requiring disclosures about the geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. We also noted, however, that information about credit scores, employment status and income would permit investors to perform better risk and return analysis of the underlying assets and therefore of the ABS.

In light of privacy concerns, we did not propose to require issuers to disclose an obligor's name, address or other identifying information, such as

[543] *See Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934,* Release No. 34–65148 (Aug. 17, 2011) [76 FR 52549].

[544] *See* Item 1100(c)(2) of Regulation AB [17 CFR 229.1100(c)(2)]. In many instances, the issuer of the ABS being resecuritized would be considered a significant obligor as defined in Item 1101(k) of Regulation AB. If so, issuers may reference information about the significant obligors located in third-party reports as set forth in Item 1100(c)(2).

[545] *See* Section III.B.5 New Form ABS–EE, General Instruction IV and Item 10 of Form SF–1 and General Instruction IV and Item 10 of Form SF–3.

[546] *See* Item 1A of Form 10–D.

the zip code of the property.[547] We also proposed ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score [548] or income or debt amounts in order to prevent the identification of specific information about an individual.[549]

The 2014 Staff Memorandum summarized the comments received related to potential privacy concerns and outlined an approach to address these concerns that would require issuers to make asset-level information available to investors and potential investors through an issuer-sponsored Web site rather than having issuers file on EDGAR and make all of the information, including potentially sensitive information, publicly available. Under the Web site approach, issuers could take steps to address potential privacy concerns associated with asset-level disclosures, including through restricting Web site access to potentially sensitive information. The Web site approach also would require issuers to file a copy of the information disclosed on a Web site with the Commission in a non-public filing to preserve the information and to enable the Commission to have a record of all asset-level information provided to investors. The prospectus would need to disclose the Web site address for the information, and the issuer would have to incorporate the Web site information by reference into the prospectus. In addition, issuers would be required to file asset-level information that does not raise potential privacy concerns on EDGAR in order to provide the public with access to some asset-level information.

(b) Comments on Proposed Rule

In response to the 2010 ABS Proposal, several commenters noted that the asset-level requirements would raise privacy concerns.[550] These commenters suggested that, while the proposed asset-level disclosures would not include direct identifiers, if the responses to certain asset-level data requirements are combined with other publicly available sources of information about consumers it could permit the identity of obligors in ABS pools to be uncovered or ''re-identified.'' [551] A number of commenters noted that, if an obligor was identified through this process, then the obligor's personal financial status could be determined.[552] The commenters noted that if obligors are re-identified, then information about an obligor's credit score, monthly income and monthly debt would be available to the general public through the EDGAR filing. Commenters also noted that if personal information was linked to an individual through the asset-level disclosures this may conflict with [553] or undermine [554] the consumer privacy protections provided by federal and foreign laws restricting the release of individual information and increase the potential for identity theft and fraud.[555]

Most commenters did not support the use of coded ranges, noting it would not address privacy concerns [556] and would not further the Commission's objective of improving disclosure for ABS investors. Two commenters noted that using coded ranges would not mitigate privacy concerns because the ranges are so narrowly defined they would identify the actual score or dollar amount of income.[557] Other commenters believed that the use of ranges for disclosures, such as credit scores and income, or requiring a broader geographic identifier for the property, such as MSAs, would greatly reduce the utility of the information.[558] Commenters also noted that disclosure of data that relates to the credit risk of the obligor, such as an obligor's exact credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[559] Commenters also suggested that exact income and credit scores are necessary to appropriately price the securities [560] and verify issuer disclosures.[561]

We received few suggestions for alternative approaches to balancing individual privacy concerns and the needs of investors to have access to detailed financial information about obligors. Commenters suggested we work with other federal agencies to evaluate whether the proposed asset-level information was in fact anonymized [562] and to assess whether the required asset-level disclosures would subject issuers to liability under

[547] We proposed to require the broader geographic delineations of MSAs in lieu of the narrower geographic delineation of zip codes.

[548] For asset-level data points that require disclosure of obligor credit scores, we proposed coded responses that represent ranges of credit scores (e.g., 500–549, 550–599, etc.). The ranges were based on the ranges that some issuers used in pool-level disclosure.

[549] For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies (e.g., $1,000–$1,499, $1500–$1,999, etc.). *See* the 2010 ABS Proposing Release at 23357.

[550] *See, e.g.,* letters from ABA I, CU, MBA I (suggesting that the use of Metropolitan Statistical Areas or Divisions in lieu of zip code would not mask the location of particular properties), VABSS I, and WPF I (also suggesting that the proposed asset-level disclosures would not mask the location of particular properties and additionally that they may provide information useful in the re-identification process). In general, these commenters were concerned that it may be possible to identify an individual obligor by matching asset-level data about the underlying property or asset with data available through other public or private sources about assets and their owners.

[551] *See, e.g.,* letter from WPF I (suggesting that attempts to mask the location of particular properties and the identity of borrowers are not workable because there is too much information about mortgages available that would allow the location of a particular property to be found).

[552] *See, e.g.,* letters from ABA I, AFSA I, American Resort Development Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, ASF II, CDIA, CNH I, CU, Anita B. Carr dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Epicurus, ELFA I, FSR, MBA I, National Association of Federal Credit Unions dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Navistar, SIFMA I, SLSA, TYI, VABSS I, Vantage Score Solutions LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''Vantage I''), and WPF I.

[553] *See, e.g.,* letters from ABA I (stating that the asset-level disclosures would potentially result in release to the public of detailed non-public personal financial information (as defined in Title V of the Gramm-Leach-Bliley Act (''GLBA'')) as well as consumer report information (as defined in FCRA), CDIA (suggesting that certain data may fall under the protections of FCRA, GLBA, or both), Epicurus, TYI (suggesting that if the disclosures could be used to identify a borrower in a European-based ABS, this may violate European privacy laws), and WPF I.

[554] *See* letter from WPF I (suggesting that if data that may fall under the scope of FCRA is posted on EDGAR and subsequently linked to an individual, the data may become public and, therefore, the transfer of this information to others may contravene FCRA restrictions).

[555] *See* letters from CDIA, VABSS II, and WPF I (suggesting that the cost of identity theft would not only fall on borrowers, but also on asset holders and, therefore, investors would demand higher returns to protect against those losses).

[556] *But see* letters from CDIA (noting that the proposed ranges or categories may provide some privacy protection) and ASF II (expressed views of loan-level investors only) (suggesting the use of range-based reporting for certain credit sensitive fields may also provide a solution to privacy concerns).

[557] *See* letters from CDIA and MBA I.

[558] *See* letters from ASF I (expressed views of investors only), Beached Consultancy (suggesting that the metropolitan area is too broad to be useful, and, therefore, a ''3-digit zip code'' should be permitted), and Wells Fargo I.

[559] *See* letters from ASF I (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS), Prudential I (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics), and Wells Fargo I (expressing concern that restricting information available to investors could result in substantially lower pricing for new residential mortgage backed securities offerings). *See also* SIFMA I (expressed views of investors only) (recommending 25-point buckets for credits scores rather than the 50-point buckets as proposed).

[560] *See, e.g.,* letters from ASF I, Prudential I, and Wells Fargo I.

[561] *See* letter from ASF I (expressed views of investors only) (suggesting that exact income allows them to double check the issuer's DTI calculations).

[562] *See* letters from ABA I and ASF I.

the federal privacy laws.[563] Many commenters that supported grouped-account disclosures rather than asset-level disclosures indicated that grouped disclosures also could address privacy concerns with asset-level disclosures.[564] Other commenters suggested addressing privacy concerns by changing the disclosure format, such as by requiring that disclosure be presented in ratios rather than dollar amounts,[565] requiring a default propensity percentage in lieu of a credit score,[566] or only requiring narrative disclosure.[567]

We also received suggestions that we should restrict access to or impose conditions on the use of sensitive data. For instance, a commenter suggested that we establish a central ''registration system'' where access to sensitive data is only made to persons who have independently established their identities as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.[568] Another commenter suggested that the Commission consider restricting access to registered users who acknowledge the potentially sensitive nature of the data and agree to maintain its confidentiality.[569] This commenter suggested that requiring users to identify themselves and accept appropriate terms of use would provide a deterrent to those who might attempt to abuse personal financial data and permit identification of such users should any abuse occur. Another commenter suggested establishing rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules.[570]

In light of the comments received raising individual privacy concerns and the requirements of new Section 7(c) of the Securities Act, we requested additional comment on privacy generally in the 2011 ABS Re-Proposing Release.[571] We received limited additional feedback on how to address the potential privacy issues surrounding the proposed asset-level disclosures. Commenters again stated that the asset-level requirements, as proposed, would raise privacy concerns.[572] One commenter suggested that the Commission could address privacy concerns by not requiring the disclosure of social security numbers, only requiring MSA information about the property instead of a property's full address, and replacing borrower name with an ID number.[573] Other commenters stated or reiterated that for some asset classes a grouped-account or pool-level disclosure format may mitigate privacy concerns.[574] One commenter repeated the suggestions that it provided in previous comment letters that the Commission could establish and manage (or have a third-party manage) a central ''registration system'' that could provide restricted access.[575]

On February 25, 2014, we re-opened the comment period to permit interested persons to comment on the Web site approach described in the 2014 Staff Memorandum. Only a few commenters indicated support for the Web site approach.[576] Most commenters generally opposed the Web site approach as a means to address privacy concerns,[577] and some commenters also noted that the Web site approach creates or shifts legal and reputational risks to issuers.[578] Commenters expressed concern about whether the Web site approach could result in issuer liability under applicable privacy laws.[579] Several commenters were specifically concerned that the Web site approach might create a risk that the issuer could be considered a ''consumer reporting agency'' under the FCRA and thus subject to its rules and regulations.[580] One commenter noted that the FCRA would not be relevant most of the time because the type of information contemplated by the Web site approach would be beyond the reach of the FCRA while also noting that privacy laws do not protect most consumer data, including the proposed asset-level data, regardless of how it may be disseminated.[581] A number of

[563] *See* letter from ABA I.

[564] *See, e.g.,* letters from ASF II (expressed views of issuers and a portion of investors only) and VABSS II.

[565] *See* letter from CU (suggesting that liquid cash reserves be expressed as a ratio relative to the borrower's debt).

[566] *See* letter from Vantage I (describing default propensity as the chance that a consumer will become 90 or more days late on a debt that he or she owes expressed as a percentage).

[567] *See* letter from ABAASA I.

[568] *See* letter from VABSS II.

[569] *See* letter from CDIA.

[570] *See* letter from Epicurus.

[571] For instance, we asked how asset-level data could be required, both initially and on an ongoing basis, to implement Section 7(c) effectively, while also addressing privacy concerns. We asked which particular data elements could be revised or eliminated for each particular asset class in a manner that would address privacy concerns, while still enabling an investor to independently perform due diligence. We also requested comment on whether it would be appropriate to require issuers to provide an obligor's credit score and income on a grouped basis in a format similar to the proposal for credit cards in the 2010 ABS Proposing Release.

[572] *See, e.g.,* letter from Mortgage Bankers Association dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''MBA III'') (reiterating that several of the data points proposed could allow someone to identify the obligor and that ''the income and credit score ranges do not mitigate privacy issues because the suggested ranges are so narrowly defined that they virtually identify the actual score or dollar amount of income'').

[573] *See* letter from MetLife II.

[574] *See* letters from Sallie Mae, Inc. (SLM Corporation) dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Sallie Mae II'') (suggesting that ''data presented on a grouped basis should address all privacy concerns''), VABSS III (again suggesting that a grouped data approach minimizes, but does not eliminate, privacy concerns), and VABSS IV (stating that they believe a grouped data approach is the best way to provide additional information to investors while addressing obligor privacy and competitive concerns).

[575] *See* letters from VABSS III (suggesting that it would not be an ''overwhelming process to establish and maintain a restricted-access system'' and that Section 7(c) does not require that data that raises privacy concerns be made publicly available) and VABSS IV.

[576] *See* letters from AFR (noting the advantages of the Web site approach include the disclosure of more granular data and the ability to restrict the data to those who agree to accept legal liability for privacy violations), CII (stating, however, that the restrictions placed on accessing the Web site should not be any more restrictive than user accounts and confidentiality agreements and that issuers should provide, instead of coded ranges, specific credit scores, income, and debt), A. Schwartz (stating that the Web site approach places the liability for errors in the asset-level data on issuers and preserves the privacy interests of borrowers), and World Privacy Forum dated Apr. 18, 2014 submitted in response to the 2014 Re-Opening Release (''WPF II'') (suggesting, however, that the Commission rather than issuers be responsible for maintaining the data).

[577] *See, e.g.,* letters from ABA III, AFSA II, Capital One II, Deutsche Bank dated Mar. 28, 2014 submitted in response to the 2014 Re-Opening Release (''Deutsche Bank''), MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[578] *See, e.g.,* letters from AFSA II (also suggesting that the Web site approach did not conform to the White House's Consumer Privacy Bill of Rights because the Web site approach does not specify requirements to provide control or choice to consumers on the sharing of their data with others), Deutsche Bank, MBA IV (also stating that the Web site approach shifts operational risks to issuers), and SFIG II.

[579] *See, e.g.,* letters from AFSA II, CCMR, Deutsche Bank, Lewtan (suggesting that there is uncertainty surrounding FCRA liability for issuers, investors, and all deal parties who touch data originally obtained in the process of underwriting a loan to the consumer), MBA IV, SFIG II (also noting that issuers may be subject to restrictions under state laws), SIFMA/FSR I-dealers and sponsors, and Wells Fargo III. *See also* letters from ELFA II (noting that the dissemination of asset-level data under the Web site approach or through EDGAR would create legal and reputational risks), and Treasurer Group (noting the requirements of Canada's privacy laws).

[580] *See* letters from ABA III, CCMR, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, and Wells Fargo III (noting, for example, that if an issuer is considered a consumer reporting agency, among other things, it will have a duty to update and correct information about the consumer and failure to comply with these duties could subject the issuer to consumer actions and CFPB enforcement).

[581] *See* letter from WPF II.

commenters requested that the Commission obtain an authoritative interpretation or some other form of guidance from the CFPB to clarify issuer liability under the privacy laws when an issuer provides asset-level data before moving forward.[582] A few commenters suggested that under the Web site approach data could still be widely distributed,[583] and two commenters stated that taking steps to reduce the ability to re-identify a person would be more appropriate than limiting access to sensitive data.[584] Some other general concerns about the Web site approach included: the costs and burdens of the Web site approach;[585] the possibility of data breaches and the impacts from data breaches;[586] potential negative market impacts;[587] and the possibility that inconsistencies in technical standards between Web sites may make the Web sites difficult to use.[588]

Some commenters disagreed with the description in the 2014 Staff Memorandum of how issuer Web sites were being used at the time the 2014 Staff Memorandum was released.[589] For instance, one commenter noted that while Web sites were being used at that time to provide information to investors, the information is not the same as what the Commission had proposed to require and does not raise the same privacy concerns.[590] Another commenter noted that current disclosure of asset-level information through Web sites is available only to a limited number of known institutional investors.[591]

Several commenters stated that additional information was necessary to fully assess the potential implications of the Web site approach. For instance, commenters requested clarity on the scope of asset-level disclosures that the Commission is considering adopting, what data would be disclosed on EDGAR and on the Web site, what type of restrictions on access would be reasonable and what information is ''necessary'' for investor due diligence.[592] Another commenter sought information about whether the Commission is still considering asset-level disclosures for certain non-RMBS asset classes.[593] Five commenters urged the Commission to re-open the 2010 ABS Proposal and the 2011 ABS Re-Proposal, in general, to permit further consideration of the concerns surrounding asset-level disclosures.[594]

A number of commenters responded to the 2014 Re-Opening Release by commenting generally on privacy concerns. Several commenters reiterated the re-identification concerns that were raised in response to the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release.[595] Commenters again suggested that obligors may suffer harm if personal data is used to re-identify them.[596] Several commenters noted that the asset-level requirements, as proposed in 2010, contain a variety of highly sensitive personal information that consumers would not expect to be available to the general public, such as information about debt, income, bankruptcies, foreclosures, job losses, and even whether the consumer has experienced marital difficulties.[597] One commenter raised particular concern with disclosure of actual income as such data is highly desirable to the consumer data industry but hard to obtain.[598] One commenter requested that the Commission provide assurance that the data required to be filed on EDGAR could not be reasonably linked to an individual consumer.[599] Some commenters expressed concern that the proposed requirements could result in the disclosure of ''Personally Identifiable Information'' or ''PII,'' which could result in legal liability or reputational damage.[600] In addition, a few commenters identified various laws that may apply to the asset-level disclosures, including non-privacy related laws.[601] Another commenter noted, however, that the availability of potentially sensitive obligor data is not new to the market.[602] Another commenter believed criminal actors

[582] *See, e.g.,* letters from SIFMA/FSR II-dealers and sponsors, Wells Fargo III, MBA IV (with respect to RMBS), and SFIG II (noting concerns that the CFPB has not affirmed past FTC guidance on the transfer of information incident to the transfer of an asset in a securitization and stating that while it strongly believed that an issuer would not become a consumer reporting agency under FCRA by disclosing asset-level information, the CFPB needs to provide a rule or authoritative interpretation that the data posted in accordance with the Web site approach would not be a consumer report and that the issuer would not become a consumer reporting agency). *See also* letter from CCMR (requesting that the Commission, CFPB and Federal Trade Commission (FTC) provide assurance that misuse of disclosures made under the Web site approach would not render the issuer liable for privacy law violations).

[583] *See, e.g.,* letters from ABA III (stating that in the case of registered offerings ABS may be sold to any person, including individuals, without restriction, resulting in a potentially unlimited pool of investors and potential investors), Capital One II, and SFIG II.

[584] *See* letters from ABA III and Treasurer Group. These comments are discussed in more detail below.

[585] *See* letters from AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS) (suggesting that the costs would include improving security protocols and designing controls to minimize sharing of the information once a party accesses the Web site), SFIG II, SIFMA/FSR I-dealers and sponsors (objecting to a requirement that issuers file non-sensitive data on EDGAR because it is redundant, imposes unnecessary costs and is incomplete since certain fields would be omitted), and Wells Fargo III.

[586] *See, e.g.,* letters from ABA III, AFSA II, ELFA II, Lewtan, MBA IV (with respect to RMBS), and Wells Fargo III.

[587] *See, e.g.,* letters from ELFA II (expressing concern that issuers may leave the ABS capital markets due to cost and liability concerns) and Lewtan (noting that issuers and investors may leave the market or move to the Rule 144A market because they cannot get comfortable with the risks associated with FCRA, while acknowledging that similar risks exist in the Rule 144A market).

[588] *See* letter from AFR.

[589] *See* letters from ABA III, AFSA II, and SFIG II.

[590] *See* letter from AFSA II. *See also* letter from ABA III (noting that the amount of information proposed for release under the Web site approach exceeds the amount of information typically made available through Web sites).

[591] *See* letter from SFIG II.

[592] *See, e.g.,* letters from ABA III, Deutsche Bank, Lewtan (noting that they did not comment on data point requirements due to the brief comment period and uncertainty about which aspects of the 2010 ABS Proposals remain under consideration), SIFMA/FSR I-dealers and sponsors (requesting clarity on whether any of the asset-level data may be considered ''material'' under the securities laws and whether disclosure of asset-level data as proposed complies with privacy laws), and Wells Fargo III (requesting clarification of which data points would require specific values in order to evaluate privacy issues).

[593] *See* letter from SIFMA/FSR I-dealers and sponsors.

[594] *See* letters from Capital One II, ELFA II (asking the Commission to reconsider requirements for equipment ABS), SFIG II (noting uncertainty as to whether ranges or specific values will be required for sensitive data points and whether the rules will apply to the Rule 144A market), SIFMA/FSR I-dealers and sponsors (suggesting that any re-proposal should include definitive, coordinated federal guidance about compliance with privacy laws, whether the disclosure requirements will apply to the Rule 144A market, which asset classes will be subject to the disclosure requirements and assurances about whether the data can be re-identified), and Wells Fargo III.

[595] *See, e.g.,* letters from ABA III, Capital One II, Deutsche Bank, SFIG II (noting that whether an obligor underlying a foreign loan can be re-identified through the proposed asset-level data will depend on the jurisdiction), SIFMA/FSR I-dealers and sponsors, Treasurer Group (suggesting that the final requirements not include geographic identifiers or other individual identifiers that can identify a borrower), and WPF II.

[596] *See, e.g.,* letters from ABA III, SFIG II, and SIFMA I (expressed view of issuers and sponsors only).

[597] *See, e.g.,* letters from Deutsche Bank, SIFMA/FSR I-dealers and sponsors, and Wells Fargo III.

[598] *See* letter from WPF II.

[599] *See* letter from SIFMA/FSR I-dealers and sponsors.

[600] *See* letter from SIFMA/FSR I-dealers and sponsors (questioning whether some or all of the asset-level information could be considered PII under federal and state laws). *See also* letters from ABA III and MBA IV (with respect to RMBS).

[601] *See* letters from ABA III (noting questions about the application of the GLBA, FCRA and Freedom of Information Act (''FOIA'')), and SIFMA/FSR-dealers and sponsors (noting questions about the application of GLBA and the Fair Debt Collections Practices Act, and whether the information would be subject to FOIA).

[602] *See* letter from Lewtan (noting that they collect and disseminate ABS-related data, including asset-level data).

would prefer to obtain access to other databases containing information more conducive to identity theft, such as social security numbers and date of birth, neither of which would be required by the Commission.[603]

Many commenters expressed particular concern with the disclosure of a property's geographic location because it, along with other data points, can be used with other public databases to match a property with a specific borrower.[604] Commenters' recommendations to revise the geographic data point varied. One commenter recommended that the Commission limit disclosure of the zip code to only the first two digits.[605] Another commenter, without providing a specific recommendation, believed that any geographic data point must be sufficiently broad to ensure that there is no risk of re-identification.[606] One commenter reiterated its support for aggregation of geographic location.[607] In contrast, another commenter noted its opposition to the 2010 ABS Proposal to require only MSA because it would compromise the utility of the data for investors.[608]

Several commenters suggested various alternatives and modifications to the Web site approach. Three commenters suggested aggregating the asset-level data.[609] These commenters, however, did not specify what they meant by ''aggregated.''[610] Another commenter suggested development of a system that permits investors to conduct analysis and produce models without providing access to asset-level information.[611] One commenter said the requirements should mirror the disclosures that the GSEs make with respect to RMBS and that issuers should have the discretion not to disclose sensitive information.[612] Others suggested that issuers should have the flexibility to modify the disclosures and decide the method of delivery to address privacy concerns.[613] Another commenter agreed that the better approach would be to modify the disclosure requirements such that the data increases transparency while still respecting the privacy of borrowers' information, but did not specify how those disclosures should be made available to investors.[614] Several commenters suggested that we adopt mechanisms or controls to restrict access to asset-level information filed with the Commission to investors and potential investors.[615]

Another commenter suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[616] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[617] Another commenter also suggested that credit bureaus, instead of issuers, should provide credit related information.[618] One commenter outlined revisions to the Web site approach that it believed are necessary if such an approach is adopted, including a data chain of custody, privacy and security rules and public disclosure of each issuer's privacy and security policies.[619]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received related to privacy concerns and on the Web site approach, and our obligations under Section 7(c) of the Securities Act,[620] we are adopting new rules to require that issuers file asset-level disclosures on EDGAR both at the time of the offering and on an ongoing basis in periodic reports. We are revising the required disclosures contained in the proposal to address the risk of parties being able to re-identify obligors and the associated privacy concerns. Specifically, as discussed below, we are modifying or omitting certain asset-level disclosures relating to RMBS and Auto ABS to reduce both the amount of potentially sensitive data about the underlying obligors and the potential risk that the obligors could be re-identified. In addition, in response to commenters' suggestions, we have sought and obtained guidance from the CFPB on the application of the FCRA to the required disclosures. As discussed

[603] *See* letter from AFR. Despite its belief that the Web site approach would not create a new target for criminal actors, AFR recommended that the Commission not adopt such an approach because: (i) Issuers could inappropriately discriminate in providing access to the restricted Web site; (ii) there is a potential that not all issuers would have the technical capacity to implement appropriate privacy controls; and (iii) if the design of the data is left to issuers, standardization of the data format would not be possible, making it more difficult to use.

[604] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[605] *See* letter from ABA III (noting that the Department of Health and Human Services, as part of its efforts to keep consumers' health information anonymous, has limited disclosure of zip codes to the first three digits, and also noting that the European Securities and Market Authority has created draft templates for asset-level disclosure, including for RMBS, in which it requires only the first two or three digits of the postal code).

[606] *See* letter from Treasurer Group.

[607] *See* letter from CFA Institute dated Apr. 28, 2014 submitted in response to the 2014 Re-Opening Release.

[608] *See* letter from AFR.

[609] *See* letters from ABA III, Lewtan (noting that aggregation would significantly reduce the risk of re-identification and data security breaches, but data security concerns related to internal operations would remain), and MBA IV (with respect to RMBS).

[610] For example, they did not specify whether they were referring to pool-level data, grouped-account data similar to the disclosures proposed for credit card ABS in the 2010 ABS Proposal, less granular loan-level information or some other form of data aggregation.

[611] *See* letter from Treasurer Group.

[612] *See* letter from MBA IV (with respect to RMBS).

[613] *See, e.g.,* letters from ABA III (suggesting that if the Commission adopts the Web site approach, then issuers should be able to aggregate, group or anonymize the data, as needed, to comply with the privacy laws or be allowed to omit data under Securities Act Rule 409, and also suggesting that issuers should have the flexibility to determine the method of delivery of the disclosure) and SIFMA/FSR II-dealers and sponsors (suggesting that issuers be allowed to withhold, aggregate, or otherwise modify the asset level disclosures in order to comply with legal and regulatory obligations, reduce re-identification risk or otherwise protect consumer privacy, or to limit disclosure of information that is not material to an investment decision).

[614] *See* letter from Capital One II.

[615] *See* letters from CDIA (suggesting that the Commission require parties that want to access the data on EDGAR register to use the data, acknowledge the sensitive nature of the data, and agree to maintain its confidentiality), Epicurus (suggesting that the Commission establish rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules), WPF I, and WPF II.

[616] *See* letter from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse).

[617] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[618] *See* letter from ABA III.

[619] *See* letter from WPF II. The commenter also outlined the elements of an appropriate data use agreement, such as disclosure restrictions, standards to qualify recipients, and providing consumers a private right of action for those who misuse the data.

[620] As noted above, Section 7(c) of the Securities Act requires that we adopt rules to require ABS issuers to disclose asset-level information if the data is necessary for investors to independently perform due diligence.

below, the CFPB has issued a letter[621] to the Commission stating that the FCRA will not apply to asset-level disclosures where the Commission determines that disclosure of certain asset-level information is ''necessary for investors to independently perform due diligence,'' in accordance with Section 7(c). We believe these steps implement the statutory mandate of Section 7(c) and will provide investors with the asset-level information they need while reducing concerns about potential re-identification risk associated with disclosing consumers' personal and financial information.

While we have considered the Web site approach described in the 2014 Staff Memorandum, as discussed below, we are not adopting this approach due to concerns about the practical difficulties and unintended consequences of limiting access to only investors and potential investors.[622] Commenters also indicated that the Web site approach could negatively affect the ability of investors and the broader ABS market to have adequate access to the data.[623]

We continue to believe that the disclosure of data that relates to the credit risk of the obligor, such as an obligor's credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.[624] We believe these disclosures, combined with other asset-level disclosures, such as the terms and performance of the underlying loan and information about the property, will enable investors to conduct their own due diligence for ABS involving consumer assets, and thus facilitate capital formation in the ABS market. Consequently, it is critically important that the manner in which such information is disseminated enables all investors to receive access to the required asset-level disclosures. The ability of other market participants, such as analysts and academics, to access this information may also benefit the market by encouraging a broader range of commentary and analysis with respect to ABS.[625]

Although we did not propose to require that an obligor's name, address, or other identifying information be disclosed, we are sensitive to the possibility that an obligor in an asset pool could be identified (now or in the future) due to the availability of the required disclosures (coupled with the XML requirement), the amount of data about obligors that is publicly available through other sources, and information about real estate transactions and other types of transactions that is available or that may become available in the future. In the event the obligor was re-identified, the information that would have been required by the proposal, even in ranges, might reveal information about the obligor's financial condition.

This issue is especially pronounced for securitizations backed by residential mortgages, as an obligor could potentially be re-identified using a combination of asset-level disclosures and real estate transaction data that is routinely disclosed by certain local governments.[626] Commenters noted that property address, sales price, and closing date are typically disclosed by local governments and could be used to link the asset-level disclosures to an individual.[627] If a specific mortgage is re-identified, sensitive financial data about an obligor (e.g., credit score, DTI, and payment history) could potentially be connected to the obligor.

In light of this concern, we are revising the proposed data set for RMBS as follows.[628] First, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code.[629] Several commenters emphasized the importance of geography in assessing the re-identification risk for RMBS asset-level disclosure.[630] We believe that, because publicly available information like property records is typically sorted and searchable by geography, requiring issuers to identify assets by a broader geographic area should decrease the ability to re-identify individual obligors. In considering how to broaden the geographic area, we considered both the specific recommendations of commenters as well as current disclosure practices, including those of the GSEs and Ginnie Mae.[631] As noted above, one commenter specifically recommended that we require disclosure of either a 2-digit or 3-digit zip code.[632] There are currently less than 99 distinct 2-digit zip codes and approximately 900 distinct 3-digit zip codes.[633] By contrast, our proposal would have required disclosure of MSA, which represents approximately 960 unique geographic areas. We understand that Ginnie Mae currently discloses state (60 distinct areas, including Washington, DC and U.S. territories and associated states).[634] Depending on the data set, Fannie Mae and Freddie Mac disclose MSA, 3-digit zip code or state.[635] After considering the various alternatives, we are adopting a 2-digit zip code. In reaching this conclusion, we considered that a 3-digit zip code would not significantly reduce the re-identification risk relative to the proposal's use of MSA and that use of state may be too broad of an area to be useful to RMBS investors.[636]

To further reduce the risk of re-identification, we are also omitting several data points that, while

[621] *See* letter from the Consumer Financial Protection Bureau dated August 26, 2014.

[622] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), AFR (expressing concern that if issuers are given the ability to limit access to asset-level data they may use this ability to discriminate between investors by, for example, giving investors with more market power preferential access to the data), CCMR, MBA IV, and SFIG II.

[623] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[624] *See* footnotes 559, 560 and 561 (discussing commenters' views on the importance of receiving granular data about obligors, such as exact income and credit scores).

[625] *See* letters from ABA III, Moody's I, Moody's II, M. Joffe, and R&R.

[626] These issues potentially exist but are less pronounced for Auto ABS. We are not aware of any public databases of auto loan and lease records made available by local governments. It is possible that these types of databases could be available from other sources for a fee. After the time of purchase, an obligor may move and register the automobile in a different state. In contrast, the property that is collateral for a mortgage is connected to a permanent address and therefore could be matched more easily with publicly available information from land records.

[627] *See, e.g.,* letters from ABA III, CU, SIFMA/FSR I-dealers and sponsors, SFIG II, and Treasurer Group.

[628] Although the changes discussed relate to RMBS data points, we also indicate, where relevant, corresponding changes we have made to the data points for Auto ABS that address privacy concerns.

[629] *See* new Item 1(d)(1) of Schedule AL. For Auto ABS, at the suggestion of commenters, we are modifying the geographic identifier of the obligor to state. *See* new Items 3(e)(7) and 4(e)(7). *See also* letters from ASF II (expressed views of loan-level investors only) and VABSS IV. We are not adopting proposed data points that would have disclosed the geographic location of the dealership. *See* proposed Items 4(b)(1) and 5(b)(1) of Schedule L.

[630] *See* letters from ABA III, ELFA II, Lewtan, SIFMA/FSR I-dealers and sponsors, SFIG II, Treasurer Group, and Wells Fargo III.

[631] *See* letter from MBA IV (with respect to RMBS).

[632] *See* letter from ABA III.

[633] *See* the U.S. Postal Service Web site for a list of 3-digit zip codes, *http://pe.usps.com/text/LabelingLists/L002.htm.*

[634] *See* Ginnie Mae's MBS Loan-Level Disclosure File *available at http://www.ginniemae.gov/doing_business_with_ginniemae/investor_resources/mbs_disclosure_data/Lists/LayoutsAndSamples/Attachments/105/mbsloanlevel_layout.pdf.*

[635] *See* Fannie Mae's Loan-Level Disclosure File *available at http://www.fanniemae.com/resources/file/mbs/pdf/filelayout-lld.pdf* and Loan Performance Data Disclosure File *available at https://loanperformancedata.fanniemae.com/lppub-docs/lppub_file_layout.pdf. See also* Freddie Mac's Loan-Level Disclosure requirements *available at http://www.freddiemac.com/mbs/docs/fs_lld.pdf* and Single Family Loan-Level Dataset General User Guide *available at http://www.freddiemac.com/news/finance/pdf/user_guide.pdf.*

[636] *See also* footnote 670 and accompanying text.

potentially useful to investors, could increase the ability to identify underlying obligors. Specifically, we are omitting the unique broker identifier data point[637] as well as the sales price,[638] origination date, and first payment date[639] data points. In addition, we are omitting some information about an obligor's bankruptcy and foreclosure history,[640] although, if an obligor had experienced a past bankruptcy or foreclosure, we would expect that those events would have been considered in generating a credit score. As noted above, the final rules require disclosure of an exact credit score.

Another step that we are taking to address commenters' concerns about re-identification risk is to omit the proposed income and debt data points. While we believe that income and debt information would strengthen an investor's risk analysis of ABS involving consumer assets,[641] we are not requiring them based on concerns about the sensitive nature of this information and increased re-identification risk posed by this information.[642] As discussed in Section III.A.2.b)(1) Residential Mortgage-Backed Securities, however, we are requiring DTI ratios.[643] These are key calculations used to assess an obligor's ability to repay the loan that, we believe, will permit investors to perform due diligence in the absence of specific debt and income data points.

We also are revising[644] or removing[645] certain other proposed data points to further mitigate re-identification risk concerns since the responses to these items will be made available to the public through EDGAR.[646] We do not believe these proposed requirements necessarily would have increased re-identification risk alone, but we have concluded that these data points, if adopted as proposed, could disclose sensitive obligor data without providing additional information necessary for investor due diligence.

Finally, in response to commenters' suggestions, we have obtained guidance from the CFPB on the application of the FCRA to the proposed disclosure requirements.[647] In a letter issued to the Commission dated August 26, 2014, the CFPB stated that the FCRA will not apply to asset-level disclosures that exclude direct identifiers where the Commission determines that disclosure of such information is ''necessary for investors to independently perform due diligence.''[648] Specifically, the CFPB letter confirms that (i) issuers and the Commission would not become consumer reporting agencies by obtaining and disseminating asset level information, and (ii) no violation of Section 604(f) of the FCRA[649] would occur if issuers or the Commission obtain or disseminate any information that is a consumer report (such as a credit score), in each case if the Commission determines that disclosure of the information is necessary for investors to independently perform due diligence and that the information should be filed with the Commission and disclosed on EDGAR to best fulfill a Congressional mandate. As noted above, we have revised or eliminated certain asset-level data points that implicate consumer privacy concerns where we determined that doing so would not compromise investors' ability to perform due diligence on the underlying assets. We believe the asset-level data points that we are requiring about underlying obligors for ABS involving consumers assets are necessary for investors to perform due diligence, as required by Section 7(c). After taking these steps and after careful consideration of alternative means of disseminating such information, we have determined that having the information filed with the Commission and disclosed on EDGAR is the most effective means of ensuring that investors have access to asset-level data.

As discussed above, we have taken significant steps to reduce the re-identification risk associated with providing certain asset-level data while adhering to the statutory mandate in Section 7(c) to require disclosure of such information to the extent necessary

[637] *See* proposed Item 2(a)(11) of Schedule L. For RMBS, we are adopting a data point that indicates whether or not a broker originated or was involved in the origination of the loan as well as a data point that discloses the National Mortgage License System registration number for the company that originated the loan. These data points will allow investors to compare loans by particular originators and across originators. Investors will also be able to compare loans where a broker was used. Together, these data points will provide investors with information they need to perform due diligence and make informed investment decisions. See new Items 1(c)(24) and 1(c)(26) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[638] *See* proposed Item 2(b)(3) of Schedule L. We are also omitting the original property valuation data points because we believe they could provide a close approximation of sales price, and thus could have raised the same re-identification concern as sales price. *See also* proposed Items 2(b)(5), 2(b)(6), 2(b)(7), 2(b)(8), and 2(b)(9) of Schedule L. For RMBS, we believe that certain other data points we are adopting, such as Original loan amount and Original loan-to-value, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(3) and 1(d)(11) of Schedule AL. For Auto ABS, we are adopting data points that capture the vehicle value, as these values are already made publicly available from sources such as the Kelly Blue Book. See new Items 3(d)(7), 3(d)(8), 4(d)(6) and 4(d)(7) of Schedule AL.

[639] *See* proposed Items 1(a)(5) and 1(a)(14)of Schedule L. *See also* letters from ABA III, Lewtan, MBA I, and SFIG II. We believe that certain other data points we are adopting, such as Original loan maturity date, Original amortization term and Remaining term to maturity, will provide investors with information they need to perform due diligence and make informed investment decisions. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2) of Schedule AL. Because the same publicly available property records are not available for auto loans and leases, we are adopting data points that capture the month and year of origination and the original first payment date for Auto ABS. *See* new Items 3(c)(2), 3(c)(10), 4(c)(2), and 4(c)(10) of Schedule AL.

[640] *See* proposed Items 2(c)(24) and 2(c)(25) of Schedule L and proposed Items 2(c)(1), 2(c)(2), 2(c)(3), 2(c)(4), 2(c)(5), 2(c)(6), 2(c)(7), 2(c)(8), 2(h), 2(k)(2), 2(k)(3), 2(k)(4), 2(k)(5), 2(k)(7), 2(k)(8), 2(k)(11), 2(k)(12), 2(k)(13), and 2(m)(3) of Schedule L–D. While commenters did not specifically note that these data points would pose re-identification risk, we received letters about the sensitivity of the data. *See, e.g.,* letters from Deutsche Bank, MBA IV, and SIFMA/FSR I-dealers and sponsors. RMBS issuers will, however, be required to provide information about an asset in the pool that is subject to a foreclosure, or if the reason for non-payment by an obligor is due to bankruptcy. *See* new Items 1(g)(33), 1(r)(1), 1(r)(2), 1(r)(3), 1(r)(4), 1(r)(5), 1(v)(1) and 1(v)(2) of Schedule AL. These data points were not proposed and are not relevant for Auto ABS.

[641] Investor members of one commenter noted that this information is useful for verifying DTI calculations. *See* letter from ASF I.

[642] *See* letters from VABSS IV, Wells Fargo III, and WPF II.

[643] *See* Section III.A.2.b)(3) Automobile Loan or Lease ABS above for a discussion of the payment-to-income ratio data points that are being adopted in lieu of proposed data points that would have collected obligor or lessee income information. There were no data points proposed for Auto ABS that would have collected obligor or lessee debt information.

[644] *See, e.g.,* proposed Item 2(l)(13) Eviction start date of Schedule L–D (revised to new Item 1(s)(8) Eviction indicator of Schedule AL). Similar data points were not proposed for Auto ABS.

[645] *See, e.g.,* proposed Items 2(c)(13) Liquid/cash reserves, 2(c)(14) Number of mortgages properties, 2(c)(18) Percentage of down payment from obligor own funds, 2(c)(20) Self-employment flag; 2(c)(21) Current other monthly payment, 2(d)(6) Mortgage insurance certificate number, 2(a)(1) Non-pay reason, and 2(l)(14) Eviction end date of Schedule L–D. Similar data points were not proposed for Auto ABS.

[646] These changes involved modifying the possible responses, such as removing certain responses from the coded list of possible responses. For example, in new Item 1(c)(1) Original loan purpose of Schedule AL, which was proposed as Item 2(a)(1) of Schedule L, we are removing certain possible responses from the enumerated list of codes due to privacy concerns.

[647] Commenters also raised concerns about the applicability of other federal and state privacy laws and analogous foreign laws. We do not believe the final rules are likely to implicate these other laws for a variety of reasons, including that they do not require disclosure of direct identifiers (PII) and because certain of these laws provide an exemption for the disclosure of information in order to comply with federal, state or local laws and other applicable legal requirements. More generally, we believe the changes we are adopting to help address privacy concerns should help to mitigate concerns about the applicability of other privacy laws.

[648] *See* Section 7(c) of the Securities Act [15 U.S.C. 77g(c)].

[649] 15 U.S.C. 1681b(f).

for investors to independently perform due diligence. We do recognize, however, that the final rules do not completely eliminate the risk of obligor re-identification [650] and there may be costs associated with providing certain sensitive information required by the final rules. These costs may include costs to issuers of consulting with privacy experts to understand the impact of providing these disclosures. We also recognize that some issuers and investors may move to unregistered offerings, which may affect capital formation.[651] Alternatively, the increased costs may be passed on to the underlying obligors in the form of a higher cost to borrowers (e.g., interest rates or fees).

Re-identification risk can also increase the cost of capital due to obligor preferences. If an obligor is particularly sensitive to the possibility of re-identification, the obligor may prefer to transact with originators that offer additional methods for preserving anonymity, which could increase that obligor's cost of or access to capital. For example, if a loan agreement gives an obligor the ability to opt out of disclosure, thereby prohibiting the ability to securitize the loan where asset-level information would be disclosed, originators may pass costs on to the obligor. Originators could also bear some increased costs if, as a result of being unable to securitize the loan or sell it to the GSEs, the originator would hold the asset on its balance sheet, thus limiting its ability to redeploy capital to more productive or efficient uses. In addition, the risk of re-identification could limit an obligor's access to capital if the obligor is unable to obtain assurances, even at a higher cost, that his or her loan would not be securitized in a way that gives rise to a potential risk of re-identification. Ultimately, an obligor's sensitivity to re-identification risk could lead to a reduction in the number of loans available for securitization. This could, in turn, lead to a reduction in liquidity of ABS markets and a corresponding increase in cost of capital even for those loans that are otherwise securitized through registered offerings.[652] In general, for these reasons, we believe that reducing the likelihood of obligor re-identification will reduce the impact of these potential costs of asset-level disclosure for the ABS market.

As discussed above, in considering how to modify the proposed disclosures to reduce the risk of re-identification, we considered the specific recommendations of commenters and current disclosure practices. Although we received various suggestions for reducing re-identification risk, commenters did not provide any data or analysis that quantified the likelihood of re-identification based on the proposed disclosures or their suggested approaches to addressing re-identification risk. Some commenters indicated that using less precise geographic identifiers would reduce the risk that an obligor could be re-identified.[653] Using less precise data points for sales price and origination date would also reduce the risk of re-identification.

To help confirm the effect of requiring less precise information, we performed an analysis of various modifications to the required data points. In particular, we have estimated the likelihood of isolating a unique mortgage in a sample pool of mortgage loans by considering different levels and combinations of precision for the geographic location of the property, sales price, and origination date. Our analysis examined mortgages collected from mortgage loan servicer providers and reported in the MBSData, LLC, dataset, which includes asset-level data for most of the mortgages securitized in the private-label RMBS market during the period from 2000 to 2012.[654] Categorizing loans according to their uniqueness is the first step someone could take to re-identify an obligor. Each of the 19.3 million mortgages reported during this period were sorted according to uniqueness of three loan characteristics—geographic location, sales price, and origination date—which could potentially link the mortgage to another publicly available dataset that contains obligors' identities.[655] We assume that loans that have unique values for these three variables, when compared to all other loans in the MBSData dataset, have an elevated potential for obligor re-identification. We note, however, that our analysis is not an actual measure of re-identification risk. Importantly, in order to actually re-identify an obligor, a unique mortgage must also be matched with publicly available data sources, such as from local government real estate transaction ledgers and tax records that contain information on property addresses, sales prices, and origination dates.[656] We have not attempted to quantify the likelihood that a unique mortgage, once isolated, can be matched with publicly available data sources. Instead, we have focused our analysis on this first step of the re-identification process, which is to isolate a unique mortgage.

To provide a basis for comparison, we first considered the likelihood of identifying a unique loan using a 5-digit zip code for the property location, the exact sales price and the exact origination date. Approximately 76% of the 19.3 million loans analyzed are unique when these three characteristics are compared across all mortgages in the database. That is, these loans could be distinguished from all other loans with respect to geography, imputed sales price, and origination date, and they were originated in states for which there

[650] In this regard we note that there is continuing debate about the ability to fully anonymize or ''de-identify'' a data set and whether it is possible to have any confidence that re-identification risk can be totally mitigated. *See, e.g.,* Paul Ohm, ''Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization,'' 57 UCLA L. Rev. 1701 (2010); Arvind Narayana and Vitaly Shmatikov, ''Myths and Fallacies of 'Personally Identifiable Information,''' 53 Comm. ACM 24, 26 n.7 (2010) (''The emergence of powerful reidentification algorithms demonstrates not just a flaw in a specific anonymization technique(s), but the fundamental inadequacy of the entire privacy protection paradigm based on 'de-identifying' the data.''). *But see* Jane Yakowitz, ''Tragedy of the Data Commons,'' 25 Harv. J.L. & Tech., 1 (2011) (expressing concern about the impact of reducing the availability of de-identified data for medical research purposes).

[651] *But see* letter from Lewtan (noting that this course is less likely, because although unregistered offerings may provide for more customized data delivery where an issuer has more direct control, the issues surrounding FCRA exposure are the same as if the securitization were made through a registered offering).

[652] *See* letter from SIFMA/FSR I-dealers and sponsors (noting that increased costs would ultimately be passed on to consumers, including an increase in financing costs and a decrease in credit availability).

[653] *See, e.g.,* letters from ABA III (recommending 2-digit zip code), CFA II (suggesting aggregation of geographic location), and Treasurer Group.

[654] Loan-level data is available on Fannie Mae and Freddie Mac Web sites; however, we did not incorporate this data into our analysis because we believe that historically the characteristics of loans purchased and securitized by GSEs have been somewhat different from the characteristics of loans securitized through private-label RMBS. We do not expect that incorporating the GSE data would significantly reduce the likelihood of finding records with unique characteristics among properties bought with mortgages securitized through private-label RMBS.

[655] Because the required asset-level disclosures do not include sales price, in our analysis, we have imputed it from the reported loan amount and LTV ratio and rounded to the nearest $100. Although the origination date is not required to be disclosed, it can be approximated in many cases using other required data points, such as Original loan maturity date, Original amortization term and Remaining term to maturity. *See* new Items 1(c)(4), 1(c)(5) and 1(g)(2).

[656] We have not analyzed re-identification techniques using commercially available datasets (e.g., datasets from consumer reporting agencies) because even though using such data may be more effective in re-identification, providers of such datasets usually charge a fee and impose restrictions on their usage, such as, access controls and user identity verification.

is no prohibition on public disclosure of the property sales price.[657]

We next considered the likelihood of identifying a unique loan using the required disclosures in the final rules. As discussed above, we are modifying the required geographic identifier from MSA, as proposed, to a 2-digit zip code and are requiring securitizers to report only the original amortization term, and remaining term to maturity, from which year and month of origination can be approximated, but not the precise origination or sales date.[658] Based on the historical data and the same method described above of determining uniqueness, we estimate that by requiring 2-digit zip code, imputed sales price, and the month and year of origination, less than 20% of mortgages in the sample pool could be unique in their characteristics. This is also significantly lower than the almost 30% likelihood of isolating a unique loan determined based on the required disclosure items in the 2010 ABS Proposal.[659]

These estimates, however, do not fully reflect the difficulty of actually re-identifying an underlying obligor.[660] As noted above, the loan would have to be matched to a record in the relevant public database of real estate transactions. As noted, some counties within states do not release property sale values. Even in those jurisdictions that do make property sale information publicly available, matching the loans to a particular property record might be challenging to do because the jurisdiction providing the information might not offer access in a way that would make the information easily accessible or in convenient format. For example, knowing the 5-digit zip code of the unique property would not necessarily be helpful in a jurisdiction that requires a street name in order to search and view records. Hence, in some cases it may be too burdensome to find the matching loan even if that information is publicly available, particularly if such search is part of a large scale matching effort (i.e., for commercial purposes). We also note that public property databases contain, in addition to property transactions with mortgages securitized through private-label RMBS, property transactions without using borrowed funds, property transactions with mortgages that are never securitized, or property transactions with mortgages that are securitized through GSEs. The addition of these other transactions only compounds the burden of matching a particular loan with a particular property record.

Although the approach that we are adopting does not eliminate the possibility of obligor re-identification, we believe it strikes the appropriate balance between privacy and transparency. Some obligors may still be particularly sensitive to the possibility of re-identification and may seek originators that offer additional methods of preserving their anonymity. We do not, however, anticipate that this will have an adverse effect on the functioning of the private-label RMBS market or the cost of capital to the originators of mortgages and their obligors because of the relatively low likelihood of re-identification associated with the revised data points. Moreover, as noted above, asset-level information has been provided by issuers and third-party data providers for private-label RMBS (although not standardized), as well as by the GSEs and Ginnie Mae,[661] and this availability has not led to market disruption or adverse effects on cost of capital for obligors. We believe that there will be significant benefits to RMBS investors by having access to obligor-specific financial information in their evaluation of the potential default risk of the securitized assets, thus improving their ability to price registered RMBS tranches. This information also will allow investors to better understand, analyze and track the performance of RMBS, and, in turn, will allow for more accurate ongoing pricing and increase market efficiency.[662]

We acknowledge that further modification of certain data points could further reduce the risk of obligor re-identification. For example, several commenters emphasized the importance of geographic location in potentially re-identifying an underlying obligor.[663] Based on our analysis, eliminating a geographic identifier reduces the likelihood of isolating a unique mortgage in the sample pool to less than 2%. We considered whether further modification to certain data points will reduce transparency of critical data points for ABS investors. As we discuss below, we believe that a geographic location identifier is critical to pricing RMBS and is therefore necessary for investors to perform due diligence.

To confirm our view, and the views of commenters,[664] that certain data points are critical for ABS investment decisions, we analyzed the potential pricing impact of various data points on RMBS transactions. Our analysis indicates that, for RMBS, certain characteristics and loan term features, such as geographic location, are key determinants of expected performance of underlying mortgage loans as measured by the historical rate of serious delinquency (''SDQ'').[665] We used a model to predict the presence or absence of SDQ within a historical dataset of private-label securitized loans.[666] We found that, by a wide margin, the following four data points make the largest contribution to explaining SDQ:[667] the year of

[657] Some states (or counties within states) consider the property sales value to be private and confidential information and therefore do not release these numbers publicly. These states include: Alaska, Idaho, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, Texas, Utah and Wyoming. The analysis does not account for non-disclosure counties that lie within a state that allows for disclosure.

[658] As discussed below, this change should not materially impact an investor's ability to price RMBS tranches, but will significantly lower the probability that a mortgage is unique in its characteristics.

[659] As noted above, the proposal would have required a geographic identifier of MSA, exact sales price and the month and year of origination.

[660] This technique is based on historical data and may not necessarily reflect future re-identification likelihoods. Also, in the future, securitizers that are conscious of privacy implications may avoid securitizing loans that have high risk of being identified (i.e., loans that are unique in their characteristics).

[661] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[662] This would also apply to other asset classes where obligor-specific financial information may be disclosed, such as Auto ABS.

[663] *See, e.g.,* letters from ABA III, SIFMA/FSR 2014 I-dealers and sponsors, SFIG II, and Treasurer Group.

[664] *See, e.g.,* letters from ABA III (recommending that the Commission consider using 2-digit zip code), ASF I (supporting exact credit score), and Mass. Atty. Gen. (noting that the DTI ratio and LTV are important metrics in an investor's assessment of risk of loss).

[665] SDQ is defined as a loan having ever been 90 days late, foreclosed, or real estate owned.

[666] We used a binomial logistic predictive model that is also referred to as a logit regression. Binomial logistic regression deals with situations in which the observed outcome for a dependent variable can have only two possible types (for purposes of this analysis—presence or absence of a serious delinquency). Logistic regression is used to predict the odds of being a case based on the value of the independent variables (i.e., the predictors). We estimate the regression model with commonly used predictive factors identified by the industry and the academic literature, such as combined LTV ratio, credit score, and DTI ratio and analyze the effects of various loan characteristics observable at origination on the ability of a researcher to forecast serious delinquency. For more details and references, see footnote 82, the White-Bauguess Study, Section V. Logit Regression Analysis (for the description of the model) and Appendix B (for variable definitions and references to studies supporting the variables choice). The analysis is based on a sample of 2,456,548 mortgages from 2000–2009 included in the MBSData dataset that have complete information for all variables of interest, in particular, DTI information.

[667] The model uses a goodness-of-fit measure (pseudo-R^2) to describe how well an SDQ can be modeled with given predictive variables. Higher R^2

Continued

origination, the LTV ratio, the geographic location of the property as measured by 2-digit zip code, and the obligor's credit score (FICO score was reported in the dataset). Our analysis shows that the year of origination provides the greatest contribution to the measure of how well these factors explain the likelihood of serious delinquency.[668] LTV, geographic location of the property and FICO score provide the next greatest contribution to explaining the likelihood of serious delinquency and have a similar magnitude in overall contribution.[669] Eliminating any of these three variables from the final disclosure requirements significantly and negatively affects the predictive ability of the model. On the other hand, in the instances we studied, providing a geographic location that represents a smaller area or the exact origination date only marginally improves the model's predictive ability,[670] but it could significantly increase the possibility of obligor re-identification.

Another approach we considered, although not specifically suggested by commenters, was an approach that rounds the loan amount, other loan balance-related data points, and monthly performance data points to further hinder potential obligor re-identification.[671] The rounding of loan amount would result in an imputed sales price that may be sufficiently different from the true sales price so as to lessen the possibility of a match to other publicly accessible real estate datasets. Rounding the loan balance to the nearest $1,000 results in the reduction of the likelihood of isolating a unique mortgage in the MBSData dataset to 11%. It would, however, come at a loss of precision in the cash flow variables that we believe is necessary for investors.[672] As noted above, such precision is key to investors' ability to analyze and track the performance of various parties involved in RMBS transactions.

We considered several alternative approaches to disseminating asset-level data as potential means to address privacy concerns, including the Web site approach.[673] Most commenters were generally opposed to the Web site approach as the appropriate means to address privacy concerns.[674] For example, commenters raised concerns about the difficulty in determining who would be a potential investor and thus should have access to asset-level data;[675] the liability for failing to disclose all material information to investors in the event a potential investor was denied access to asset-level data;[676] the need for guidance on what controls are necessary to address privacy;[677] and access to the data by other market participants.[678] Given these concerns and our belief that it is critically important that investors receive access to asset-level information, we are not adopting the Web site approach. We believe the final asset-level requirements, which have been modified from the proposal to address privacy concerns, provide investors with information they need to perform due diligence and make informed investment decisions, and therefore, we are requiring the asset-level information to be filed on EDGAR where it will be readily available to and accessible by investors. For similar reasons, we do not think it would be appropriate to restrict access to such information on EDGAR.

Commenters suggested a central repository or ''aggregated data warehouse'' to house the asset-level data because such an approach would simplify enforcement of access policies, ensure consistent data formats and lower incentives to exclude certain users.[679] Similarly, another commenter suggested that issuers disclose all asset-level data to a consumer reporting agency administered repository, along with a unique identification number for each asset, which would allow investors to access all the asset-level data for these assets.[680] Another commenter also

represents higher predictive ability of a model in forecasting SDQ of mortgages. We consequently eliminate each individual factor from predictive regression and record its impact on the reduction in the goodness-of-fit measure. Higher reduction represents higher contribution of a factor to predictive ability of the full model. The R^2 that we find here is in line with R^2 found in academic studies that perform similar analyses. *See id.*

[668] We believe this primarily is due to the fact that the year of loan origination served as a proxy for unobservable factors like the quality of underwriting standards during the years immediately preceding the financial crisis when serious delinquency rate was higher, and a large portion of the loans in the sample were originated during that time. The importance of the origination year is smaller for sub-samples that do not include loans originated in 2006–2007.

[669] Origination year contributed 5% to the goodness-of-fit measure. LTV, 2-digit zip code, and the obligor's credit score contributed about 1.5% each. All other 12 data points we considered made a comparatively smaller contribution to the predictive ability of the model (1.5% combined), but are still important in predicting SDQ. These 12 data points include: Interest rate on the loan, DTI, indicators whether a loan had full documentation, had prepayment penalty provisions, was interest-only, had a balloon payment, had negative amortization, was a first lien, was long term, had a teaser rate, had private mortgage insurance, and whether the property was owner-occupied.

[670] The analysis indicated that the goodness-of-fit of the complete model (i.e., the model that includes all predictive variables considered in this study) would increase from 15.5% to 15.7% if an MSA is used instead of a 2-digit zip code, and to 16.0% if a 3-digit zip code is used instead of a 2-digit zip code.

[671] To be effective in reducing the probability of isolating a loan that is unique with respect to location, imputed sales price, and origination date, rounding loan amount (and other loan balance related variables like most recent appraised value, sales price, paid-in-full amount, etc.) to the nearest $1,000 ($10,000) must be accompanied by rounding monthly payment performance related variables approximately to the nearest $10 ($100).

[672] *See* letter from Prudential III (noting that loan-level data (e.g., current asset balance, next interest rate, current delinquency status, remaining term to maturity) will allow investors to better estimate the timing of the principal and interest cash flows of the collateral pool, which will in turn allow investors to better estimate the cash flow of the securitization and be more confident in their risk/reward consideration of the security).

[673] *See* the 2014 Re-Opening Release and the 2014 Staff Memorandum.

[674] *See* letters from ABA III, AFSA II, Capital One II, Deutsche Bank, MBA IV (with respect to RMBS), SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[675] *See, e.g.,* letters from ABA III (noting concern that without guidance as to who is a potential investor, issuers may apply their own bias filters to public offerings, such as limiting public offerings to only institutional investors), CCMR, MBA IV, and SFIG II.

[676] For example, issuers have expressed concern about possible claims for failure to disclose material information by a potential investor who is denied access to the Web site or refuses to agree to the terms of access but nonetheless purchases the security. *See, e.g.,* letters from ABA III, CCMR, ELFA II, SIFMA/FSR II-dealers and sponsors, and SFIG II.

[677] Some commenters noted that in order to determine whether a user should be granted access it would need to screen parties, conduct reviews of these parties' data protection controls, and obtain appropriate disclosure agreements, among other controls. *See* letters from MBA IV (noting, for example, that issuers would be faced with the burden of determining how to control the spread of the information once a credentialed entity accesses the Web site), SIFMA/FSR I-dealers and sponsors (noting that issuers would generally not be equipped to verify any prospective user's identity or credentials or be able to enforce compliance with the terms of access), SFIG II (noting that investors do not want the liability risk that may be imposed with the access restrictions), and Wells Fargo III.

[678] *See, e.g.,* letters from ABA III, Moody's II, and R&R.

[679] *See* letters from AFR (suggesting either a single data warehouse managed by a federal agency (e.g., the Commission, the Federal Reserve (similar to the Bank of England model), or the Office of Financial Research) or a non-profit data warehouse owned and managed by private sector entities under Commission oversight (similar to the European Data Warehouse) and VABSS II (recommending, as one option to address privacy concerns, to establish a central ''registration system'' managed by the Commission or a third party that would permit access to sensitive asset-level data only to persons who had established their identities as investors, rating agencies, data providers, investment banks or other permitted categories of users).

[680] *See* letter from SIFMA/FSR II-dealers and sponsors (noting that this approach would apply to all ABS asset classes and also noting certain developmental challenges, such as identifying a consumer reporting agency willing to act as a repository, and application of FCRA). *See also* SFIG II (stating that issuers should have the option to use

suggested that credit bureaus, instead of issuers, should provide credit-related information.[681] While these suggestions have the potential to address privacy concerns, as noted by one commenter, they are not currently in use, would require further development, and would depend upon the willing participation of certain third parties in order to function as a viable means of disseminating asset-level data.[682]

4. Requirements Under Section 7(c) of the Securities Act

As we note elsewhere, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act which requires the Commission to adopt regulations requiring an issuer of ABS to disclose, for each tranche or class of security, information regarding the assets backing that security. It specifies, in part, that in adopting regulations, the Commission shall require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence including—data having unique identifiers relating to loan brokers or originators; the nature and extent of the compensation of the broker or originator of the assets backing the security; and the amount of risk retention by the originator and the securitizer of such assets.[683]

In the 2011 ABS Re-Proposing Release, we requested comment as to whether our 2010 ABS Proposals implemented Section 7(c) effectively and whether any changes or additions to the proposals would better implement Section 7(c). We discuss below the comments we received in response to the requests for comment regarding the requirements of Section 7(c).

(a) Section 7(c)(2)(B)—Data Necessary for Investor Due Diligence

Section 7(c)(2)(B) states, in part, that we require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary to independently perform due diligence. We requested comment in the 2011 ABS Re-Proposing Release whether the 2010 ABS Proposal implements Section 7(c) effectively. In response, two investors supported requiring asset-level disclosures for all asset types, except for credit cards.[684] The investor membership of one trade association suggested that the disclosure of relevant asset-level data is necessary for well-functioning markets[685] and another commenter suggested that the 2010 ABS proposals would successfully implement Section 7(c) of the Securities Act.[686] Two other commenters, however, questioned whether borrower data proposed in the 2010 ABS proposals was ''necessary'' for investors to perform their own due-diligence.[687] These commenters, however, did not specifically identify the asset-level disclosures that are necessary for investors to independently perform due diligence.

We are adopting asset-level requirements for RMBS, CMBS, Auto ABS, debt security ABS, and resecuritizations. We prioritized these asset classes for various reasons that we discuss above.[688] Our decision to adopt these requirements is based on our belief that investors should have access to robust information concerning the pool assets that provides them the ability to independently perform due diligence. We continue to consider the appropriate disclosures for other asset classes. We believe the data points we are adopting fulfill, for those asset types, the Section 7(c) requirement that we adopt asset-level disclosures that are necessary for investors to independently perform due diligence. To the extent issuers believe additional data is needed, we encourage them to provide such additional disclosures in an Asset Related Document.[689]

(b) Section 7(c)(2)(B)(i)—Unique Identifiers Relating to Loan Brokers and Originators

Section 7(c)(2)(B)(i) requires the Commission to require disclosure of asset-level or loan-level data, including, but not limited to, data having unique identifiers relating to loan brokers or originators if such data are necessary for investors to independently perform due diligence. In the 2010 ABS Proposing Release, we proposed to require issuers to provide the originator's name for all asset types and, if the asset is a residential mortgage, the MERS number[690] for the originator, if available. We also proposed requiring RMBS issuers to provide the National Mortgage License System registration number required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, otherwise known as the NMLS number, for the loan originators and company that originated the loan.[691]

In the 2011 ABS Re-proposing Release, we stated our belief that the proposal to require NMLS numbers would implement the requirements of Section 7(c) with respect to mortgages by requiring a numerical identifier for a loan broker.[692] We requested comment on whether unique identifiers for loan brokers and/or originators were necessary to permit investors to independently perform due diligence for asset classes other than RMBS or CMBS and, if so, whether there is a unique system of identifiers for brokers and originators for other asset classes.[693] We did not receive any comments suggesting this requirement would not satisfy the requirements of Section 7(c), although one commenter opposed requiring an NMLS identifier (for RMBS) because disclosure should focus on the collateral and its performance and an NMLS identifier does not provide investors with information they can use to value the assets.[694]

For RMBS, we are adopting the requirement that issuers provide for ABS backed by residential mortgages the NMLS number of the loan originator company. As noted above, we are not adopting the requirement that issuers provide a unique broker identifier, (i.e., the NMLS number of the specific loan originator) because we are concerned this disclosure may increase re-identification risk.[695] Even though we

third party agents (which may be a consumer reporting agency or a central Web site data aggregator) to make the data available and control access, but also noting that such an approach still raises privacy law concerns and concerns about who pays for the third-party service).

[681] *See* letter from ABA III.

[682] *See* letter from SIFMA/FSR II-dealers and sponsors.

[683] *See* Section 7(c)(2) of the Securities Act, as added by Section 942(b) of the Dodd-Frank Act.

[684] *See* letters from MetLife II and Prudential II.

[685] *See* letter from SIFMA II-investors (stating that well-functioning markets require the disclosure of as much relevant asset-level data as is reasonably available).

[686] *See* letter from Chris Barnard dated Aug. 22, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''C. Barnard'').

[687] *See* letters from ABA III and MBA IV.

[688] *See* Section III.A.1 Background and Economic Baseline for the Asset-Level Disclosure Requirement.

[689] *See* Section III.B.4 Asset Related Documents for further discussion on how to provide such additional disclosures.

[690] MERS has developed a unique numbering system and reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan.

[691] The NMLS numbers for the originator and the company refer to the individual and company taking the loan application, which would include loan brokers and the company that the broker works for. We noted in the 2011 ABS Re-Proposing Release that we were unaware of any other unique identifying systems used for the purpose of identifying brokers or originators of other asset types, across all asset types or within an asset type.

[692] *See* the 2011 ABS Re-Proposing Release at 47965–66.

[693] *See* the 2011 ABS Re-Proposing Release at 47966.

[694] *See* letter from MBA III.

[695] *See* Section III.A.3 Asset-Level Data and Individual Privacy Concerns.

are not requiring disclosure of the NMLS loan originator number, we believe disclosure of the NMLS number of the loan originator company satisfies Section 7(c)(2)(B)(i) regarding the asset-level disclosure of unique identifiers for loan brokers or originators. We believe this disclosure should, over time, allow investors to compare loans originated by particular loan originator companies and determine whether there is any correlation to the performance of the loan. This should facilitate independent investor due diligence with respect to the loan pools underlying RMBS.

We are unaware of unique identifiers for loan originators and, if applicable, brokers within the commercial mortgage, auto loan and lease, and debt security markets. We note the ongoing development of certain identifiers, but we are uncertain, at this time, especially due to the lack of response to our request for comment, whether a unique identifier for loan originators for these asset classes is necessary for investor due diligence. Therefore, at this time, we are not adopting unique identifiers for loan originators or brokers within the CMBS, Auto ABS or debt security markets.

(c) Section 7(c)(2)(B)(ii)—Broker Compensations and Section 7(c)(2)(B)(iii)—Risk Retention by Originator and the Securitizer of the Assets

In the 2010 ABS Proposing Release, we did not propose requiring asset-level disclosures of broker compensation or risk retention held by loan originators or securitizers. Section 942(b) of the Dodd-Frank Act, however, amended Section 7(c) of the Securities Act to require disclosure on an asset-level or loan-level basis with respect to the nature and extent of the compensation of the broker or originator of the assets backing the security and the amount of risk retention by the originator and the sponsor of such assets if these disclosures are necessary for investor due diligence. In the 2011 ABS Re-Proposing Release, we requested comment on whether these disclosures were necessary for investor due diligence.

We received few comments on these portions of Section 7(c) in response to our requests for comments. One commenter stated that disclosure of broker compensation was appropriate to require because it ''is necessary for evaluating how the compensation structure associated with an asset—including possible conflicts of interest—might affect its quality.'' [696] The same commenter believed that asset-level or loan-level disclosure of risk retention held by an originator or sponsor ''would undoubtedly be of value to investors as they perform due diligence and assess the quality of the offering.'' [697] This commenter stated that we must require asset-level risk retention disclosure because of the ''many forms of risk retention that have been proposed in accordance with Section 941(b) of the Dodd-Frank Act, including vertical, horizontal, and other configurations'' and because ''[e]ach of those forms of risk retention presents a different risk profile, depending on the specific underlying assets that are subject to the risk retention.'' [698]

A CMBS issuer and a trade association did not believe that broker compensation disclosure in the prospectus would be useful to investors in performing due diligence on the assets in the pool.[699] The CMBS issuer stated that the general due diligence focus for CMBS was whether the income-producing potential of the underlying commercial property was sufficient to service the debt that it secures and broker compensation does not assist that analysis.[700] Another trade association stated that it did not support disclosure of asset-level risk retention disclosures because its ''members do not believe this would add any value in the CMBS industry.'' [701]

We did not receive any comments from investors suggesting that disclosure of broker compensation is necessary for their due diligence. While the disclosure of broker compensation on an asset-level basis may provide some value to investors in assessing possible conflicts of interest, we are not persuaded at this time that such information is necessary for investors to independently conduct due diligence.

With respect to asset-level risk retention, we are not persuaded at this time that additional requirements relating to risk retention, on an asset-level basis, are needed for investors to independently conduct due diligence. A sponsor, however, will be required to provide information, on an aggregate basis, about its retained interest in a securitization transaction. As explained below, we are adopting amendments to Items 1104, 1108, and 1110 of Regulation AB that will require disclosure regarding the sponsor's, a servicer's, or a 20% originator's interest retained in the transaction, including the amount and nature of that interest.[702] The disclosure would be required for both shelf and other offerings. We note the recent re-proposal of the credit risk retention rules, issued jointly by the Commission and other agencies, implementing Section 941 of the Dodd-Frank Act.[703] When adopted, we will review the final credit risk retention rules to determine whether additional asset-level or other disclosure requirements, if any, are appropriate. The asset-level requirements we are adopting should provide investors with transparency about the quality of the assets in a securitization.

B. Asset-Level Filing Requirements

1. The Timing of the Asset-Level Disclosure Requirements

This section, Section III.B.1, is divided into two parts covering when asset-level information must be provided. Section III.B.1.a discusses when asset-level disclosures are required at the time of the offering. Section III.B.1.b discusses the frequency with which the asset-level disclosures are required on an ongoing basis. Section III.B.2 discusses the scope of asset-level data required at the time of the offering and on an ongoing basis.

(a) Timing of Offering Disclosures

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require asset-level information of asset pool characteristics at the following times during the offering process:

- At the time the preliminary prospectus is filed.
- At the time the final prospectus is filed.
- With an Item 6.05 Form 8–K if the requirements of Item 6.05 were triggered.[704]

[696] *See* letter from Better Markets.

[697] *Id.*

[698] *Id.*

[699] *See* letters from MBA III and Wells Fargo & Co. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Wells Fargo II'').

[700] *See* letter from Wells Fargo II.

[701] *See* letter from CRE Finance Council dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''CREFC II'').

[702] *See* Items 1104, 1108 and 1110 of Regulation AB [17 CFR 229.1104, 17 CFR 229.1108 and 17 CFR 229.1110].

[703] *See* the 2013 Risk Retention Re-Proposing Release.

[704] Under the existing Item 6.05 requirement, if any material pool characteristic of the actual asset pool at the time of issuance of the securities differs by five percent or more (other than as a result of the pool assets converting to cash in accordance with their terms) from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, the issuer must provide certain disclosures regarding the actual asset pool, such as that required by Items 1111 and 1112 of Regulation AB. Under a proposed revision to Item 6.05 of Form 8–K, we proposed that a new Schedule L be filed if assets are added to the pool during the reporting period, either through prefunding periods, revolving periods or substitution, and the triggers of Item 6.05 are met.

(2) Comments on Proposed Rule

Only one commenter responded to our proposal that the asset-level disclosures be required at the time of the offering. This commenter stated the proposal seemed to cover the period of offering sufficiently.[705]

(3) Final Rule and Economic Analysis of the Final Rule

Under the final rule, as proposed, those issuers that are required to provide asset-level data must provide all of the required asset-level disclosures in a preliminary prospectus and the final prospectus. Requiring that asset-level disclosures be filed by the same time a preliminary prospectus is filed will provide investors more time to analyze the asset-level data in advance of an investment decision. We acknowledge that every time asset-level disclosures are filed issuers likely will incur filings costs and costs to verify the data. We believe the costs incurred to provide this information are justified in order to provide investors access to relevant data about the assets underlying the particular ABS offering in advance of their investment decision. In addition, we believe providing investors time to analyze the asset-level data may result in better pricing and therefore may improve allocative efficiency and facilitate capital formation. Compliance costs are minimized, to some extent, because if there has been no change to the asset-level information provided with the preliminary prospectus, then under current requirements, this information can be incorporated by reference into the final prospectus. This eliminates the costs associated with re-filing the information.

Under the proposal, an issuer would have been required to provide updated asset-level disclosures about the pool composition, including characteristics of new assets added to the pool, if an Item 6.05 Form 8–K was triggered.[706] Under the final rules, asset-level information about the actual pool composition is required with each Form 10–D. Therefore, we do not believe that issuers should also incur the cost to provide asset-level information if an Item 6.05 is triggered.

(b) Timing of Periodic Disclosures

(1) Proposed Rule

We also proposed in the 2010 ABS Proposing Release to require ongoing asset-level disclosures. Under the proposal, asset-level disclosures would be required at the time of each Form 10–D, which under current requirements is within 15 days after each required distribution date on the ABS.

(2) Comments on Proposed Rule

With respect to when and how frequently the ongoing asset-level disclosures should be provided, comments varied. One commenter recommended that the required disclosures be provided on the distribution date rather than 15 days thereafter.[707] Some commenters noted that industry standards for CMBS make ongoing disclosures available earlier than when the proposal would require them.[708]

With respect to how frequently the ongoing asset-level disclosures should be provided, comments varied. For instance, a few commenters suggested we require disclosure on the day of an ''observable event,'' or promptly thereafter.[709] Alternatively, one commenter suggested requiring less asset-level data each month or allowing issuers to provide the data annually or quarterly.[710] Other commenters stated that the asset-level disclosures should not be required on a daily basis or on a timeframe that occurs less than monthly.[711] Relatedly, one commenter stated that the final rule should include an instruction clarifying that the ongoing asset-level information reported for any particular reporting period may be reporting information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.[712]

(3) Final Rule and Economic Analysis of the Final Rule

The final rule requires, as proposed, that issuers provide the asset-level disclosures at the time of each Form 10–D. As discussed, however, in Section III.B.2 the scope of information required with each Form 10–D has changed to also include the same set of data points that were required in the prospectus. We are not persuaded by commenters' suggestions that the ongoing asset-level disclosures be provided quarterly, annually or monthly, because reporting at these times may be outside the time when such disclosures are normally collected. The requirement to file a Form 10–D is tied to the distribution date on the ABS, as specified in the governing documents for the securities. In effect, tying the asset-level disclosures to each Form 10–D filing aligns the frequency of the disclosures to the payment cycle (when data about the collections and distributions is captured) which should minimize the burdens and costs to issuers of collecting such information. For investors, receiving asset-level data tied to the payment cycle should allow them to conduct their own valuation and risk analysis of each asset in the pool at periods close in time to when the data is captured and other distribution information is already being reported. This should allow investors to understand, on an ongoing basis for the life of the investment, how the performance of any particular asset is affecting pool performance.

We also believe that only requiring asset-level disclosures on a quarterly or monthly basis may not provide investors with timely access to data about the performance of pool assets because it ties the reporting of asset-level disclosures to a timeframe that may be outside the payment cycle when the data is normally captured, which may increase costs or inhibit investors' ability to make timely and informed ongoing investment decisions. For instance, if asset-level reporting was required monthly, but the payment cycle occurred every six months, then requiring a filing on a monthly basis

See footnote 235 of the 2010 ABS Proposing Release.

[705] *See* letter from MBA I (stating that if the Commission requires a Schedule L for CMBS, then they do not recommend the inclusion of Schedule L data at other times as the proposal seems to cover the period of offering sufficiently).

[706] *See* footnote 235 of the 2010 ABS Proposing Release.

[707] *See* letter from MetLife I.

[708] *See* letters from BoA I, MBA I, MBA IV, and Wells Fargo I (referring to the CREFC IRP making disclosures available 15 days earlier than what the proposal would require).

[709] *See* letters from TYI and CoStar (both defining ''observable events'' as any of the following: (1) Payment (and the amount thereof) by the obligor on such loan or receivable; (2) failure by the obligor to make payment in full on such loan or receivable on the due date for such payment; (3) amendment or other modification with respect to such loan or receivable; or (4) the billing and collecting party becomes aware that such obligor has become subject to a bankruptcy or insolvency proceeding).

[710] *See* letter from AFSA I (suggesting that monthly reports are cumbersome and the data does not change that often).

[711] *See* letters from ABA I (suggesting that it would be burdensome or impossible to provide intra-month updates because of system limitations that would prevent more frequent data collection and that data is only comparable if consistently collected at the same point in time) and Wells Fargo I (suggesting that, for RMBS and CMBS, requiring ongoing disclosures on a daily basis or less than monthly is inappropriate because the marginal benefit to investors would not justify the costs).

[712] *See* letter from Wells Fargo I (stating that CMBS transactions often involve multiple loans with different financial reporting dates, and the information has to be reviewed by the appropriate parties, including the servicer, and normalized before it is provided to the filer, which can result in substantial delays between the time information is received and is reported on Form 10–D).

may unnecessarily increase costs without a corresponding benefit. If reporting was required on a quarterly basis, but the payment cycle was monthly, then in instances where the performance of pool assets deteriorates or the pool assets change, investors would not receive timely updates about such events. This may impact their ability to spot developing trends, thus limiting their ability to make informed ongoing investment decisions with respect to the ABS.

We are also not persuaded that we should require reporting any time an ''observable event'' occurs with respect to a single asset because we do not believe that the benefits to investors of such a requirement would justify the costs to issuers of capturing and reporting data in a timeframe that falls outside when data is typically captured and reported. Reporting on an observable event basis could result in the issuer constantly updating the data. As noted above, we believe providing investors access to timely and relevant asset-level disclosures and minimizing costs to issuers is best achieved by requiring asset-level disclosures be provided with each Form 10–D, which means the disclosures will be provided in a timeframe that is in line with the payment cycle and when the data is typically captured.

The final rule also requires that the asset-level disclosures be provided for each asset that is in the pool at any point in time during the reporting period. Therefore, if a substitution occurred during the reporting period, then asset-level disclosures are required for both the loan added and the loan removed during the reporting period in which the change occurred. Providing investors with disclosure about assets that are added and removed will allow investors to understand the actual composition of the asset pool over the life of a security. This will benefit investors by allowing them to assess on an ongoing basis the current risk of the collateral pool and to compare the characteristics of the assets involved in a substitution. We recognize that this benefit to investors will result in increased reporting costs to sponsors and ABS issuers.

A commenter suggested the final rule include an instruction clarifying that the information reported for any particular reporting period may be information from a prior reporting period due to delays that can occur between the time when asset-level information is received and such information is ready to be reported.[713] We are not persuaded that this is a significant problem for issuers; therefore the final rule does not include such an instruction. The transaction agreements specify a distribution date to investors that is generally sometime after the end of a reporting period so that the amounts of a distribution may be calculated so that reports may be prepared. Consistent with current requirements, the Form 10–D is required to be filed 15 days after each required distribution date on the ABS and accordingly, because the asset-level disclosures are included in the Form 10–D disclosure requirements, they are due at the same time. Based on current market practice, the amount of time between the end of a reporting period and filing of a Form 10–D may be four weeks or more. Therefore, we believe aligning the timing of filing the asset-level disclosure with current Form 10–D reporting requirements will not be costly and will provide a sufficient period of time for the appropriate parties to review the information before filing.

2. The Scope of New Schedule AL

Section III.B.1 discussed when asset-level disclosures are required at the time of offering and on an ongoing basis. This section discusses the scope of those required asset-level disclosures required at the time of the offering and on an ongoing basis.

(a) Proposed Rule

(1) Offering Disclosures

As noted above, in the 2010 ABS Proposing Release, we proposed to add the prospectus disclosure requirements in new Item 1111(h) and new Schedule L to Regulation AB. We also proposed data points related to each asset. Proposed Schedule L focused, in general, on providing investors asset-level data about the credit quality of the obligor, the collateral related to each asset and the cash flows related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time. Schedule L contained some data points capturing some loan performance data.[714] As noted above, proposed Schedule L would have been provided at the time of the preliminary prospectus. We also proposed that an updated Schedule L be provided with the final prospectus.[715] Finally, we proposed that, if issuers are required to report changes to the pool under Item 6.05 of Form 8–K, then an updated Schedule L would be required.[716] We also requested comment on whether Schedule L data should be required at any other time.[717]

Under our proposed revisions to Item 6.05 of Form 8–K, we proposed that a new Schedule L be filed if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more from the description of the asset pool in the prospectus.[718] Based on comments received, it seemed that it may not be clear that an Item 6.05 Form 8–K would be required when prefunding or revolving assets increased or changed the pool by 1% or more, although that was the intent of the proposal. Therefore, in the 2011 ABS Re-Proposing Release, we requested additional comment about whether we should clarify that a new Schedule L would be required with an Item 6.05 Form 8–K when assets are added to the pool after the issuance of the securities either through prefunding periods, revolving periods or substitution and the triggers in Item 6.05 are met.[719] The Schedule L provided with an Item 6.05 Form 8–K would provide investors with the current pool composition including data related to the cash flows related to a particular asset, data that allows for better prepayment analysis or credit analysis and data about the property. We also requested comment on whether the updated Schedule L should include all assets in the pool and whether the Schedule L should be an exhibit to a Form 8–K or to a Form 10–D.[720]

(2) Periodic Disclosures

In the 2010 ABS Proposing Release, we also proposed ongoing disclosure requirements in Item 1121(d) and Schedule L–D. Proposed Schedule L–D

[713] *See* letter from Wells Fargo I.

[714] *See, e.g.,* proposed Items 1(b)(5) and 1(b)(6) of Schedule L.

[715] *See* proposed Item 1125 of Regulation AB and the 2010 ABS Proposing Release at 23356.

[716] In footnote 235 of the 2010 ABS Proposing Release we stated that if a new asset is added to the pool during the reporting period, an issuer would be required to provide the asset-level information for each additional asset pursuant to proposed revisions to both Item 1111 of Regulation AB and Item 6.05 of Form 8–K. *See* the 2010 ABS Proposing Release at 23356.

[717] *See* the 2010 ABS Proposing Release at 23356.

[718] *See* the 2010 ABS Proposing Release at 23392. As proposed, if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by 1% or more than the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, an issuer would be required to file an Item 6.05 Form 8–K and provide the disclosures required under Item 1111 and Item 1112 of Regulation AB. Under proposed Item 1111(h) of Regulation AB issuers would be required to provide a Schedule L. In addition, the item, as proposed to be revised, also would require a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

[719] *See* the 2011 ABS Re-Proposing Release at 47970.

[720] *Id.*

would require, in general, disclosures corresponding to payments received during the payment cycle, as well as amounts past due and the servicer's efforts during the payment cycle to collect past due amounts. Proposed Item 1121(d) and Schedule L–D disclosure would be provided at the time of each Form 10–D. We also requested comment in the 2010 ABS Proposing Release about whether Schedule L–D data should be provided at other times.[721]

(b) Comments on Proposed Rule

We received limited response to the request for comment on whether Schedule L and Schedule L–D data should be provided at any other time. Commenters generally indicated that the disclosures enumerated in Schedule L and Schedule L–D may be appropriate at other times than proposed. For instance, one investor stated that the same disclosures for all ABS sectors (other than CMBS) should be required for offering documents and ongoing reports.[722] The investor recognized that certain data will be static, while other data will change from month to month. Another investor stated that for transactions involving a prefunding period or revolving period, a new Schedule L should be filed monthly when new collateral is added.[723]

In response to the questions asked in the 2011 ABS Re-Proposing Release about clarifying that a new Schedule L would be required with an Item 6.05 Form 8–K, an investor reiterated its earlier position that issuers should file a Schedule L at issuance and each month new assets are added to the collateral pool.[724] The investor added that this would allow investors to evaluate the changing nature of the risk layering introduced by the new assets and it would allow investors to confirm that the quality of the newly added collateral meets the expected origination practices of the issuer.[725]

One commenter noted that current rules require that updated information about the characteristics of the collateral in the pool be provided with the Form 10–D, rather than in a Form 8–K.[726] The commenter, however, also believed requiring an updated Schedule L for assets added after the measurement date for revolving asset master trusts is inappropriate because the asset composition of these trusts changes on a daily basis during its revolving period and, therefore, an issuer would be filing both a Schedule L and Schedule L–D each month.[727] Another commenter suggested that a new Schedule L should not be required when assets are added to the pool after issuance, either through prefunding periods, revolving periods or substitution unless the triggers under Item 6.05 of Form 8–K are met. If the 5% threshold under Item 6.05 was met, then the commenter asserted filing the Schedule L with the Form 10–D would be more efficient.[728]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a rule, based on a commenter's suggestion that the same asset-level disclosures be provided, if applicable, at the time of the offering and on an ongoing basis. Therefore, we have condensed information previously proposed to be provided in either Schedule L or Schedule L–D into a single schedule, titled Schedule AL. Schedule AL in new Item 1125 of Regulation AB enumerates all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis. The asset-level disclosures apply to each asset in the pool during the reporting period covered by Schedule AL.[729]

We believe aggregating Schedule L and Schedule L–D into one unified schedule simplifies the new rules to the benefit of both issuers and investors. For investors, we believe a unified schedule will make it easier to understand the actual pool composition and the performance of the asset pool both at issuance and on an ongoing basis. We recognize that, in certain circumstances, the pool composition may continue to change even after the final prospectus is filed. As a result, the asset-level information provided with the final prospectus may not reflect the pool composition at closing.[730] On an ongoing basis, the composition of the asset pool may change due to prefunding or revolving periods, or substitution. Under the proposal, if the assets in the pool changed after the filing of the final prospectus, then investors would have only received updated disclosures about the characteristics of the current asset pool, if an Item 6.05 of Form 8–K was triggered. Some assets could be added or removed from the pool without investors receiving updated disclosures about the changes to the composition and characteristics of the asset pool. As a result, the assets identified in the most recent Schedule L–D would not exactly match the assets identified in the last Schedule L that was filed.

Requiring that the asset-level information provided with the Form 10–D include information about the characteristics of each asset will make it easier to understand the actual pool composition at any point in time and, in particular, when the asset composition has changed through additions, substitutions or removal of assets.[731] This requirement will also make it easier to compare the characteristics of the current asset pool with the pool characteristics for a prior period or date. As a result, we believe investors will be able to better assess any potential risk layering introduced by changes to the composition of the asset pool and confirm that the quality of the newly added collateral meets expected origination practices.

Another benefit is that investors at the time of the offering will receive a more complete picture of any seasoned assets in the ABS pool, including the current performance of these assets. As we noted in the 2010 ABS Proposing Release, proposed Schedule L–D focused on whether an obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due,

[721] *See* the 2010 ABS Proposing Release at 23368.

[722] *See* letter from MetLife I (suggesting that the same disclosure be required for offering documents and ongoing reports, but that for CMBS the loan originator and the loan servicer are not affiliated and therefore, the same requirement may be impractical for CMBS).

[723] *See* letter from Prudential I (opposing additions to the collateral pool after the filing of the final prospectus except for substitutions for defaulted assets after closing).

[724] *See* letter from Prudential II.

[725] *See* letter from Prudential II (also suggesting that the newly originated collateral should also appear on Schedule L–D, ''so investors can efficiently assess how the new assets influence the risk profile of the overall collateral pool'').

[726] *See* letter from VABSS II (noting that existing Item 1121(b) of Regulation AB requires disclosure for changes in pool composition during revolving periods and prefunding periods, and Item 1121(b) states that the information is to be provided in distribution reports on Form 10–D, rather than in a Form 8–K).

[727] *See* letter from VABSS III.

[728] *See* letter from Sallie Mae II.

[729] *See* Item 1111(h)(7) of Regulation AB [17 CFR 229.1111].

[730] The requirement to file Schedule AL data with the final prospectus does not impact the analysis regarding the timing and adequacy of information conveyed to the investor at the time the investment decision is made. Under Securities Act Rule 159, information conveyed after the time of the contract of sale (e.g., a final prospectus) is not taken into account in evaluating the adequacy of information conveyed to the investor at the time the investment decision was made. Therefore, registrants should be mindful of their obligations under Securities Act Rule 159.

[731] For instance, if a loan was added to an RMBS pool during a reporting period, the next Schedule AL that is filed will include all relevant disclosures about the asset, including all disclosures that would have been included if the loan was part of the pool at the time of securitization and all required ongoing asset-level disclosures about the asset. The final rules include a data point that captures whether an asset was added to the pool during the reporting period.

and the losses that may pass on to investors.[732] We believe these disclosures, if made at the time of the offering, will also assist an investor in its investment analysis, especially with respect to asset pools involving seasoned assets.

We recognize that the one schedule format may benefit issuers, but it may also result in some increased compliance costs. We believe that it may be easier to revise, amend and file one schedule than two separate schedules. Also, as discussed above, because we are not adopting the proposed requirement that an updated Schedule L be provided if an Item 6.05 is triggered, issuers will not need to bear the burden or cost of assessing whether an updated Schedule L is required if the requirements of Item 6.05 were triggered.[733]

We also recognize that aggregating the data points proposed in Schedules L and L–D into one schedule may increase the number of data points that an issuer will need to respond to at the time of the offering and on an ongoing basis. We do not believe that this change increases the data issuers must collect about the assets beyond what was proposed as the unified schedule primarily consists of information proposed to be provided under Schedule L and Schedule L–D. Under the rule we are adopting, the issuer will be required, at the time of the offering, to provide all the information relating to the underwriting of the asset (e.g., terms of the asset, obligor characteristics determined at origination) and any applicable performance related information for the most recent reporting period. On an ongoing basis, the issuer will be required to provide the relevant ongoing performance information for the most recent reporting period and the underwriting information previously provided about the asset. Issuers may incur some increased filing costs compared to what they would have incurred under the proposal because they will be verifying and filing more data at each filing. Although we cannot quantify the increase in filing costs that issuers may incur, our qualitative assessment is that the increase will not be significant over what was proposed.[734]

We considered, as an alternative, requiring information to be provided only about assets added to the pool during a reporting period. We believe asset-level information is most useful when it reflects all the assets actually in the pool. Therefore, we believe that current investors and potential secondary market investors should have access through the current Form 10–D to the asset-level information reflecting the assets in the pool at that time. Otherwise those parties may have to piece together various tables of information to construct the current pool. Piecing together various tables may lead to confusion and errors and, as a result, market participants may base their analysis on data that does not provide an accurate picture of the asset pool. Further, investors rather than issuers would bear the cost of piecing together the disclosures and having each investor doing so would create duplicative costs.

One investor commenter who supported the same asset-level disclosure in offering documents and in ongoing reports for most asset classes did not support this format for CMBS.[735] For CMBS, this commenter stated the loan originator and the loan servicer are not affiliated and, therefore, unifying items in Schedule L and Schedule L–D may be impractical for the CMBS sector. We considered this concern, but we believe the information is available to issuers, albeit perhaps at some cost. Thus, Schedule AL enumerates for issuances of CMBS all of the asset-level disclosures to be provided, if applicable, about the assets in the pool at securitization and on an ongoing basis.

In the end, we believe this approach is reasonable despite the increased compliance costs, because this approach provides investors with access, both at the time of the offering and on an ongoing basis, to more data about the characteristics and performance of the pool assets. As a result, investors can evaluate the characteristics of the pool with the benefit of a more complete picture of the pool assets' characteristics and performance.

3. XML and the Asset Data File

(a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed requiring that asset-level information be provided in XML. We believed that requiring the asset-level data file in XML, a machine-readable language, would allow users to download the data directly into spreadsheets and databases, analyze it using commercial off-the-shelf software, or use it within their own models in other software formats.

(b) Comments on Proposed Rule

In response to the 2010 ABS Proposing Release, several commenters supported the use of XML to report loan-level data[736] and some commenters noted that the residential mortgage industry already uses XML to transmit data about loans.[737] For CMBS, some commenters suggested not requiring XML at this time.[738] A few commenters suggested that we not adopt the XML requirement for RMBS, but instead require the information in comma separated values (''CSV'').[739]

[732] *See* the 2010 ABS Proposing Release at 23367.

[733] The current disclosures required under existing Item 6.05 of Form 8–K are still required if the triggers of Item 6.05 are met. Item 6.05 is not limited to the reporting of differences in material pool characteristics that result only from changes in the pool composition and, in fact, it excludes only changes that occur as a result of the pool assets converting into cash in accordance with their terms. For example, absent a change in pool composition, if payment activity after the cut-off date would result in a change to the delinquency or payment statistics that were presented in the prospectus by more than 5% after the cut-off date, but prior to closing, then disclosure would be required under Item 6.05.

[734] By aggregating the schedules we are able to omit any duplicate data points found on both schedules. For instance, the following data points were in proposed Schedule L–D and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a) Asset number type; 1(b) Asset number; 1(c) Asset group number; 1(f)(7) Current asset balance; 1(f)(12) Current delinquency status; 1(f)(13) Number of days payment is past due; 1(f)(14) Current payment status; 1(f)(15) Pay history; 1(f)(18) Remaining term to maturity; 1(g)(6) Servicing advance methodology; 2(b)(2) Next interest rate change date; 2(b)(5) Option ARM indicator; 2(e)(1) Modification effective payment date; 2(e)(3) Total capitalized amount; 2(e)(29) Forgiven principal amount (cumulative); and 2(e)(30) Forgiven interest amount (cumulative). The following data points were in proposed Schedule L and were omitted from Schedule AL since they were similar or identical to other data points: Items 1(a)(15) Primary servicer; 2(a)(21)(iv) Updated DTI (front-end) and 2(a)(21)(iv) Updated DTI (back-end).

[735] *See* letter from MetLife I.

[736] *See, e.g.,* letters from ActiveState Software Inc. dated July 29, 2010 submitted in response to the 2010 ABS Proposing Release, Beached Consultancy, CMBS.Com I, CREFC I (recognizing the importance of XML format, but requesting we not adopt the requirement for CMBS until such time that CREFC IRP adopts a version of the CREFC IRP in XML), Interactive, MetLife I, Risk Management Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''RMA''), and Alberto Zonca dated July 26, 2010 submitted in response to the 2010 ABS Proposing Release (''A. Zonca'').

[737] *See* letters from eSign, MBA I, MERS, and MISMO (each supporting the use of XML, but suggesting the use of MISMO XML standards).

[738] *See* letters from CREFC I (indicating that requiring XML would be a significant burden on those institutions who largely work under an alternative platform to convert to XML and the conversion could create data quality issues), MBA I, and Wells Fargo I (each suggesting that the Commission wait until the CMBS industry develops the XML format).

[739] *See* letters from ASF I (suggesting requiring RMBS files be in text format with each value in the file separated by a comma because market participants should focus staff and information technology resources on efforts to standardize the data) and Wells Fargo I (suggesting the format of the data be in CSV format).

Other commenters also suggested the use of another standard, such as XBRL.[740]

As we note above, subsequent to the 2010 ABS Proposing Release, Congress adopted the Dodd-Frank Act. Section 942(b) of the Dodd-Frank Act added Section 7(c) to the Securities Act, which requires the Commission to set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes. We requested comment in the 2011 ABS Re-Proposing Release as to whether the proposed XML format was an adequate standard for the format of data that facilitated the comparison. We did not receive any comments suggesting that requiring that asset-level data be provided in XML did not, as it relates to data standardization, implement Section 7(c) effectively.

Instead, comments on the 2011 Re-Proposing Release reiterated concerns raised in prior comment letters. For instance, some commenters reiterated their belief that XML should not be required for CMBS at this time[741] and one of these commenters said requiring XML should be tied to investor demand.[742] These commenters were concerned with the cost to implement the standard,[743] the cost of providing the data in duplicate formats,[744] data quality risks,[745] and the time needed to implement the standard.[746] On the other hand, one commenter believed that the current format of CMBS reports (CSV, Excel and even PDF) ''greatly limits the transparency of CMBS.'' [747]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting the proposed XML requirement. We believe requiring asset-level information in a standardized machine-readable format should lower the cost for investors of collecting data about ABS offerings and should allow data to be analyzed by investors and other end-users more quickly than if the data was provided in a non-machine readable format. For instance, if the asset-level data is made available to investors in a format that is not machine-readable, it would require the manual key-entry of the data into a format that allows statistical analysis and aggregation. Thus, investors seeking to gain a broad understanding of ABS offerings would either need to spend considerable time manually collecting the data and manually entering the data into a format that allows for analysis, thus increasing the time needed to analyze the data, or incur the cost of subscribing to a financial service provider that specializes in this data aggregation and comparison process. Further, manual entering of data can lead to errors, thereby reducing data accuracy and usefulness. Requiring companies to report asset-level data in a standardized machine-readable format, such as XML, should lower both the time and expense for each investor to access this data. Since asset-level disclosures will be tagged and can be immediately downloaded into a larger, more comprehensive database that may include data about other ABS offerings, investors will not need to manually enter the data or subscribe to a third-party data aggregator. With more information readily available in a usable format, investors may be able to better distinguish the merits of various investment choices, thereby allowing investors to better match their risk and return preferences with ABS issuances having the same risk and return profile. Thus, we expect that this reduction in the costs of accessing, collecting and analyzing information about the value of ABS will lead to better allocation of capital. We believe that the requirements we are adopting to require standardized asset-level disclosures in XML fulfill, for the asset types subject to these requirements, the requirement under the Dodd-Frank Act that we set a standard for the format of data that facilitates comparison across securities in similar types of assets.

We understand that some commenters expressed concerns regarding the burden and cost to implement the standard. We recognize that requiring asset-level disclosures in XML will result in substantial initial set-up costs to filers.[748] In a further attempt to mitigate costs to issuers, as we discuss below in Section IX.B, we are requiring that issuers comply with the asset-level disclosures no later than November 23, 2016, which we believe reduces the burden of implementation by providing time for market participants to reprogram their systems. With respect to the costs of implementation, we believe that the costs are justified because we believe investors need the asset-level disclosures in a standardized machine-readable format that makes the data transparent and comparable. We continue to believe that having the asset-level data in a standardized machine-readable format will enable investors to use commercial off-the-shelf software for analysis of underlying asset-level data, which will allow them to aggregate, compare and analyze the information.

We also considered, as several commenters suggested, alternative formats to XML, such as PDF, CSV and XBRL. We do not believe PDF format is a suitable alternative because it is not a convenient medium for tabular structured data and it is not designed to convey machine-readable data. As explained above, the ability of investors to easily utilize the asset-level data required of issuers is crucial to its usefulness. We believe that the CSV format is not suitable either, since any given dataset reported will require more than a single set of uniformly structured

[740] *See* letters from RMA (supporting the use of XML schemas specified either with the XSD language or the more specialized XBRL), UBMatrix, Inc. dated July 31, 2010 submitted in response to the 2010 ABS Proposing Release (recommending requiring XBRL), and XBRL.US dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting the use of XBRL because it is consistent with their recommended waterfall output format).

[741] *See* letters from CREFC II, MBA III, and Wells Fargo II.

[742] *See* letter from MBA III.

[743] *See* letter from CREFC II. This commenter did not provide a specific cost to implement XML.

[744] *See* letter from MBA III (stating that CMBS investors generally do not currently utilize XML formatting for reporting and even if XML is required, issuers will likely continue to provide investors the disclosures in the format they currently provide them and use XML format ''solely for filings with the Commission.'').

[745] *See* letters from CREFC II and Wells Fargo I.

[746] *See* letter from Wells Fargo I.

[747] *See* letter from CMBS.com and Commercial Mortgage Industry Standards Maintenance Organization dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release.

[748] We estimate the direct costs of converting data from internal formats to rule-compliant XML format the following way: We assume that a sponsor would work with all asset types and would need to convert the total of 680 distinct data columns, with 80% of them having direct mapping from internal data types (i.e., no additional conversion or modification would be necessary) and 20% being coded (i.e., column value be a combination or modification of existing data values) and requiring 3 times the effort for direct columns. One simple column would require 6 hours of work, with a total of 5,712 hours. The deployment (documentation, internal ''roll out'' with the first filing, etc.) would add another 10% to the costs, leading to the total 6,283 hours, or 3.5 full-time equivalents (Senior Database Administrator, Senior Business Analyst and one and a half Junior Business Analysts). Using salary data 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, we estimate the initial costs would be about $1,445,000 per sponsor. The hardware cost increment would be de minimis and the maintenance in subsequent periods would be only 5% of build cost. For some sponsors that specialize on a limited number of asset types the costs could be significantly lower because they would need to transform fewer data points from their internal format to the rule-compliant XML format. After necessary adjustments have been made, we expect that the ongoing costs for providing the data in XML will be minimal.

rows and CSV format will not support the disclosure of such datasets easily. Finally, while XBRL allows issuers to capture the rich complexity of financial information presented in accordance with U.S. Generally Accepted Accounting Principles, we do not believe that it is appropriate for the asset-level disclosure requirements we are adopting.[749] The Asset Data File will present relatively simpler characteristics of the underlying loan, obligor, underwriting criteria, and collateral, among other items, that is better suited for XML. Further, the data extensions available in XBRL are not appropriate for this dataset where comparability of data is critical and the nature of the repetitive data lends itself to an XML format. In addition, the XML schema can be easily updated. [750]

4. Asset Related Documents

(a) Proposed Rule

We understand that a situation may arise where an issuer would need to disclose other asset-level data not already defined in Schedule AL. To address this situation, we proposed to include a limited number of ''blank'' data tags in our XML schema to provide issuers with the ability to present additional asset-level data not required under the proposal.[751] We also proposed an ''Asset Related Document'' that would allow registrants to disclose the definitions or formulas of any additional asset-level data or provide further explanatory disclosure regarding the Asset Data File.[752]

(b) Comments on Proposed Rule

We received some comments, which were mixed, on the blank tag proposal, but we did not receive any comments regarding the use of an Asset Related Document. With regard to the blank tag proposal, one commenter suggested that as long as the information in the blank data tag is clearly described, neither the number of blank data tags nor the information would add complexity to the requirements.[753] One commenter, however, did not see the benefit of the proposed blank tags because new data points can be added as business and reporting needs evolve.[754] Another commenter did not believe a blank tag was appropriate or consistent with ''good XML syntax.'' [755]

(c) Final Rule and Economic Analysis of the Final Rule

We continue to believe, given the possible variety of assets and structures for securitization and that business and reporting needs may evolve faster than changes can be made to the asset-level requirements, issuers should have the flexibility to provide asset-level data in addition to what is required by Schedule AL. For instance, we note that some commenters suggested we adopt data points that we had not proposed.[756] While we are adopting some of the data points commenters suggested, we are not adopting all the additional data points recommended for various reasons that we describe above. We encourage issuers to provide any additional asset-level data that may be appropriate. We believe the flexibility to provide additional data in a machine-readable format will provide benefits to investors and issuers at no significant cost.

Under the final requirements, issuers can provide additional asset-level disclosures in an Asset Related Document and such Asset Related Document(s) must then disclose the tags, definitions, and formulas for each additional asset-level disclosure.[757] As we stated in the 2004 ABS Adopting Release and 2010 ABS Proposing Release, issuers and underwriters should be mindful of any privacy, consumer protection or other regulatory requirements when providing additional loan-level information, especially given that the information would be publicly filed on EDGAR.[758] Finally, issuers may also provide other explanatory disclosure regarding the asset-level data in an Asset Related Document.[759] As with any information that is part of the prospectus or ongoing reports, all Asset Related Documents must be filed concurrently with the Schedule AL it supplements. We are not adopting the blank tag proposal as we are persuaded by comments that the blank tags are not appropriate, may provide limited benefits and may not be consistent with ''good XML syntax.''

5. New Form ABS–EE

(a) Proposed Rule

We proposed that the new Asset Data File be filed as an exhibit to certain filings. Therefore, we proposed changes to Item 601 of Regulation S–K, Rule 11 and 101 of Regulation S–T, and Form 8–K to accommodate the filing of Asset Data Files. We proposed to define the XML file required by Schedules L and L–D as an Asset Data File in Rule 11 to Regulation S–T and proposed corresponding changes to Rule 101 of Regulation S–T mandating electronic submission. For asset-level disclosures required at the time of the offering, we proposed, regardless of whether the issuer was registering the offering on Form SF–1 or SF–3, that the Asset Data File be filed as an exhibit to the appropriate Form 8–K (in the case of an offering) under proposed Item 6.06 of Form 8–K. Proposed Item 6.06 would have required that issuers file the Asset Data File as an exhibit to a Form 8–K on the same date a preliminary or final prospectus is filed or an Item 6.05 of Form 8–K is filed. The proposed requirement would have also required that any Asset Related Document be filed at the same time the Asset Data File is filed on EDGAR.

For ongoing reporting of asset-level disclosure, we proposed to require the Asset Data File and any Asset Related Document be filed with the appropriate Form 10–D. As noted above, we also proposed an additional exhibit, an Asset Related Document, for registrants to disclose the definitions or formulas of any additional asset-level data or to provide further explanatory disclosure regarding the Asset Data File.

(b) Comments on Proposed Rule

We did not receive any comments with respect to the requirement of filing the Asset Data Files or Asset Related Documents with the Form 8–K (in the case of an offering) or with the Form 10–D (in the case of a periodic distribution report).

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Form ABS–EE to facilitate the filing of the new Asset Data Files [760] and Asset Related Documents.[761] The Asset Data Files and the Asset Related Documents are

[749] XBRL was derived from the XML standard. *See Interactive Data to Improve Financial Reporting Adopting,* Release No. 34–59324 (Jan. 30, 2009) [74 FR 6776].

[750] A schema is a set of custom tags and attributes that defines the tagging structure for an XML document. Extension data is not permitted in the asset-level data file because we believe it would defeat the purpose of standardizing data elements. Extension data allows issuers to add their own data elements to our defined data elements.

[751] *See* the 2010 ABS Proposing Release at 23375.

[752] *Id.*

[753] *See* letter from Prudential I.

[754] *See* letter from MISMO.

[755] *See* letter from MBA I.

[756] *See, e.g.,* letters from ASF I (suggesting additional RMBS data points), CU, and Wells Fargo I (suggesting additional RMBS data points as well as additional RMBS data points regarding government-sponsored assets).

[757] *See* Item 1111(h)(5) of Regulation AB.

[758] *See* Section III.C.1.c. of the 2004 ABS Adopting Release and Section III.A.(b)(i) of the 2010 ABS Proposing Release.

[759] *See* Item 1111(h)(4) of Regulation AB.

[760] *See* new Item 601(b)(102) of Regulation S–K [17 CFR 229.601(b)(102)].

[761] *See* new Item 601(b)(103) of Regulation S–K [17 CFR 229.601(b)(103)].

required to be filed as exhibits to new Form ABS–EE.[762]

We had proposed that the Asset Data Files and Asset Related Documents be filed with the Form 8–K because, in the case of a shelf offering, a Form 8–K is typically used to file other documents related to a registration statement. We had proposed filing the documents with Form 10–D to keep periodic disclosures on the same form. We believe, however, that requiring the information on a single Form ABS–EE will facilitate the filing of the Asset Data Files and Asset Related Documents because EDGAR programming for XML files can be specifically tailored for these types of documents, therefore simplifying filing obligations for issuers. Form ABS–EE will benefit investors by making it easier for users to run queries on EDGAR to locate these documents for download.

The fact that the disclosures are filed as exhibits does not impact the fact that the data contained in the Asset Data Files and the Asset Related Documents are disclosures that are part of a prospectus or a periodic report, as applicable.[763] As noted earlier, they are required to be incorporated by reference into the prospectus or the Form 10–D, as applicable. Accordingly, there is no change to the timing and frequency requirements for filing information to meet our offering and periodic disclosure rules and the corresponding Form ABS–EE, with the proper attachments, must be on file and be incorporated by reference into those filings by the time those filings are made or are required to be made.

6. Temporary Hardship Exemption

(a) Proposed Rule

We proposed to revise Rule 201 of Regulation S–T to include a self-executing temporary hardship exemption for filing the Asset Data File.[764] We also proposed to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S–T. Rule 202 generally allows an issuer to apply for a continuing hardship if it cannot file all or part of a filing without undue burden or expense. Under the proposed temporary hardship exemption, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File, a registrant would still be considered timely if: The Asset Data File(s) containing the asset-level data is posted on a Web site on the same day it was due to be filed on EDGAR; an Asset Data File is filed on EDGAR that contains the Web site address, a legend is provided in the Asset Data File filed on EDGAR claiming the hardship exemption; and the Asset Data File(s) are filed on EDGAR within six business days.

(b) Comments on Proposed Rule

We did not receive any comments regarding our proposed self-executing temporary hardship exemption. We also did not receive any comments on the proposal to exclude Asset Data Files from the continuing hardship exemption under Rule 202 of Regulation S–T.

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting, as proposed, a temporary hardship exemption. Under the requirement, if an issuer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File required to be filed on EDGAR, it may still be considered timely. For the Asset Data File, an issuer will still be considered timely if: The Asset Data File is posted on a Web site accessible to the public on the same day it was due to be filed on EDGAR; a Form ABS–EE is filed that identifies the Web site address where the file can be located; a legend is provided claiming the hardship exemption; and the Asset Data File is filed on EDGAR within six business days.[765] We believe that the hardship exemption will benefit both issuers and investors, because it will allow issuers to maintain compliance with our rules while providing investors with access to the information required to be disclosed without further delay.

We are also excluding the Asset Data File, as proposed, from the continuing hardship exemption under Rule 202 of Regulation S–T. We continue to believe that a continuing hardship exemption is not appropriate with respect to the Asset Data File because the Asset Data File is an integral part of the prospectus and periodic reports. We also believe that for ABS issuers the information in machine-readable format is generally already collected and stored on a servicer's systems. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the Asset Data File. We believe all investors will benefit from receiving the disclosures specified in Schedule AL in a format that will allow them to effectively utilize the information.

C. Foreign ABS

We requested comment on whether there are other privacy issues that arise for issuers of ABS backed by foreign assets.[766] The responses we received indicated concerns regarding foreign privacy laws,[767] as well as concerns related to variations in the characteristics of consumer receivables originated in different jurisdictions,[768] the inconsistencies between our proposal and other countries' disclosure and reporting standards,[769] and certain terms or structures used in the proposed rule that lack a direct European equivalent.[770] As an alternative to our proposal, some commenters requested that the disclosure standards for transactions involving assets located outside the United States be based on local requirements.[771] In response to the

[762] *See* Item 1111(h)(3) of Regulation AB [17 CFR 229.1111(h)(3)].

[763] Forms SF–1, SF–3, and 10–D each include an instruction requiring that any disclosures provided pursuant to Item 1111(h) of Regulation AB [17 CFR 229.1111(h)] filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) or 601(b)(103) [17 CFR 229.601(b)(102) and (b)(103)].

[764] [17 CFR 232.201]. Rule 201 of Regulation S–T generally provides for a temporary hardship exemption from the electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper format but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper format.

[765] See Rule 201(d) and (e) of Regulation S–T [17 CFR 232.201].

[766] *See* Section III.A(b)(i) of the 2010 ABS Proposing Release. We asked: (1) Are there other privacy issues that arise for issuers of ABS backed by foreign assets? (2) How do the privacy laws of foreign jurisdictions differ from U.S. privacy laws? (3) If the privacy laws of foreign jurisdictions are more restrictive regarding the disclosure of information how should we accommodate issuers of ABS backed by foreign assets? (4) Is there substitute information that could be provided to investors?

[767] *See* letters from ABA I, Association for Financial Markets in Europe/European Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AFME/ESF''), and Association for Financial Markets in Europe dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''AFME'').

[768] *See* letter from Australian Securitisation Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''AusSF'').

[769] *See* letter from AFME/ESF.

[770] *Id.*

[771] *See* letters from AusSF (requesting that Australian issuers need only satisfy the Australian Securities and Investments Commission requirements and that differences between U.S. and Australian standards be disclosed in the offering documents), AFME/ESF (suggesting that the Commission permit the satisfaction of certain requirements by European issuers if they provide relevant information in compliance with any local or other relevant requirements and allow the adjustment of the requirements to reflect the information available outside of a U.S. context) and AFME (suggesting a similar regime, but stating that if compliance with local requirements was not

Continued

2014 Re-Opening Release, a few commenters raised cost and burden concerns about foreign ABS issuers' compliance with overlapping regulatory regimes.[772] A few commenters suggested flexible requirements for foreign ABS issuers to account for differences in the applicability and availability of information or a substitute compliance regime to account for differences between jurisdictions, including differences between the privacy laws of foreign jurisdictions.[773]

We have reviewed the requirements we are adopting against the requirements adopted by the European Central Bank[774] and the Bank of England.[775] We note several similarities and differences between our requirements and theirs, and we believe that perfect agreement between the Commission's requirements and the requirements of all foreign jurisdictions may not be achievable. We believe U.S. investors may expect data in a certain format and/or a certain level of disclosure that is not required under the requirements of other jurisdictions, some of which require the information for supervisory purposes and not specifically for the benefit of investors.[776] In addition, the underlying assets, the form of issuance, parties to the structures, terms and definitions and the structures themselves vary across jurisdictions. We also note that the privacy laws vary across jurisdictions, resulting in disclosure requirements of one jurisdiction that may conflict with the privacy laws in another jurisdiction.

We are not persuaded, however, that the Commission should implement a regime that would recognize the asset-level data requirements developed by foreign authorities, for example the European Central Bank and the Bank of England, that are tailored to assets originated outside of the U.S. or a ''provide-or-explain'' type regime that would permit selective disclosure based upon foreign laws. We continue to believe, as for U.S. originated assets, the usefulness of asset-level data is generally limited unless the data is standardized. We believe adopting another disclosure regime for foreign asset ABS would reduce standardization and, thereby, the comparability of ABS backed by assets originated outside of the U.S. and ABS backed by assets originated within the U.S. Further, a provide-or-explain regime lowers the comparability of ABS pools comprised of assets originated outside the U.S. against each other as the scope of disclosures provided by each issuer for each ABS may differ depending on the privacy laws of the home jurisdiction of the issuer. We acknowledge that compliance challenges and increased costs for foreign market participants may arise; however, we believe U.S. investors should receive the same data about ABS backed by assets originated outside the U.S. as ABS backed by assets originated within the U.S. This approach is consistent with our approach for corporate issuers, under which foreign private issuers generally provide comparable information to U.S. issuers.

IV. Other Prospectus Disclosure

A. Transaction Parties

1. Identification of the Originator

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that Item 1110(a) of Regulation AB, prior to the adoption of today's amendments, required identification of originators apart from the sponsor or its affiliates only if the originator has originated, or expects to originate, 10% or more of the pool assets. We noted that in situations where many of the pool assets have been purchased from originators other than the sponsor and each of these originators originated less than 10% of the pool assets that the requirement requires very little, if any, information about the originators. Therefore, we proposed to amend the item to require that an originator originating less than 10% of the pool assets would be required to be identified if the cumulative amount of originated assets by parties other than the sponsor or its affiliates comprises more than 10% of the total pool assets.

(b) Comments on Proposed Rule

Comments on the proposal were focused on the scope of the requirement. Commenters argued that the rule should require disclosure identifying the originator of each asset without exception.[777] Another commenter recommended that the requirement be modified to include a low threshold (e.g., 2% of the original pool assets) under which identification of the non-affiliated originators would not be required.[778] In contrast, one commenter believed that the proposal was excessive with the costs outweighing the benefits and recommended keeping the current requirement and supplementing it with disclosure of ''additional originators to the extent necessary so that information about the originators of at least 85% of the pool assets has been included in the prospectus.''[779] Another commenter stated that disclosure of only third parties who originated more than 10% of the pool and all originators who provided 5% or more of the pool by dollar value would be more valuable to investors.[780]

(c) Final Rule

After considering the comments received, we are adopting the amendment to Item 1110(a) of Regulation AB, as proposed, with a slight modification to clarify the change that we are making to the existing requirement. Under the final rule that we are adopting, if the cumulative amount of originated assets by parties, other than the sponsor or its affiliates, comprises more than 10% of the total pool assets, then those originator(s) originating less than 10% of the pool assets will also be required to be identified in the prospectus. We continue to believe that where the sponsor securitizes assets of a group of originators that are not affiliated with the sponsor, more disclosure regarding the originators of the assets is needed. We believe investors will benefit from these disclosures because they will be

appropriate, then a ''provide-or-explain'' regime would be a helpful alternative).

[772] *See* letters from ABA III, GFMA/AusSF, SFIG II, SIFMA/FSR I-dealers and sponsors, and Treasurer Group.

[773] *See, e.g.,* letters from ABA III, GFMA/AusSF, and Treasurer Group (stating that substitute compliance is allowing the issuer to provide the disclosure required under a foreign jurisdiction).

[774] *See Data Templates,* European Central Bank (2013), *http://www.ecb.eu/mopo/assets/loanlevel/transmission/html/index.en.html.*

[775] *See Bank of England Loan Level Data: Reporting Template for Residential Mortgage Pools,* Bank of England (Nov. 2010), *http://www.bankofengland.co.uk/markets/Documents/money/documentation/RMloanleveldata-template.pdf.*

[776] *See, e.g.,* details about the European Central Bank's loan-level requirements for ABS accepted as collateral in Eurosystem credit operations *available at http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html. See also* the market notices from the Bank of England discussing their eligibility requirements for RMBS and covered bonds backed by residential mortgages; CMBS, small-medium enterprise loan backed securities and ABS backed by commercial paper; and ABS backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at *http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf, http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf.*

[777] *See, e.g.,* letters from Prudential I (suggesting that Schedule L should specify the originator of each asset, which will allow investors to identify and differentiate originators that are providing riskier collateral to structured product transactions) and Realpoint (recommending that for CMBS transactions every originator be identified).

[778] *See* letter from BoA I.

[779] *See* letter from VABSS I (without providing a cost estimate).

[780] *See* letter from CFA I (without describing why this disclosure would be more valuable to investors).

better able to assess pools comprising assets from these originators. We acknowledge that the revised rule will likely result in more originators having to be identified in the prospectus than is currently required; however, we do not think that it will result in significant costs to issuers since the information is readily available and the disclosure is limited only to identification of the originator. In addition, while we note that some commenters requested that we impose an additional minimum threshold before issuers would be required to identify unaffiliated originators,[781] we do not believe that such a distinction would be appropriate for the same reasons.

2. Financial Information Regarding a Party Obligated To Repurchase Assets

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that in the events arising out of the financial crisis, the financial condition of the party obligated to repurchase assets pursuant to the transaction agreement governing an asset securitization became increasingly important as to whether repayments on asset-backed securities would be made.[782] We proposed to require disclosure of the financial condition of certain parties required to repurchase assets when there is a breach, pursuant to the transaction agreements, of a representation and warranty related to pool assets. Under the proposal, information regarding the financial condition of a 20% originator would be required if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets. Information about the sponsor's financial condition similarly would be required to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

(b) Comments on Proposed Rule

The response to the proposal was mixed with some commenters supporting the proposal,[783] some commenters opposing the proposal,[784] and other commenters who did not express whether they supported or opposed the proposal, but suggested certain revisions.[785] One concern, raised by some commenters who opposed the proposal, was that investors may perceive the disclosure and the existence of representations and warranties as suggesting that the obligated parties are providing credit or liquidity support to the transaction.[786] Some commenters stated that the disclosure requirement may act as a barrier to entry for participation in the securitization markets, may potentially be misleading because it would likely be provided long before repurchase demands would be made, and in most instances disclosure would be required because an obligated party's financial condition would likely always impact a party's ability to perform its repurchase-related obligations.[787]

(c) Final Rule

After considering the comments received, we are adopting the amendments to Item 1104 and Item 1110, with some modification. We have revised the amendments so that the standard for when disclosure of financial information is required mirrors the existing standard for disclosures required about certain servicers.[788] Under the revised rules, the standard focuses on whether the sponsor or 20% originator's financial condition would have an effect on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities.

We are adopting these amendments because we believe an investor's ABS investment decision includes consideration of obligations from certain parties to repurchase assets if there is a breach of the representations and warranties relating to those assets and the capacity of those parties to repurchase those assets. As evident from the crisis, the mere existence of a repurchase provision provides investors with little comfort as to the ability of the party obligated to repurchase assets for a breach of a representation or warranty.[789] The expanded disclosure

[781] *See* letters from BoA I, CFA I, and VABSS I.

[782] *See* the 2010 ABS Proposing Release at 23382. In the 2010 ABS Proposing Release, we also proposed to amend Item 1104 and Item 1110 of Regulation AB to require disclosure of the amount, if material, of publicly securitized assets originated or sold by the sponsor or an identified originator that were the subject of a demand to repurchase or replace any of the assets for breach of the representations and warranties concerning the pool assets in the last three years pursuant to the transaction agreements. This proposal and the comments on this proposal were considered in connection with the rules implementing Section 943 of the Dodd-Frank Act. *See* the Section 943 Adopting Release. Therefore, the proposal and related comments are not addressed in this release.

[783] *See* letters from ASF I (supporting the proposal, but suggesting that we revise the standard for when such disclosure is required to mirror the requirement regarding financial information of certain servicers included in Item 1108(b)(4) of Regulation AB, with a focus on whether the sponsor's or originator's financial condition would have an effect on origination of the pool assets or on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities) and CFA I (stating that benefits to investors in the form of better knowledge about the source of pool assets outweighs the costs of compliance).

[784] *See* letters from BoA I, CMBP (disagreeing with the proposed disclosure requirement as it relates to a 20% originator) CREFC I, IPFS Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''IPFS I'') (responding with respect to private offerings of insurance premium finance loans), and MBA I.

[785] *See* letters from AusSF (stating that if we require financial statements that we should allow the submission of IFRS-compliant financial statements to satisfy the requirement) and KPMG LLP dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''KPMG'') (noting that the impact of the proposal will vary depending, in part, on whether the financial information must be audited and urging the Commission to weigh the cost of requiring audited financials against such benefit). *See also* letters from Center for Audit Quality dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release and Ernst & Young dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (''E&Y'') (requesting other revisions). These commenters contended that the proposed amendments to Item 1104 and Item 1110(b) would require a subjective evaluation of the materiality of the risk and recommended, instead, to expand the scope of the definition of significant obligor in Item 1112 (i.e., to incorporate the obligated party that is required to repurchase assets for breach of a warranty or representation) or to expand the scope of Item 1114, the requirement relating to disclosure of significant credit enhancements, to include repurchase and replacement obligations—thereby providing an objective standard for determining when and how the requisite financial disclosure should be provided. Under this standard, the required financial information would be (1) the selected financial data specified by Item 301 of Regulation S–K when the obligation exceeds 10% of the asset pool, and (2) audited financial statements that comply with Regulation S–X when the obligation exceeds 20% of the asset pool.

[786] *See* letters from BoA I, CREFC I, and MBA I.

[787] *See* letters from CREFC I and MBA I. *See also* letter from CMBP (recommending instead to require sponsors to certify that: all the originators that have sold assets to the pool backing the ABS meet the sponsor's standards of creditworthiness, the sponsor's standards are customary and commercially reasonable, and based on the sponsor's assessment that each originator has the financial means to discharge their obligations under the representations and warranties regarding the pool assets).

[788] *See* Item 1108(b)(4) of Regulation AB (requiring information regarding the servicer's financial condition to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities).

[789] *See Transparency in Accounting: Proposed Changes to Accounting for Off-Balance Sheet Entities Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 110th Cong. 3 (2008) (statement of Joseph Mason, Professor at Louisiana State University) (stating that '' 'representations and warranties' have become a mechanism for subsidizing pool

Continued

that we are requiring will provide investors insight into the capacity of the obligated parties to repurchase assets. We acknowledge that the financial condition of these parties may change between the time of the transaction, when the disclosure is provided, and when a repurchase is required. We believe that investors will nonetheless benefit from the required information because it will allow investors to assess, at the time of their investment decision, whether the representations and warranties provided regarding the pool assets are made by entities financially capable of fulfilling their obligations.

We also note the concerns that some of these parties are private companies who may choose to exit the securitization market rather than provide financial disclosures. While we acknowledge this possibility, we believe that this information is material for investors in order to make an informed investment decision. Furthermore, we believe this concern is minimized, to some extent, because the requirement does not necessarily require financial statements, but only information about their financial condition similar to the type of disclosure required under current rules regarding financial information of certain servicers, some of which may be private companies. Where disclosure is required, the type and extent of information regarding certain originators' and sponsors' financial condition would depend upon the particular facts. We note that sponsors will typically conduct due diligence regarding the pool assets when purchasing assets to include in the ABS pool, including assessing the financial condition of originators that are obligated to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements. We believe that when the trigger for disclosure of the financial information of sponsors and 20% originators is met, as outlined in the rule, investors should have the same information. We are mindful, however, of the costs that originators and sponsors would incur if we required audited financial information, especially for those originators and sponsors that have not previously been subject to an audit; therefore, we are not requiring that financial information included be audited.

performance, so that no asset- or mortgage-backed security investor experiences losses—until the seller, itself, fails and is no longer able to support the pool'').

3. Economic Interest in the Transaction

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that existing Item 1103(a)(3)(i) of Regulation AB required disclosure of the classes of securities offered by the prospectus and any class of securities issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.[790] We also noted our belief that information regarding the sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is important to an ABS investor and, therefore, we proposed to revise Items 1104, 1108, and 1110 to require disclosure regarding the sponsor's, a servicer's, or a 20% originator's interest retained in the transaction, including the amount and nature of that interest.[791] The disclosure would be required for both shelf and other offerings.[792]

(b) Comments on Proposed Rule

Several commenters supported the proposed rule but recommended certain revisions.[793] Some of these commenters suggested that the required disclosures include the effect of hedging.[794] For instance, one commenter stated that the rule should state that the disclosure should be net of hedging,[795] and the other commenter recommended requiring the sponsor to disclose ''any hedge (security specific or portfolio) that was entered into by the sponsor or, to the extent it has actual knowledge of such a hedge, an affiliate in an effort to offset any risk retention position held by the sponsor or an affiliate.'' [796]

Another commenter requested that we limit the retention disclosure requirements ''to those required in any risk retention construct that may be included in the final rules.'' [797] The commenter acknowledged that it ''is difficult for investors to ascertain how many securities cleared the market and how many were taken down by the issuer or sponsor,'' but that disclosure of any retention held above a required amount would be impractical and misleading because accurate information about retention interests may not be known until closing, which is after investors make their investment decision, and the retention interests often change during the period between the time of sale and closing.

(c) Final Rule

After considering the comments received, we are adopting the proposed revisions to Items 1104, 1108, and 1110 with some modifications.[798] As noted below, the requirements that we are adopting for shelf eligibility do not contain a requirement for risk retention in light of the risk retention proposals currently being considered by regulators under the Dodd-Frank Act.[799] Because commenters noted that disclosure about a sponsor's, a servicer's, or a 20% originator's continuing interest in the pool assets is an important factor that investors consider when analyzing the alignment of interests among various parties in the securitization chain, we are adopting this rule.[800] We are also persuaded by commenters that this disclosure should describe the effect of hedging because a hedge could effectively reduce the actual exposure that the party may face from its continuing interest in the pool assets.[801] We do not believe that providing disclosure of the interests retained by the sponsor, servicer, or 20% originator net of hedging alone, as suggested by one commenter, provides investors with

[790] 17 CFR 229.1103(a)(3)(i).

[791] For example, if the originator has retained a portion of each tranche of the securitization, then disclosure regarding each amount retained for each tranche would be required.

[792] We also proposed that if the offering was being registered on Form SF–1, the issuer would be required to provide clear disclosure that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

[793] *See* letters from ABA I (supporting this requirement in lieu of the proposed risk retention shelf eligibility requirement because this disclosure will ensure that investors are fully aware of the alignment of interests in each offering), ASF I (expressed views of investors only) (believing that if the sponsor of the securitization retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets), Mass. Atty. Gen., and Prudential I.

[794] *See* letters from Mass. Atty. Gen. and Prudential I.

[795] *See* letter from Mass. Atty. Gen.

[796] *See* letter from Prudential I.

[797] *See* letter from CREFC I.

[798] For purposes of describing any interest that the sponsor, servicer, or 20% originator, retained in the transaction, such disclosure must also include any interest held by an affiliate of such entity, except as described below for certain hedges entered into by affiliates, disclosure is required to the extent known. We have made conforming changes to the final rule to clarify the treatment of affiliates. As discussed later in Section VIII.A.3 Changes in Sponsor's Interest in the Securities, we are also adopting a requirement that any material change in the sponsor's interest in the securities must be disclosed on Form 10–D.

[799] *See* the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

[800] *See also* footnote 1320 (describing one commenter's views on the importance of requiring disclosure of any material change in the sponsor's interest in the transaction).

[801] We also note that Section 15G of the Exchange Act, as added by Section 941 of the Dodd-Frank Act, requires that the risk retention rules, to be finalized by regulators, must prohibit a securitizer from directly or indirectly hedging the credit risk required to be retained under the rules.

sufficient insight into the hedging activities used by these entities to minimize exposure to their interests. Therefore, we are adopting the rule that each of these parties disclose their continuing interest in the pool assets, including the amount and nature of that interest, and disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by these parties or, if known, by any affiliate of these parties to offset any risk position held.[802] We believe this approach provides investors with appropriate information about these entities' continuing interest in the pool assets and how these parties may be managing those exposures.

We also acknowledge the concerns that the exact amount retained by these parties may not be known until closing and that these retention interests may and do often change during the period between the time of sale and closing.[803] To address these concerns, the parties will only need to describe in the preliminary prospectus the amount and nature of the interest that they intend to retain. The parties must, however, also disclose in the preliminary prospectus the amount and nature of risk retention that they have retained in order to comply with law (for example, to comply with the final risk retention rules once they are adopted).[804] In order to clarify the requirement, we have included an instruction specifying that the amount and nature of the interest or asset retained in compliance with law must be separately stated in the preliminary prospectus.[805] For purposes of the final prospectus, the parties must also disclose the actual amount and nature of the interest to be retained.

4. Economic Analysis Related to the Rules Regarding Transaction Parties

The rules discussed in this section seek to provide ABS investors with greater information about the transaction parties to a securitization, thereby allowing them to make more informed investment decisions. First, investors will now be able to identify a potentially larger number of the originators of pool assets, which will improve their ability to compare the loan performance across originators and assess the relative stringency of these originators' underwriting standards as well as their historical performance. Second, at the time of an ABS offering, investors will now be able to better assess the ability of parties obligated to repurchase assets to actually fulfill those obligations. This will allow investors to more accurately assess the representations and warranties in the transaction agreements, since the enforceability of these depends on the ability of the obligated party to repurchase breached assets. Third, investors will now have information about the sponsor's, servicer's, or a 20% originator's interest retained in the transaction net of hedging. Investors have indicated that this information will be beneficial to them because the information will allow them to consider the incentives of the various parties involved in the securitization chain.

The costs of the revised rule will be borne primarily by issuers, who will be required to provide additional disclosure about the transaction parties to a securitization. The magnitude of the costs will depend on the extent to which issuers already gather the required information. For instance, on the one hand, issuers likely already obtain the identities of originators; therefore, providing that information should not impose significant additional costs. On the other hand, issuers may need to gather some additional information from third parties regarding the financial condition of an originator who originated 20% or more of the pool assets and is obligated to repurchase assets under the transaction agreements. As a result, issuers may incur costs to gather the financial data and then prepare and provide the required disclosure. However, we believe that the revised rule strikes the appropriate balance between the benefit of providing investors with useful information about the originators and the burden of requiring the identification of all originators, regardless of the amount they contributed to the pool.

Some commenters were concerned that disclosing the financial condition of a party obligated to repurchase assets may impose an indirect cost on investors, if investors misinterpret this disclosure and the existence of representations and warranties as the obligated parties providing credit or liquidity support to the transaction. In light of our other rules on disclosure of credit and liquidity support, we believe investors will see a clear distinction between the representations and warranties and any credit or liquidity support provided. Similarly, some commenters were concerned that the disclosure may be misleading to investors because the financial condition of the party may have changed between the time of the transaction when the disclosure was provided and the repurchase demand. We believe that investors will still benefit from the required information since it will allow investors to assess at the time of making their investment decision whether the entities that provided representations and warranties regarding the pool assets are, at least as an initial matter, financially capable of fulfilling their obligations.

B. Prospectus Summary

1. Proposed Rule

In the 2010 ABS Proposing Release, we noted that a prospectus summary should briefly highlight the material terms of the transaction, including an overview of the material characteristics of the asset pool. We also noted our belief that the prospectus summaries provided in ABS prospectuses may not adequately highlight the material characteristics, including material risks, particular to the ABS being offered. Instead, these prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class.[806] Accordingly, we proposed a new instruction to clarify the prospectus summary disclosure requirements.[807] Specifically, the proposed instruction noted that the prospectus summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria, and, if applicable, modifications made to the pool assets after origination.

2. Comments on Proposed Rule

Comments on the proposal were mixed.[808] One commenter, who was supportive of the proposal, stated that the instruction would help ''highlight potential risks relating to the underwriting of the underlying pool assets.'' [809] Another commenter, who opposed the proposed instruction, requested an exception for CMBS transactions stating that each commercial mortgage is unique and, as

[802] Because we believe that a security-specific hedge is more likely to be material to investors, we anticipate that issuers will need to provide more detailed disclosure about such hedge in order for investors to understand the impact such hedge may have on the ABS.

[803] *See* letter from CREFC I.

[804] *See* the 2013 Risk Retention Re-Proposing Release.

[805] *See* letter from CREFC I (noting that the nature and amount of retained interests held to fulfill risk retention requirements could be disclosed in the prospectus).

[806] *See* the 2010 ABS Proposing Release at 23383.

[807] 17 CFR 229.1103(a)(2).

[808] *See* letters from BoA I, CFA I, Prudential I, and Realpoint (all supporting the proposal). *But see* letters from ASF I (expressed views of dealers and sponsors only) and CREFC I (opposing the proposed rule).

[809] *See* letter from CFA I.

a result, the proposed disclosures would not enhance an investor's understanding of the risks and characteristics of a particular CMBS loan pool.[810] One commenter stated that the instruction runs counter to the Commission's plain English rules because it requires the repeating of disclosure in different sections of the document without enhancing the quality of the information.[811] This commenter also contended that the proposed instruction seems to encourage reliance on a summary of information that should be considered in the fuller context of the narrative in the body of the prospectus. The commenter suggested that we reconsider the proposal or, in the alternative, require only a cross-reference in the summary to the location of this information in the body of the prospectus.[812]

3. Final Rule and Economic Analysis of the Final Rule

After considering comments received, we are adopting the proposed instruction with revisions. From our experience, the prospectus summaries often summarize types of information that are common to all securitizations of a particular asset class rather than the material characteristics of the particular ABS, such as statistics regarding whether the loans in the asset pool were originated under various underwriting or origination programs, whether loans were underwritten as exceptions to the underwriting or originations programs, or whether the loans in the pool have been modified.[813] We believe that investors would benefit from a prospectus summary that summarizes the disclosures in the prospectus regarding this type of information because presenting this information in a summarized format may aid investors' understanding of material characteristics. In that regard, we also believe that the final instruction is less prescriptive than one commenter suggested since it does not require specific disclosure but rather indicates the types of information that may be summarized. We acknowledge that the prospectus summary should be brief and should not contain, and is not required to contain, all of the detailed information in the prospectus and, therefore, issuers should not simply repeat the disclosure found elsewhere in the prospectus in the prospectus summary. We also acknowledge that more fulsome narrative disclosures discussing these summary statistics may provide greater context about these disclosures; therefore, we added as part of the final instruction a requirement to include a cross-reference in the prospectus summary to the location of corresponding disclosure in the body of the prospectus.

The costs associated with this disclosure should be minimal as the issuer should already have this information, or be able to easily generate the information, in light of the more detailed disclosure required by other item requirements in Regulation AB. Furthermore, this is not a new requirement, but rather a clarification of our position on what should be provided in the prospectus summary. Finally, if this disclosure is not appropriate for a particular asset class, then existing Item 1103(a) addresses this concern by indicating that the disclosure is only required where applicable.[814]

C. Modification of Underlying Assets

1. Proposed Rule and Comments on Proposed Rule

In the 2010 ABS Proposing Release, we proposed to replace Item 1108(c)(6) of Regulation AB with a more detailed and specific disclosure requirement in Item 1111.[815] Item 1108(c)(6) requires disclosure to the extent material of any ability of the servicer to waive or modify any terms, fees, penalties, or payments on the assets and the effect of exercising such ability, if material, on the potential cash flows from the assets. The proposed requirement in Item 1111 would require a description of the provisions in the transaction agreements governing modification of the assets and disclosure regarding how modifications may affect cash flows from the assets or to the securities. We received only one comment on the proposal, which supported the proposed amendments.[816]

2. Final Rule and Economic Analysis of the Final Rule

We are adopting the final rule, as proposed. We continue to believe that the ability of the servicer to modify any terms, fees, and penalties and the effect of this ability on potential cash flows remains an important factor to investors. We believe that more granular data about this ability will enable investors to better assess the possibility of a potential change in the cash flows, which should, in turn, promote more efficient allocation of capital. To the extent issuers will be providing more detail than they previously provided, issuers' costs to provide the required disclosure will likely increase.

D. Disclosure of Fraud Representations

We also proposed to revise Item 1111(e) to require disclosure of whether a representation was included among the representations and warranties that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. In proposing this requirement, we believed that it was important that any fraud representation be highlighted to investors.

Several commenters were opposed to the proposed requirement.[817] One commenter noted that both its investor and issuer members agreed that the absence of fraud in the origination is an element of several representations and warranties concerning the pool assets, such as the representation and warranty stating that the pool assets were originated in compliance with the requirements of law and applicable underwriting standards, and that the pool assets are legal, valid, and binding payment obligations of the related obligors.[818] This commenter further noted that singling out a fraud representation in the disclosure was unnecessary and duplicative in light of our other proposal that would require issuers to provide disclosure on representations and warranties. Another commenter stated that the proposed requirement did not pass a reasonable

[810] *See* letter from CREFC I.

[811] *See* letter from ASF I (expressed views of dealers and sponsors only) ("find[ing] it unusual that the Commission is proposing such a specific disclosure requirement as an instruction to an Item requirement that is otherwise by design very general").

[812] *See* letter from ASF I (expressed views of dealers and sponsors only).

[813] For example, the prospectus summary should include summarized information about the disclosure required as part of the issuer review performed under Securities Act Rule 193. In particular, Item 1111 of Regulation AB requires an ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer's review of the assets, which includes its conclusion that the review was designed and effected to provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects.

[814] *See* Item 1103(a) of Regulation AB [17 CFR 229.1103(a)] (stating in providing the information required by Item 503(a) of Regulation S–K, provide the following information in the prospectus summary, as applicable).

[815] 17 CFR 229.1111. In the 2010 ABS Proposing Release, we proposed to amend Item 1111 to require disclosure regarding deviations to disclosed underwriting standards. The proposal would have also required disclosure of the steps taken by the originator to verify information received during the underwriting process. These proposals and the comments on the proposals were later considered and acted upon in connection with the rules implementing Section 945 of the Dodd-Frank Act. *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Release No. 33–9176 (Jan. 20, 2011).

[816] *See* letter from MBA I.

[817] *See* letters from ASF I, ELFA I, and MBA I.

[818] *See* letter from ASF I.

cost-benefit test and, without clarifying why, stated that the disclosure would not benefit investors.[819] This commenter suggested that we not adopt the proposed requirement and instead require a restatement or identification of the specific fraud representation, if any, included in the transaction ''rather than including a binary response to whether or not there is a fraud representation.''[820]

After considering the comments we received, we are not adopting the proposed revisions to Item 1111(e). As one commenter noted, the absence of fraud may be an element of several representations and warranties concerning the pool assets and therefore is already adequately disclosed under the current requirements of Item 1111(e).

E. Static Pool Disclosure

1. Disclosure Required

(a) Proposed Rule

In the 2010 ABS Proposing Release, we noted that since the adoption of Regulation AB we have observed that static pool information provided by asset-backed issuers may vary greatly within the same asset class. Variations exist not only with the type or category of information disclosed but also with the manner in which it is disclosed. As a result, static pool information between different sponsors has not necessarily been comparable, which reduces its value to investors.

To address this problem, we proposed revisions to Item 1105 of Regulation AB[821] to increase the clarity, transparency, and comparability of static pool information. Some of the proposed rules would apply to all issuers, and other proposed rules would apply only to amortizing asset pools and not to revolving asset master trusts. For all issuers, we proposed the following five requirements.[822] First, we proposed to require appropriate introductory and explanatory information to introduce the characteristics. Second, we proposed to require that issuers describe the methodology used in determining or calculating the characteristics and describe any terms or abbreviations used. Third, we proposed to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered. Fourth, we proposed to require additional disclosure if an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information. Finally, we proposed to require graphical presentation of the static pool information, if doing so would aid in understanding.

(b) Comments on Proposed Rule

Commenters were generally supportive of these proposed rules[823] and mostly requested that the Commission clarify certain aspects.[824] Some commenters were supportive of the proposal to provide narrative disclosure.[825] One commenter stated that the inclusion of explanatory information introducing the characteristics of the static pool would increase the clarity of the required static pool disclosure.[826] Other commenters requested greater clarification about the narrative disclosure requirements. For instance, one commenter believed that it was unclear whether ''narrative disclosure'' would permit presentation in tabular format.[827] Another commenter expressed concern with the RMBS example provided in the 2010 ABS Proposing Release and noted that one of the aspects we listed—the number of loans that were exceptions to standardized underwriting—is qualitatively different and more granular and detailed than the other aspects listed (i.e., number of assets and types of mortgages).[828]

One commenter, supportive of the proposal to require a description of the methodology used in determining or calculating the characteristics, urged the Commission to require that the methodologies used by issuers be standardized to facilitate comparison of securities within the same asset class.[829] This commenter also emphasized that key defined terms, such as ''delinquency'' and ''default'' must be standardized.

Several commenters provided differing views on whether the proposal to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered was necessary or helpful to investors. One commenter indicated that this disclosure is helpful in understanding ''pool construction risk.''[830] Another commenter, however, argued that it did not understand how this requirement adds anything to the proposed narrative disclosure.[831]

With respect to requiring an issuer to explain why it did not provide static pool information or provided alternative information, one commenter interpreted this proposal as capable of being satisfied through summary disclosure stating that either the data are not available or that static pool disclosure is immaterial.[832]

One commenter opposed requiring the graphical presentation of static pool information in addition to the proposed narrative description.[833] This commenter asserted its belief that graphical presentation is not market practice, has ''highly questionable utility'' and is possibly misleading. This commenter supported, however, graphical presentation of delinquency, loss, and prepayment information for amortizing pools.

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the requirements as proposed.[834] First, we are amending Item 1105 to require narrative disclosure that provides introductory and explanatory information to introduce the static pool information presented. We continue to believe that a brief snapshot of the static pool information presented will benefit investors by providing them with context in which to evaluate the information, especially for those investors who lack sophisticated

[819] *See* letter from ELFA I (noting that a general ''fraud representation'' is difficult to make due to the potential chain of parties involved in a single lease/loan including the lessee, manufacturer, dealer, broker, lessor/lender and servicer).

[820] *See* letter from ELFA I.

[821] 17 CFR 229.1105.

[822] *See* the 2010 ABS Proposing Release at 23385.

[823] *See* letters from AMI, ASF I, BoA I, CFA I, MSCI, Prudential I, and Realpoint.

[824] *See* letters from ASF I and VABSS I.

[825] *See* letters from AMI and ASF I.

[826] *See* letter from ASF I.

[827] *See* letter from VABSS I.

[828] *See* letter from ASF I. *See also* the 2010 ABS Proposing Release at 23385. In the 2010 ABS Proposing Release, we illustrated the narrative disclosure that would be required using RMBS as an example. We noted that for a pool of RMBS the disclosure would include the number of assets, the types of mortgages, and the number of loans that were exceptions to the standardized underwriting criteria.

[829] *See* letter from AMI.

[830] *See* letter from Prudential I (recommending that ''[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms, and/or risk tolerances than the static pool data'').

[831] *See* letter from VABSS I (stating its hope that the Commission is not suggesting that, for each offering, registrants should include a description of how the securitized pool differs from each of the 3 to 25 static pools, as the commenter believes that such disclosure would simply compare the disclosed metrics for each pool and therefore would provide no incremental value to investors).

[832] *See* letter from BoA I (urging reconsideration of any standard that would require disclosure of a ''detailed analysis of materiality'' and stating that ''[a]n analysis of an issuer's methodology for making materiality determinations is not a proper subject of prospectus disclosure'').

[833] *See* letter from BoA I.

[834] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

analytical tools.[835] We do not intend for the requirement to cause issuers to repeat the underlying static pool disclosure in the narrative; rather we intend for the requirement to serve as a clear and brief introduction of the static pool disclosure in order to provide context to investors. We do believe, however, that the type of narrative disclosure that we are requiring is best presented in paragraph format, and not in tabular format as one commenter recommended, in order for the narrative description to clearly convey to investors the differences in the assets being securitized in the deal and the assets comprising the static pools.[836]

To aid issuers in understanding what the narrative disclosure would typically include, and as commenters noted, we provided an example in the 2010 ABS Proposing Release, as we have done in other releases, to illustrate the disclosure principle.[837] In our example, for a pool of RMBS, the disclosure would typically include, among other things, the number of loans that were exceptions to the standardized underwriting criteria. As noted above, one commenter expressed concern and noted that the number of loans that were exceptions to the standardized underwriting criteria was qualitatively different and granular than the other two characteristics in the example and raised questions for issuers as how to apply the disclosure standard in a principled way to distinguish among various credit characteristics of the pool.[838] We believe that for RMBS, the number of exceptions to the standardized underwriting criteria is an important credit characteristic for issuers to highlight in the narrative disclosure. Inclusion of a significant number of mortgages that deviate from the underwriting standards could pose a risk to the performance of the RMBS. We believe disclosure of the number of loans that were exceptions to standardized underwriting criteria is likely to be important to highlight for other asset classes as well. Issuers should highlight those characteristics that would be most important for investors to be aware of before analyzing the actual static pool disclosure, which for some asset classes can be extensive.

Second, we are adopting, as proposed, an amendment to require issuers to describe the methodology used in determining or calculating the characteristics and also to describe any terms or abbreviations used.[839] We believe that this requirement will provide clarity and transparency to investors and assist them in determining whether the calculations or terms are comparable across issuers. This will benefit investors because it will facilitate their ability to make better informed investment decisions. One commenter urged the Commission to direct that the methodologies and key terms used by issuers be converged and standardized over time so that investors can compare securities within the same asset class.[840] Although we are not adopting standardized methodologies and terms for static pool disclosure, the proposal we are adopting requires asset-level disclosures for ABS backed by certain asset types.[841] As a result of the new asset-level requirements, the data used to produce the static pool information for these asset classes will be standardized.

Third, we are requiring a description of how the assets in the static pool differ from the pool assets underlying the securities being offered.[842] We continue to believe that this requirement benefits investors by providing them with context in which to evaluate the information without sophisticated data analysis tools and, as one commenter noted, to evaluate pool construction risk. If the pool in the offering is materially different from prior pools, then the issuer should describe the difference so that investors can factor in that difference when examining the static pool information. We agree with one commenter's statement that ''[t]he prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms and/or risk tolerances than the static pool data.'' [843] We also believe that in cases where the assets of the pool being securitized were underwritten through different origination channels (e.g., loans originated directly through an originator's retail channel or through unaffiliated mortgage brokers) compared to prior securitized pools, disclosure of the proportion of assets originated through each channel should be provided. To address commenters' concerns, we are clarifying that we are requiring ''a clear and concise description'' of the material differences, if any, from the pool being securitized, but not a detailed comparison.[844]

Fourth, as proposed, the final rule states that the static pool information should be presented graphically if doing so would aid in understanding.[845] As with the other requirements discussed above, we believe graphical presentations help investors to more easily evaluate material information, without the use of sophisticated analytical tools. One commenter stated that the graphical presentation has ''highly questionable utility'' and also may be misleading under many circumstances.[846] We are requiring the issuer to provide a graphical illustration only if it would be helpful; therefore, if an issuer believes that providing graphical presentation of the static pool information would not be useful for understanding the data or misleading, then the issuer would not be required to provide it. However, we generally believe that graphical presentation of information can be beneficial to investors by helping them to quickly spot trends, which may not be evident by looking at the numbers alone.

Finally, in addition to providing investors with a clear and brief introduction of the static pool data, we are also requiring issuers to provide disclosure in cases where an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information.[847] It is not always apparent why one issuer does not provide static pool information or provides alternative disclosure in lieu of such information, when other issuers within the same asset class provide the information. Therefore, we are requiring that issuers explain why they have not included static pool disclosure or why they have provided alternative information. One commenter interpreted this requirement as capable of being satisfied through summary disclosure, such as stating that the data is not available or not material.[848] While we are not requiring that the issuer provide an extensive explanation, the issuer should provide some explanation beyond a conclusory statement that the information is not

[835] *See* the 2010 ABS Proposing Release at 23385.

[836] *See* letter from VABSS I. Issuers can supplement the narrative disclosure that is required to be provided in paragraph format with graphical presentation if doing so would aid in understanding.

[837] *See* the 2010 ABS Proposing Release at 23385.

[838] *See* letter from ASF I. We discuss amendments to Item 1111 requiring specific data about the amount and characteristics of assets that deviate from the disclosed origination standards in Section III.A.2.a) Disclosure Requirements for All Asset Classes and Economic Analysis of These Requirements.

[839] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[840] *See* letter from AMI.

[841] *See also* Section III.A Asset-Level Disclosure Requirement.

[842] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[843] *See* letter from Prudential I.

[844] *See* letter from VABSS I.

[845] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[846] *See* letter from BoA I.

[847] *See* Item 1105 of Regulation AB [17 CFR 229.1105].

[848] *See* letter from BoA I.

available or not material. If the information is not included because it is not material, an issuer should explain why the data is immaterial, such as if the assets differ so significantly from the assets in the pool being offered.

We believe that taken together the static pool disclosure requirements adopted will benefit investors by providing them with more clearly explained and more consistently presented information about static pools, thereby facilitating their understanding of how the performance of the static pools may or may not be indicative of how the current pool may perform. This will help investors make better informed investment decisions and lead to more efficient allocation of capital. The requirements will be costly to issuers to the extent that they require reformatting information such as in graphical format. We expect that these costs will be minimal because issuers can use off-the-shelf software to create the graphs. Issuers will also incur costs for analyzing prior pools as compared to the current offering, but these costs should not be significant since they will have all the necessary information.

2. Amortizing Asset Pools

(a) Proposed Rule

We proposed to add an instruction to Item 1105(a)(3)(ii) of Regulation AB to require the static pool information related to delinquencies, losses, and prepayments be presented in accordance with the existing guidelines outlined in Item 1100(b) [849] for amortizing asset pools. Additionally, we proposed to amend Item 1105(a)(3)(iv) to require graphical presentation of delinquency, losses, and prepayments for amortizing asset pools.

(b) Comments on Proposed Rule

Comments received on the proposed changes for amortizing asset pools were mixed. With respect to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b), several commenters supported the proposal,[850] and several other commenters opposed.[851] Those commenters opposing the requirement were most concerned about the one-size-fits-all approach to Item 1100(b)(1). They stated, for example, that reporting delinquencies, losses, and prepayments in 30- or 31-day increments through charge-off would be for a longer period of time than required under general principles of materiality.[852] In regard to the graphical presentation requirement, one commenter noted that graphical presentations provide immediate recognition of changes in asset performance.[853] Commenters that opposed the requirement argued that not all graphical presentations are useful or meaningful, especially for asset classes with extensive data.[854]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed rules for amortizing asset pools with modification in response to comments. We remain concerned that the inconsistent presentation of delinquencies, losses, and prepayments across issuers within the same asset class has resulted in a lack of clarity and comparability.[855] To address this concern, we are adding an instruction to Item 1105(a)(3)(ii) of Regulation AB to require for amortizing asset pools that the static pool information related to delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) with respect to presenting such information in 30- or 31-day increments. In response to commenters' concerns with requiring such presentation through charge-off, the final instruction requires that delinquencies, losses, and prepayments be presented in 30- or 31-day increments through no less than 120 days.[856] We believe that this revised time period balances commenters' concerns with the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of the delinquencies, losses, and prepayments in a uniform manner across asset classes. We also note that this revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.[857] While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.[858] We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

In addition to requiring that delinquencies, losses, and prepayments be presented in accordance with Item 1100(b) through no less than 120 days, we are amending Item 1105(a)(3)(iv) to require the graphical presentation of this information for amortizing asset pools. We acknowledge commenters' concern that the substantial quantitative data associated with some prior securitized pools could make graphical presentation of the data ''unintelligible'' and that investors may prefer actual data over graphs because they cannot ascertain the data from the graphs and they can take the tabular data and create their own graphs.[859] We believe, however, that static pool data alone, depending on the volume and type of data, can be difficult to analyze without the use of sophisticated analytical tools. Requiring graphical presentation of this information will benefit investors by enabling them to analyze the information without such tools.[860] In addition, graphical presentation of the information highlights possible data segments that warrant further analysis and may therefore facilitate a more

[849] 17 CFR 229.1100(b). Item 1100(b) requires that information be presented in a certain manner. For example, it requires that information regarding delinquency be presented in 30-day increments through the point that assets are written off or charged off as uncollectable.

[850] *See* letters from BoA I and Realpoint.

[851] *See* letters from ASF I and VABSS I.

[852] *Id.* These commenters requested that the Commission tailor Item 1100(b) according to asset class. For instance, ASF requested that the Commission modify Item 1100(b)(1) for RMBS and CMBS as follows: Present delinquency information in 30- or 31-day increments through the point that the loans are 179 or 180 days delinquent, followed by an additional 180-day increment (i.e., through the point that the loans are 359 or 360 days delinquent), and a final increment of 359 or 360 days or more. For ABS supported, directly or indirectly, by motor vehicles, equipment and other similar physical assets with finite lives over which their value depreciates, ASF and VABSS requested that Item 1100(b)(1) be modified so that delinquency information is presented in 30- or 31-day increments through the point that the loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more.

[853] *See* letter from CFA I. *See also* letters from AMI and BoA I (supporting the graphical requirement for amortizing asset pools).

[854] *See* letters from ASF I and VABSS I.

[855] *See* the 2010 ABS Proposing Release at 23385.

[856] *See* letters from ASF I and VABSS I.

[857] *See* new Item 1(g)(33) of Schedule AL.

[858] *See* new Item 1(g)(28) of Schedule AL. *See* Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[859] *See* letter from VABSS I.

[860] *See* letters from AMI, BoA I, and CFA I (noting that graphical representation of this information provides investors with an immediate recognition of changes in asset performance in successive pools and thus an indication of the underwriting standards of the issuers).

tailored and efficient in-depth analysis. We also note that the inherent function of static pool information (i.e., analyzing trends within a sponsor's program by comparing originations at similar points in the assets' lives) is well-suited for graphical presentation as it allows for better detection of patterns that may not necessarily be evident from overall portfolio numbers.

3. Filing Static Pool Data

(a) Proposed Rule

We proposed to permit issuers to file their static pool information required under Item 1105 of Regulation AB on EDGAR in Portable Document Format (''PDF'') as an official filing in lieu of, as currently required, including the information directly in the prospectus (or incorporating by reference) in ASCII or HTML format.[861]

As is the case today, however, issuers can incorporate static pool information filed on a Form 8–K or as an exhibit to a Form 8–K by reference into a prospectus.[862] We proposed that all static pool disclosure, if filed on a Form 8–K, be filed under a new item number so that investors could easily locate the information that is incorporated by reference into the prospectus. We also proposed to create a new exhibit number to Item 601 of Regulation S–K for static pool information filed as an exhibit to a Form 8–K or prospectus.

(b) Comments on Proposed Rule

Commenters were generally opposed to our PDF proposal, favoring data formats other than PDF for static pool information. One commenter stated that PDF makes detailed analysis ''difficult'' and ''time-consuming.'' [863] Another commenter preferred a format that is readily importable to Excel or a comparable database program.[864] One commenter stated its belief that EDGAR in its current form will not facilitate the usability of static pool information, such as allowing investors to download the data in a format that investors can use with their own analytical tools and applications.[865] With respect to our proposal to house all static pool information filed on Form 8–K under a new item number, commenters were supportive of the proposal.[866]

(c) Final Rule and the Economic Analysis of the Final Rule

Given commenters' concerns regarding the usability of static pool information in PDF, we are not adopting our proposal to permit issuers to file their static pool information in PDF as an official filing. This decision benefits investors because they will continue to receive static pool information in a more usable format compared to PDF. Issuers, however, will be precluded from taking advantage of any cost savings that could be achieved by filing the static pool information in PDF.

We are adopting the proposed rules to amend Form 8–K and Item 601 of Regulation S–K. We believe that these amendments will benefit investors in searching and locating the static pool information filed on EDGAR. Therefore, if the issuer wishes to incorporate static pool information by reference to a Form 8–K filing rather than to include it in the prospectus, then an issuer must file it under new Item 6.06 of Form 8–K. If the issuer files the static pool information as an exhibit to a Form 8–K to be incorporated into a prospectus, the issuer must file the static pool information as Exhibit 106. Under the final rule, issuers will be required to include a statement in the prospectus that the static pool information incorporated by reference is deemed to be a part of the prospectus and also identify the Form 8–K on which the static pool information was filed by including the CIK number, file number, exhibit number (if applicable) and the date on which the static pool information was filed. Investors will benefit by being able to more easily search and locate static pool information incorporated by reference into the prospectus, and the only cost issuers are likely to incur is to update their information systems to reflect the new Form 8–K item requirement and exhibit number, which we believe should be minimal.

We also proposed that the information should be filed with the Form 8–K on the same date that the preliminary prospectus is required to be filed.[867] We are adopting that proposal with one clarification. Consistent with current practices under existing requirements, issuers may incorporate by reference the same static pool information into the prospectus of one or more offerings of the same asset class as long as the information meets the requirements of Item 1105 of Regulation AB,[868] which states that the most recent periodic increment for the static pool data must be of a date no later than 135 days after the first use of the prospectus.[869] The amended requirement clarifies that issuers are required to provide information by the date that the prospectus is required to be filed rather than on the same date the prospectus is filed (i.e., permitting incorporation of a previously-filed Form 8–K), and thereby allows issuers to continue to have the flexibility to incorporate the static pool information by reference into prospectuses of multiple deals.

F. Other Disclosure Requirements That Rely on Credit Ratings

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b) provides that no financial information regarding a significant obligor is required if the obligations of the significant obligor, as they relate to the pool assets, are backed by the full faith and credit of a foreign government and the pool assets are securities that

[861] Rule 312 of Regulation S–T permitted issuers for ABS filed on or before June 30, 2012, to post their static pool information on an Internet Web site under certain conditions in lieu of filing the static pool information on EDGAR. We are not removing Rule 312 of Regulation S–T in connection with this rulemaking since issuers that previously provided static pool information via a Web site are required to retain all versions of the information provided through the Web site for a period of not less than five years. Issuers are no longer able to use Rule 312 as a means to provide their static pool information. We are, however, removing Item 512(l) of Regulation S–K, the undertaking previously required for providing static pool information on a Web site under Rule 312 of Regulation S–T because this undertaking is no longer applicable. We are also removing paragraph (d)(6)(iii) of Securities Rule 433 which had permitted issuers to include a Web site address for static pool information in a free writing prospectus.

[862] *See* the 2004 Adopting Release at 1541.

[863] *See* letter from CFA I.

[864] *See* letter from Prudential I.

[865] *See* letter from ASF I. *See also* letter from American Securitization Forum regarding the filing of static pool information dated May 4, 2012 submitted in response to the 2010 ABS Proposing Release (''ASF V'') (noting that its investor members supported upgrading EDGAR to allow for a number of file types, including PDF and Excel, but did not specify whether PDF would in fact facilitate the usability of the static pool data).

[866] *See* letters from MBA I and Prudential I. Prudential suggested requiring the issuer to include a link in the prospectus to the relevant information in order to assist investors in locating the information. As is the case today, filers may reference a previously submitted filing in the prospectus; however, filers are generally not permitted to include external references. *See* EDGAR Manual (Volume II), Section 5, for additional information and instruction about acceptable external references.

[867] In the 2010 ABS Proposing Release, we proposed that ''[t]he static pool disclosure must be filed as an exhibit with this report by the time of effectiveness of a registration statement on Form SF–1, on the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)) and a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).''

[868] 17 CFR 229.1105(a)(3)(ii).

[869] We established a requirement regarding the age of the most recent periodic increment to ensure the currency of the data. *See* the 2004 Adopting Release at 1540.

are rated investment grade by an NRSRO.[870] Item 1114 of Regulation AB contains a similar instruction that relieves an issuer of the obligation to provide financial information when the obligations of the credit enhancement provider are backed by a foreign government and the credit enhancement provider has an investment-grade rating.[871] We proposed to revise Item 1112 and Item 1114 to eliminate the exceptions based on investment-grade ratings.

We received only one comment on this proposal, which supported the proposal.[872] We are adopting the amendments to Items 1112 and 1114 as proposed. We continue to believe that these changes are consistent with the requirements of Section 939A of the Dodd-Frank Act, which requires us to reduce regulatory reliance on credit ratings, and our revisions to eliminate ratings from the shelf eligibility criteria for asset-backed issuers. We believe that this will allow investors to directly consider the financial condition of significant obligors and credit enhancement providers rather than rely solely on the implication of these parties' credit ratings. Because the information now required to be disclosed is likely available to the issuer, the revisions to Item 1112 and Item 1114 will not impose substantial costs or burdens on an asset-backed issuer.

V. Securities Act Registration

A. Background and Economic Discussion

Securities Act shelf registration provides important timing and flexibility benefits to issuers. An issuer with an effective shelf registration statement can conduct delayed offerings ''off the shelf'' under Securities Act Rule 415 without staff action.[873] Asset-backed securities are often registered on a Form S–3 registration statement and later offered ''off the shelf'' if, in addition to meeting other specified criteria,[874] the securities are rated investment grade by an NRSRO. We continue to recognize that ABS issuers have expressed the desire to use shelf registration to access the capital markets quickly. ABS issuers' interest in shelf registration is also evidenced by the lack of ABS issuers using Form S–1.[875]

In the 2010 ABS Proposing Release, we proposed, among other things, new registration procedures, registration forms and shelf eligibility requirements for asset-backed security issuers. The 2010 ABS Proposals sought to address a number of concerns about the ABS offering process and ABS disclosures that were subsequently addressed in the Dodd-Frank Act, while others were not addressed by the Dodd-Frank Act. Two of the proposed shelf eligibility requirements—risk retention[876] and continued Exchange Act reporting[877]—were addressed by provisions of the Dodd-Frank Act. In July 2011, we re-proposed some of the 2010 ABS Proposals in light of the changes made by the Dodd-Frank Act and comments we received.

The 2011 ABS Re-Proposals for ABS shelf registration eligibility were also part of several rule revisions we are considering in connection with Section 939A of the Dodd-Frank Act. Section 939A of the Dodd-Frank Act requires

[870] Instruction 2 to Item 1112(b) of Regulation AB [17 CFR 229.1112(b)].

[871] Instruction 3 to Item 1114 [17 CFR 229.1114]. Under both Items 1112 and 1114, to the extent that pool assets are not investment-grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information. Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

[872] *See* letter from BoA I.

[873] As discussed in the 2010 ABS Proposing Release, contemporaneous with the enactment of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), which added the definition of ''mortgage related security'' to the Exchange Act, we amended Securities Act Rule 415 to permit mortgage related securities to be offered on a delayed basis, regardless of which form is utilized for registration of the offering (Pub. L. No. 98–440, 98 Stat. 1689). SMMEA was enacted by Congress to increase the flow of funds to the housing market by removing regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage related securities. *See* H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827. *See also Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889] at footnote 30 (noting that mortgage related securities were the subject of pending legislation). In 1992, in order to facilitate registered offerings of asset-backed securities and eliminate differences in treatment under our registration rules between mortgage related asset-backed securities (which could be registered on a delayed basis) and other asset-backed securities of comparable character and quality (which could not), we expanded the ability to use ''shelf offerings'' to other asset-backed securities. *See Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 32461]. Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO (typically one of the four highest categories) could be shelf eligible and registered on Form S–3. The eligibility requirement's definition of ''investment grade'' was largely based on the definition in the existing eligibility requirement for non-convertible corporate debt securities.

[874] In addition to investment-grade rated securities, an ABS offering is shelf-eligible only if the following conditions are met: delinquent assets must not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S–3 subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to Section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). Such material (except for certain enumerated items) must have been filed in a timely manner. We did not propose changes to these other eligibility conditions.

[875] According to EDGAR, since 2008, no ABS issuer has filed a registration statement on Form S–1 that went effective.

[876] In the 2010 ABS Proposing Release, we proposed to require that sponsors of ABS transactions retain a specified amount of each tranche of the securitization, net of hedging. Section 941 of the Dodd-Frank Act added new Section 15G of the Exchange Act. Section 15G generally requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commission and in the case of the securitization of any ''residential mortgage asset,'' together with the Department of Housing and Urban Development and the Federal Housing Finance Agency, to jointly prescribe regulations relating to risk retention. In March 2011, the agencies proposed rules to implement Section 15G of the Exchange Act. In August 2013, the agencies re-proposed the rules. *See* the 2011 Risk Retention Proposing Release and the 2013 Risk Retention Re-Proposing Release.

[877] The Commission proposed in the 2010 ABS Proposals to require that an ABS issuer undertake to file Exchange Act reports with the Commission on an ongoing basis as a condition to shelf eligibility. The 2010 ABS Proposals also proposed to require an issuer to confirm, among other things, whether Exchange Act reports required pursuant to the undertaking were current as of the end of the quarter in order to be eligible to use the effective registration statement for takedowns. Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers, and granted authority to the Commission to issue rules providing for the suspension or termination of such duty. In the 2011 ABS Re-Proposing Release, we stated that due to the amendment to Section 15(d), the proposed shelf eligibility requirement to undertake to file Exchange Act reports is no longer necessary, including the quarterly evaluation by issuers of compliance with the undertaking. In August 2011, we adopted rules to provide for suspension of the reporting obligations for asset-backed securities issuers when there are no asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. *See* footnote 543.

that we review any regulation issued by us that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Once we have completed that review, the statute provides that we modify any regulations identified in our review to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as we determine to be appropriate. In that connection, we take into account the context and purposes of the affected rules.

B. New Registration Procedures and Forms for ABS

1. New Shelf Registration Procedures

Under existing rules, as with current offerings of other types of securities registered on Form S–3 and Form F–3, the shelf registration statement for an offering of ABS will often be effective weeks or months before a takedown is contemplated. The prospectus in an effective registration statement must describe, among other things, the type or category of assets to be securitized, the possible structural features of the transaction, and identification of the types or categories of securities that may be offered.[878] Pursuant to existing Securities Act Rules 409 and 430B,[879] the prospectus in the registration statement may omit the specific terms of a takedown if that information is unknown or not reasonably available to the issuer when the registration statement is made effective.[880] For ABS offerings off the shelf, because assets for a pool backing the securities will not be identified until the time of an offering, information regarding the actual assets in the pool and the material terms of the transaction are typically only included in a prospectus or prospectus supplement that is required to be filed with the Commission by the second business day after first use.[881] This information includes information about the structure of the cash flows, the pool, underwriting criteria for the assets and exceptions made to the underwriting criteria, identification of the originators of the assets and other information that is related to the identification of specific assets for the pool. We understand that the creation of an asset pool to support securitized products is a dynamic and ongoing process in which changes can take place up until pricing. As a result, the new rules we are adopting maintain the fundamental framework of shelf registration for delayed ABS offerings, but provide new important protections for investors who choose to commit capital to the ABS transactions.

We also recognize that it is important for investor protection that, in addition to receiving adequate information to make an investment decision, ABS investors also have adequate time to analyze the information and the potential investment. For the most part, each ABS offering off of a shelf registration statement involves securities backed by different assets, so that, in essence, from an investor point of view, each offering requires a new investment analysis. Information about the underlying assets is an important piece of information for analyzing the ability of those assets to generate sufficient funds to make payments on the securities. Furthermore, some have noted the lack of time to review transaction-specific information as hindering investors' ability to conduct adequate analysis of the securities.[882] We believe that a process for ABS offerings where investors and underwriters have additional time to conduct their review of offerings will result in improved investor protections and promote a more efficient asset-backed market, even if issuers may not always be able to complete their offering as swiftly as they could in the past. Therefore, we are adopting rules designed to increase the amount of time that investors have to review information about a particular shelf takedown, which we believe will allow for better analysis of ABS in lieu of undue reliance on security ratings.

a) Rule 424(h) and Rule 430D

(1) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that an ABS issuer using a shelf registration statement on proposed Form SF–3 file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. This requirement would allow investors additional time to analyze the specific structure, assets and contractual rights of each transaction. We proposed this requirement in response to investors' concerns that ABS issuers were not providing them enough time to review the transaction-specific information, which hindered their ability to conduct adequate analysis of the securities. We noted in the 2011 ABS Re-Proposal that the five business-day waiting period was also intended to reduce undue reliance on security ratings, thus part of our efforts to remove the prior investment-grade ratings requirement.[883] We believed that requiring such information to be filed at least five business days before the first sale of securities in the offering balances the interest of ABS issuers in quick access to the capital markets and the need of investors to have more time to consider transaction-specific information. In the 2010 ABS Proposing Release, we explained that we considered whether a longer minimum time period than five business days would be more appropriate.[884] We had proposed five business days because we believed that the companion proposals requiring the filing of standardized and tagged asset-level information and a computer program could reduce the amount of time required by investors to

[878] The form of prospectus in an effective registration statement should also include disclosure about the risks associated with changes in interest rates or prepayment levels as well as the various scenarios under which payments on the ABS could be impaired.

[879] 17 CFR 230.409 and 17 CFR 230.430B.

[880] The prospectus disclosure in the registration statement is often presented through a ''base'' or ''core'' prospectus and a prospectus supplement. We are eliminating this type of presentation for ABS issuers. *See* Section V.D.1 Presentation of Disclosure in Prospectuses.

[881] An instruction to Rule 424(b) [17 CFR 230.424(b)] requires that a form of prospectus or prospectus supplement relating to a delayed offering of mortgage-backed securities or an offering of asset-backed securities be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

[882] *See, e.g.,* Section I.B. of CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, *U.S. Financial Regulatory Reform: The Investor's Perspective,* July 2009 (noting that securitized products are sold before investors have access to a comprehensive and accurate prospectus, noting that each ABS offering involves a new and unique security, and recommending that the Commission adopt rules to improve the timeliness of disclosures to investors); *Securitization of Assets: Problems & Solutions Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 111th Cong. 11 (2009) (statement of William W. Irving) (recommending that there be ample time before a deal is priced for investors to review and analyze a full prospectus and not just a term sheet); *The State of Securitization Markets Hearing Before the Subcomm. on Sec., Ins., & Inv. of the S. Comm. on Banking, Housing & Urban Affairs,* 112th Cong. 9 (2011) (statement of Chris J. Katopis, Executive Director of the Association of Mortgage Investors) (recommending that there be a ''cooling off period'' when ABS are offered to provide investors with enough time to review and analyze prospectus information prior to making investment decisions). *See also* footnote 885 listing those commenters supporting the waiting period proposal.

[883] *See* the 2010 ABS Proposing Release at 23334, including footnote 80, and the 2011 ABS Re-Proposal at 47950, including footnote 19.

[884] Some have suggested that investors be provided with up to two weeks to analyze asset information. *See, e.g.,* Joshua Rosner, *Securitization: Taming the Wild West, in* Roosevelt Institute, Make Markets be Markets 73 (2010).

consider transaction specific information. The proposal also provided that a material change from the information provided in the preliminary prospectus, other than offering price, would require a new preliminary prospectus to be filed and therefore, a new five business-day waiting period.

(2) Comments on Proposed Rule

Comments received on this proposal were mixed. Several commenters supported the proposal that a preliminary prospectus be filed five business days in advance of the first sale.[885] Two commenters generally supported the proposed five business-day waiting period and also provided additional feedback on other time periods.[886] One of the commenters recommended that investors should have not less than three days to evaluate an ABS offering,[887] while the other stated that two business days for repeat issuers may be sufficient.[888]

Other commenters opposed the five business-day waiting period [889] and suggested shorter alternatives such as two business days prior to the first sale,[890] one business day,[891] or no waiting period.[892] One commenter suggested that the waiting period vary by asset class.[893] Another commenter recommended a one business-day waiting period for a category of ''well-known seasoned asset-backed sponsors'' that meet certain issuer classification (e.g., seasoned depositors and sponsors with established securitization programs that have issued more than a threshold aggregate amount and/or over a specified period of time), asset class classification (e.g., master trusts where the asset pool does not change materially from transaction to transaction and a specified dollar amount of transactions have been issued and supported by the pool), or transaction structure (e.g., transactions by the same depositor or sponsor, where issuances involve waterfall structures that do not change materially from transaction to transaction).[894] Along the same lines, another commenter suggested that certain types of ABS offerings do not warrant any mandatory waiting periods because of their frequency and nature (e.g., where a sponsor, its parent or a subsidiary has completed at least one public offering within the preceding two years of securities in the same asset class and where the cash flows and structure are substantially similar to a prior public offering).[895] Several commenters argued that a five business-day waiting period is more consistent with the time delays associated with an equity initial public offering (''IPO''), and noted that the proposed rule could lead to the ''perverse result'' that a well-known seasoned issuer can issue relatively risky forms of capital such as equity or unsecured debt without any required waiting period, but secured debt, generally regarded as less risky, would have a waiting period.[896]

While we did not specifically request further comment on this topic in the 2011 ABS Re-Proposing Release, several commenters offered comment on the proposal. For the most part, commenters reiterated their suggestions from their comment letters on the 2010 ABS Proposing Release. Several commenters agreed that a preliminary prospectus should be provided to investors in advance.[897] Some commenters noted concern if the proposed time period were to be shortened.[898] One commenter reiterated its suggestion for different filing requirements based on asset class.[899] Another commenter suggested a one business-day waiting period for ''widely followed, programmatic ABS issuers'' and a two business-day waiting period for all others.[900]

As noted above, the proposal provided that a material change from the information provided in a preliminary prospectus, other than offering price, would require a new preliminary prospectus and therefore, a new five business-day waiting period. Some investor commenters supported the proposal to require a new waiting period for any material changes.[901] However, several commenters recommended changes to this aspect of the proposal.

Some commenters, believing the five business-day waiting period after material changes was too long, suggested shorter periods.[902] Commenters recommending shorter periods generally argued that in most cases a material change can be easily identified and reviewed and will not

[885] *See* letters from AFL–CIO dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, AMI, CalPERS, CFA I, CREFC I, Rylee Houseknecht dated Apr. 26, 2010 submitted in response to the 2010 ABS Proposing Release, ICI I, Jamie L. Larson dated Apr. 27, 2010 submitted in response to the 2010 ABS Proposing Release, MetLife I, MBA I, Prudential I, and Realpoint.

MBA also requested that issuers, particularly CMBS issuers, also have the ability to update without restarting the five business-day period. *See* letter from MBA I (noting that while a five business-day minimum waiting period prior to the first sale will occasionally impose an ''unwelcome timing constraint,'' the minimum waiting period is unlikely to make shelf registration sufficiently less attractive if the rule provides flexibility for issuers to provide updates with a shorter waiting period). Comments about the waiting period for updates are addressed below.

[886] *See* letters from ICI I (noting that if the Commission considers a shorter period, investors should be provided with no less than a three-day period) and CFA II (reiterating their support for the proposed five business-day waiting period).

[887] *See* letter from ICI I.

[888] *See* letter from CFA I.

[889] *See* letters from ABA I, ASF I, AmeriCredit, CNH I, SIFMA I, and Wells Fargo I.

[890] *See* letters from ABA I (suggesting two business days for all ABS transactions other than those by widely followed, well-known ABS issuers), ASF I, AmeriCredit, BoA I, CNH I, Vanguard, VABSS I (recommending no mandatory minimum waiting period, but suggesting two business days if a minimum is imposed), and Wells Fargo I.

[891] *See* letter from ABA I (one business day is appropriate for widely-followed, well-known ABS issuers, sponsors or asset classes or structures, similar to the well-known seasoned issuer concept).

[892] *See* letter from VABSS I.

[893] *See* letter from SIFMA I (suggesting a two business-day period for bank credit card or charge card receivables; three business days for private-label credit card or charge card receivables, motor vehicle loans/leases, student loans, or equipment loans or leases; and five business days for any other asset class, including RMBS and CMBS).

[894] *See* letter from ABA I (noting that some programmatic issuers have issued hundreds of billions of dollars of ABS over decades, using securitization programs that have consistent documentation from deal to deal, and are well-known to their investor base which, as a result, needs less time to absorb transaction details).

[895] *See* letter from VABSS I.

[896] *See* letters from AmeriCredit and VABSS I.

[897] *See* letters from ABA II, AFME, and CFA II.

[898] *See* letters from Better Markets and ICI II (also suggesting a time period of no less than three business days).

[899] *See* letter from SIFMA III-dealers and sponsors (stating that ''at least two business days before the date of the first sale in the offering, in the case of ABS backed by bank credit card or charge card receivables; at least three business days before the date of the first sale in the offering, in the case of ABS backed by private-label credit card or charge card receivables, motor vehicle loans or leases, student loans, or equipment loans or leases; and at least five business days before the date of the first sale in the offering, in the case of ABS backed by any other asset class, including residential or commercial mortgage loans'').

[900] *See* letter from ABA II.

[901] *See* letters from AMI, MetLife I, and Prudential I.

[902] *See* letters from ABA I, ASF I (expressed views of issuers and investors only) (supporting a one business-day minimum if a minimum period is imposed but noting that even a one business-day minimum period could be overly rigid and unnecessarily long in some cases), AmeriCredit, AMI, BoA I, CNH I, CREFC I (suggesting a waiting period up to five business days based upon the nature of the change and the length of time that would be needed for the market to digest that change in accordance with past experience, and that sponsors should be given the latitude to determine the appropriate length of review on a case-by-case basis based on their ''unique'' understanding of the CMBS market and experience with the investor community), MBA I, Prudential I, SIFMA I (expressed views of issuers and investors only), VABSS I, and Wells Fargo I (asserting that one business day should be sufficient where a material change was made during the first day of the initial waiting period, and two business days if made later in the initial period).

take investors the same amount of time to consider as compared to the first review of the entire preliminary prospectus.[903] Some investor commenters suggested that the waiting period should be shortened because investors will have the opportunity to become familiar with the transaction documents during the initial marketing period.[904] One commenter stated that a five business-day waiting period unnecessarily exposes well-established sponsors to market and execution risk without providing a meaningful benefit to investors and recommended both a shorter waiting period and a requirement that material changes be disclosed in a supplement to the preliminary prospectus to facilitate easy identification of such changes.[905]

Some commenters suggested that no additional waiting period after material changes may be necessary.[906] One investor commenter recommended a new filing and a new five business-day period only if a change to the transaction occurs that a reasonable investor would consider material to an investment decision, such as: Changes to more than 1% of the collateral pool, including changes at the property, tenant or borrower level; any changes to the priority of payment (i.e., waterfall); any changes of any service provider or party to the transaction; or any changes to the terms in the documents related to the transaction, including changes to any representations and warranties, covenants or indemnities originally contained in such documents.[907]

Commenters also requested that we provide additional clarity regarding the material changes to the preliminary prospectus that would trigger a new five business-day waiting period.[908] One of those commenters stated that changes in pool composition as a result of ordinary events, such as payments of interest or principal, should not require additional disclosure or a renewed waiting period unless such payments reflect another material change.[909] Several commenters recommended that the requirement should not focus so much on the materiality of the change in terms of its economic impact or importance, but rather on the likely extent of the effect of such a change on the disclosure itself and the need for more time to review.[910]

We also received comments on our proposal to permit omission of pricing information in the required preliminary prospectus. One commenter recommended that we define what is contemplated by the phrase ''information dependent on pricing'' and whether this would include only quantitative pricing terms, or whether it could also include other additional information that is typically determined at pricing (e.g., selection of a swap counterparty, weighted average life calculations, or, in the case of credit card master trusts, transaction size and minimum principal receivables balance requirements).[911] Along the same lines, several commenters suggested an accommodation for transactions involving derivative contracts.[912] Another commenter suggested that the preliminary prospectus should have a section that specifically discusses any aspect of the transaction that is ''to be determined'' at the time of the filing.[913]

We did not receive comments on our proposed conforming revisions to the undertakings that are required by Item 512 of Regulation S–K [914] in connection with a shelf registration statement for ABS. We also did not receive comments on our proposed addition to Item 512 to require an issuer to undertake to file the information required to be contained in a preliminary prospectus.

(3) Final Rule and Economic Analysis of the Final Rule

(a) Rule 424(h) Filing

Under the final rule, with respect to any takedown of securities in a shelf offering of asset-backed securities where information is omitted from an effective registration statement in reliance on new Rule 430D, as discussed below, a form of prospectus meeting certain requirements must be filed with the Commission in accordance with the new Rule 424(h) preliminary prospectus at least three business days prior to the first sale of securities in the offering.[915] After considering the various comments received on the initial five-business day waiting period, we have shortened the waiting period as proposed from five business days to three business days. We believe that three business days balances the benefit to investors of providing additional time to conduct an analysis of the offering—a longstanding concern of ABS investors [916]—and the concerns of issuers expressed in the comment letters. While the final rule imposes a minimum three-day waiting period, issuers may provide additional time to potential investors to consider the offering.

We recognize that the final rule will require issuers to provide information to investors earlier in the process than was often provided for ABS issued before the crisis. During the required waiting period, issuers may be exposed to the risk of changing market conditions because they may have to hold the underlying assets on their balance sheets (inventory risk), and the risk may have larger impact on small sponsors with smaller balance sheets. To assess the magnitude of this risk and the costs that it may impose on issuers, we

[903] *See* letters from BoA I and SIFMA I (expressed views of issuers and investors only). *See also* AmeriCredit (suggesting an additional waiting period should apply only in cases where the material changes significantly affect the asset pool, the cash flows or the transaction structure, otherwise no waiting period should be required, such as when ''upsizing'' a transaction due to strong investor demand), CREFC I (stating that a free writing prospectus that highlights a material change will expedite and improve the review of changes by the investor community rather than requiring review of an entirely new 424(h) filing), and MBA I (noting that investors in CMBS do not need five business days to understand all material changes, and that CMBS issuers commonly issue ''pre-pricing updates,'' often no more than one or two pages, to investors prior to pricing to convey any material changes since the preliminary prospectus and also suggesting that the period be shortened to one day or have the rule focus more on the length of time necessary for an investor to understand the change rather than the materiality of the change).

[904] *See* letters from AMI and Prudential I.

[905] *See* letter from ABA I.

[906] *See* letters from ASF I (expressed views of issuers and investors only) and BoA I. These commenters reasoned that existing Rule 159 provides adequate protections by promoting the delivery of updated information in a manner that provides investors with an opportunity to evaluate the disclosure prior to contract of sale.

[907] *See* letter from MetLife I.

[908] *See* letters from ABA I, BoA I, CREFC I, ICI I, and MBA I.

[909] *See* letter from ABA I.

[910] *See* letters from BoA I, CREFC I, and MBA I (noting that many material changes (e.g., a change in payment priority) that are important can nevertheless be easily described and quickly understood, particularly if one has already received a preliminary prospectus).

[911] *See* letter from ABA I.

[912] *See* letters from ASF I and BoA I (explaining that in these cases the preliminary prospectus could not include information relating to a specific swap counterparty or other information dependent on the pricing because the optimal pricing of the derivative and the counterparty with the most competitive bid cannot be determined by the issuer until the time of pricing for the offered securities).

[913] *See* letter from Prudential I.

[914] 17 CFR 229.512.

[915] Sale includes ''contract of sale.'' *See* footnote 391 and accompanying text of the Securities Offering Reform Release. We are clarifying the final rule to note that the preliminary prospectus must be filed two business days after first use but no later than three business days before first sale. *See also* letter from SIFMA I (noting that the Commission should make clear that a preliminary prospectus must be filed not later than the earlier of (i) the applicable number of business days before the date of the first sale, or (ii) or the second business day after fist use).

[916] *See* the 2004 ABS Adopting Release at 1527. Although the investment analysis does not have to be completely done anew for master trust transactions since the asset pools do not necessarily change with each takedown, we believe that the three business-day waiting period is still important for investors in such transactions as investors are not only reviewing the assets but also any changes to the structure to ensure that it will produce the expected cash flows, which can be intricate and complex for master trusts.

analyzed time series changes in the price of the Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (R0A0).[917] Average index returns for the pre-crisis, crisis, and post-crisis periods are presented in Table 1. To assess the cost of the three business-day waiting period that we are adopting against the cost of reasonable alternatives, we calculated index returns over one, three, five and ten days. Outside of the volatile 2008–2009 crisis period, the average change in ABS market conditions as measured by index returns is below 1.5 basis points (bps) for all horizons (1, 3, 5, and 10 days) with the standard deviation below 15bp for three-day returns. These results suggest that the economic exposure of issuers to market conditions (opportunity cost) is relatively small for all waiting period lengths in the range from 1 day to 10 days, but increases with the horizon. Further, reducing the waiting period from 5 days to 3 days lowers the riskiness of returns by more than 15% (the standard deviation drops from 17bps to 14bps). To put these numbers in perspective, for a $100 million ABS issuance that is similar to the above-mentioned R0A0 ABS index, a three business-day waiting period during the analyzed period would result in an expected change of less than $10,000 and a 10% likelihood of a more than $230,000 increase or decrease in the value of the issuance. Additionally, exposure to several sources of risk, for example, the three-day interest rate risk or credit spread risk, can be hedged with forward contracts, further reducing potential exposure to losses due to a three-day delay in offering.[918]

TABLE 1—INDEX RETURNS ARE CALCULATED USING THE PRICE OF BANK OF AMERICA MERRILL LYNCH U.S. FIXED RATE ASSET BACKED SECURITIES INDEX FOR THE 5/6/2004 TO 12/31/2013 PERIOD. THREE, FIVE, AND TEN DAY RETURNS ARE OVERLAPPING.

Time period	Number of daily observations	1-day		3-day		5-day		10-day	
		Average	Standard deviation	Average	Standard deviation	Average	Standard deviation	Average	Standard deviation
5/6/2004–12/31/2007	954	0.0000	0.0011	−0.0001	0.0017	−0.0002	0.0020	−0.0003	0.0025
1/1/2008–12/31/2009	524	−0.0001	0.0021	−0.0003	0.0037	−0.0005	0.0050	−0.0009	0.0077
1/1/2010–12/31/2013	1046	0.0000	0.0006	0.0000	0.0011	0.0000	0.0014	0.0000	0.0020
2004–2013 excl. 2008–2009	2000	0.0000	0.0009	0.0000	0.0014	−0.0001	0.0017	−0.0001	0.0022

As noted above, comments received on the waiting period were mixed on the appropriate length of time for the initial waiting period before first sale with mostly investors supporting[919] an initial waiting period of five business days and issuers mostly opposing[920] such a requirement. Commenters opposing five business days provided various suggested alternatives to the proposal—ranging from two business days prior to first sale to no waiting period at all.[921] Some of these commenters recommended that the length of the waiting period be determined based on asset class or whether the issuer is a repeat issuer.[922] Because we believe that, regardless of the asset class or whether the issuer is well-known, investors should have more time to conduct their analysis before making an investment decision than was provided previously, we are not adopting such distinctions based on asset class or type of issuer. We also believe that given the complexity of ABS transactions that two-business days, and especially one-business day, would not provide investors with enough time to conduct their due diligence.[923] As a result, we believe that a minimum of three business days strikes the appropriate balance of providing investors with more time to analyze the information related to the transaction while also minimizing issuers' exposure to changing market conditions and giving them flexibility in timing of ABS issuance.

Finally, while we have observed that post-crisis ABS issuers have provided investors with additional time, we are concerned that market practice could change in a heated market with many issuers possibly reverting to the practice of providing investors with insufficient time and causing investors to place undue reliance on ratings. Because of this concern and our belief that investors should conduct their own due diligence rather than unduly rely on ratings, we are mandating a waiting period of at least three-business days as part of our rules.[924] We are persuaded by commenters that neither a new preliminary prospectus nor a restart of the waiting period is necessary for material changes because, in most cases, a material change can be easily identified and reviewed and therefore may not take an investor as long to review compared to the first review of the preliminary prospectus.[925] The final rule will require that the issuer disclose any material changes in a supplement to the preliminary prospectus that must be filed with the Commission at least 48 hours before the date and time of the first sale.[926] The supplement must

[917] The Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Securities Index (the ''Index'') tracks the performance of U.S. dollar denominated investment-grade fixed rate asset-backed securities issued in the U.S. domestic market. Qualifying securities must have an investment-grade rating (based on an average of Moody's, S&P, and Fitch ratings). In addition, qualifying securities must have the following: (1) A fixed rate coupon (including callable fixed-to-floating rate securities); (2) at least one year remaining term to final stated maturity; (3) at least one month to the last expected cash flow; (4) an original deal size for the collateral group of at least $250 million; (5) a current outstanding deal size for the collateral group greater than or equal to 10% of the original deal size; and (6) a minimum outstanding tranche size of $50 million for senior tranches and $10 million for mezzanine and subordinated tranches. Floating rate, inverse floating rate, interest only, and principal only tranches of qualifying deals are excluded from the Index as are all tranches of re-securitized and agency deals. Securities to be sold in reliance on Securities Act Rule 144A qualify for inclusion in the Index.

[918] The inventory risk can also be transferred to underwriters that would commit to buy the issue from securitizers.

[919] *See* footnote 885.

[920] *See* footnote 889.

[921] *See* footnotes 890, 891, and 892.

[922] *See* footnote 893.

[923] Even though most ABS offerings are structured as shelf offerings, each takedown off a shelf registration statement is more akin to an IPO given that each ABS offering consists of new assets and a new structure, which requires investors to conduct their investment analysis anew to make an informed investment decision.

[924] *See* letter from ICI I (noting that although they support an initial five-business day waiting period, should the Commission decide to reduce the waiting period, that investors should have not less than three business days to evaluate an ABS shelf offering).

[925] *See, e.g.,* letters from ABA I, AmeriCredit, ASF I (issuers and investors), SIFMA I, VABSS I, and Wells Fargo I.

[926] The changes must be filed in a supplement in accordance with Rule 424(h)(2); provided that if the material change relates to the assets within the pool also provide the information required by Item 1125. Whether a change is material for purposes of the requirement will depend on the facts and

Continued

provide a description of how the information in the initial preliminary prospectus has changed so that the changes are apparent to investors.

This revision will help to address cost and other concerns expressed by issuers and others about the proposed amount of waiting time after a material change and the concerns about filing an entirely new preliminary prospectus. It should reduce some commenters' concerns regarding exposure to market risk and unnecessary delay. We are concerned, however, that extensive material changes, even after an initial waiting period for the preliminary prospectus, could be difficult for investors to review in this shortened timeframe; therefore, we are requiring issuers to clearly delineate in a prospectus supplement what material information has changed and how the information has changed from the initial preliminary prospectus. We expect that the asset-level disclosure requirements that we are adopting, which will provide investors with standardized machine-readable data about the pool assets, will facilitate investors' ability to update their investment analysis quickly. As a result, we do not believe that investors will need as much time to review the supplement as they will need for their initial review of the preliminary prospectus.

(b) New Rule 430D

Prior to the rules we are adopting, the framework for ABS shelf offerings, along with shelf offerings for other securities, was outlined in Rule 430B of the Securities Act. Rule 430B describes the type of information that primary shelf-eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act reports incorporated by reference, or a post-effective amendment, and addresses both the treatment of prospectuses filed pursuant to Rule 424(b) and effective date triggers for securities sold off the shelf registration statement.[927] As discussed above, we are adopting new Rule 430D to provide the framework for shelf offerings of asset-backed securities pursuant to revised Rule 415(a)(1)(vii) or (xii); therefore, ABS issuers eligible to conduct shelf offerings are no longer eligible to use Rule 430B. By removing ABS shelf offerings from existing Rule 430B and creating new Rule 430D, we are providing a shelf offering framework that is appropriately tailored to ABS shelf offerings and that incorporates the new preliminary prospectus requirement.[928]

New Rule 430D requires that, with respect to each offering, all the information previously omitted from the prospectus filed as part of an effective registration statement must be filed at least three business days in advance of the first sale of securities in the offering in accordance with new Rule 424(h), except for the omission of information with respect to the offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to Rule 409. The information required to be filed pursuant to Rule 424(h) includes, among other things, information about the specific asset pool that is backing the securities in the takedown and the structure of the transaction. As summarized above, commenters requested that we clarify what we mean by information with respect to the offering price. We note that new Rule 430D largely conforms to existing Rule 430B but is tailored to ABS shelf offerings; therefore, the type of information permitted to be omitted from a preliminary prospectus is the same as the information that Rule 430B permitted to be omitted from the base prospectus in a shelf offering prior to this rulemaking.

As we stated in the 2010 ABS Proposing Release, so long as a form of prospectus has been filed in accordance with Rule 430D,[929] asset-backed issuers can continue to utilize a free writing prospectus or ABS informational and computational materials in accordance with existing rules.[930] Because we believe that investors should have access to a comprehensive prospectus that contains all of the required information, a free writing prospectus or ABS informational and computational materials could not be used for the purpose of meeting the requirements of new Rule 424(h). As proposed, the Rule 424(h) preliminary prospectus filing will be deemed part of the registration statement on the earlier of the date such form of prospectus is filed with the Commission or, if used earlier, the date of first use.[931] A final prospectus for ABS shelf offerings should continue to be filed pursuant to Rule 424(b). Consistent with Rule 430B for shelf offerings of corporate issuers, under new Rule 430D, the filing of the final prospectus under Rule 424(b) will trigger a new effective date for the registration statement relating to the securities to which such form of prospectus relates for purposes of liability.

To reflect the requirements under new Rule 424(h) and new Rule 430D, we are also adopting, as proposed, conforming revisions to the undertakings that are required by Item 512 of Regulation S–K[932] in connection with a shelf registration statement. For the most part, ABS issuers will continue to provide the same undertakings that have been required of ABS issuers conducting delayed shelf offerings. In light of adopting the new Rule 424(h) preliminary prospectus, we are adopting conforming revisions to the undertakings relating to the determination of liability under the Securities Act as to any purchaser in the offering. In particular, the issuer must undertake that information that was omitted from an effective registration statement and then later included in a Rule 424(h) preliminary prospectus shall be deemed part of and included in the registration statement on the earlier of the date the Rule 424(h) preliminary prospectus was filed with the Commission, or if used earlier, the date it was first used after effectiveness. Also, in light of the new Rule 424(h) preliminary prospectus, under our revisions to Item 512 of Regulation S–K, an issuer is required to undertake to file the information required to be contained in a Rule 424(h) filing with respect to any offering of securities.

2. Forms SF–1 and SF–3

(a) Proposed Rule

In order to delineate between ABS filers and corporate filers and, more importantly, to tailor requirements for ABS offerings, we proposed to add new

circumstances. *See* TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448–49 (1976). *See also* Basic v. Levinson, 485 U.S. 224, 231 (1988).

[927] *See* Section V.B.1.b of the Securities Offering Reform Release.

[928] For offerings of ABS on Form SF–1, existing Securities Act Rule 430A would apply.

[929] Rule 430D(c) provides that a form of prospectus that omits information as provided in the rule will be a permitted prospectus. Thus, after a registration statement is filed, offering participants can use a form of prospectus that omits information in accordance with the rule.

[930] ABS informational and computational materials, as defined in Item 1101 of Regulation AB [17 CFR 229.1101], may be used in accordance with Securities Act Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Materials that constitute a free writing prospectus, as defined in Securities Act Rule 405 [17 CFR 230.405] may be used in accordance with Securities Act Rules 164 and 433 [17 CFR 230.164 and 17 CFR 230.433].

[931] This is consistent with the existing provisions for other preliminary prospectuses. *See* Rule 430B(e).

[932] 17 CFR 229.512.

registration forms that would be used for any sales of a security that is an asset-backed security, as defined in Item 1101 of Regulation AB.[933] New forms named Form SF–1 and Form SF–3 would require all the items applicable to ABS offerings that are currently required in Form S–1 and Form S–3 as modified by the proposals in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposal. Under the proposal, ABS offerings that qualify for shelf registration would be registered on proposed Form SF–3, and all other ABS offerings would be registered on Form SF–1.[934]

(b) Comments on Proposed Rule

Several commenters specifically supported adopting new Forms SF–1 and SF–3 and none opposed.[935]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting new Forms SF–1 and SF–3 for ABS offerings, which are largely based on existing Forms S–1 and S–3. ABS offerings that qualify for shelf registration will be registered on Form SF–3, and all other ABS offerings will be registered on Form SF–1. These new registration forms are tailored to ABS offerings and incorporate the offering and disclosure changes that we are adopting. The new forms will help in providing organizational clarity to our registration forms and their requirements.[936] In addition to providing organizational clarity to our forms, the new forms will facilitate easy identification of registered ABS offerings. We acknowledge, however, that ABS issuers may incur some costs in revising their information systems to reflect the new forms, but we believe that such one-time costs will be justified by the benefits of tailoring the registration system for ABS offerings.[937]

3. Shelf Eligibility for ABS Offerings

In the 2010 ABS Proposing Release, we proposed revisions to both the registrant and the transaction shelf eligibility requirements for ABS issuers.[938] In particular, ABS issuers would no longer establish shelf eligibility through an investment-grade credit rating. The proposals were part of a broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create.[939] In place of credit ratings, we had proposed to establish four shelf eligibility criteria that would apply to mortgage-related securities and other asset-backed securities alike.[940] Similar to the existing requirement that the securities must be investment grade, the 2010 ABS Proposal for registrant and transaction requirements were designed to provide that asset-backed securities that are eligible for delayed shelf registrations are shelf appropriate. As noted above, the 2011 ABS Re-Proposal for registrant and transaction requirements for shelf did not contain a requirement for risk retention or a requirement to include an undertaking to provide Exchange Act reports in light of the changes mandated by the Dodd-Frank Act.[941]

We believe the new transaction and registrant shelf eligibility requirements being adopted will continue to allow ABS issuers to access the market quickly by conducting delayed shelf offerings (rather than registering each offering on Form SF–1), while imposing conditions that we think are appropriate in light of the compressed timing and lack of staff review inherent in the shelf offering process. These new shelf eligibility conditions should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and, along with providing investors stronger enforcement mechanisms in the transaction agreements, should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that such transactions are appropriate for public offerings off a shelf without prior staff review.

(a) Shelf Eligibility—Transaction Requirements

The new transaction requirements for shelf offerings include:

- A certification filed at the time of each offering from a shelf registration statement, or takedown, by the chief executive officer of the depositor concerning the disclosure contained in the prospectus and the structure of the securitization;
- A provision in the underlying transaction agreements requiring review of the assets for compliance with the representations and warranties following a specific level of defaults and security holder action;
- A provision in the underlying transaction agreements requiring repurchase request dispute resolution; and
- A provision in the underlying transaction agreements to include in ongoing distribution reports on Form 10–D a request by an investor to communicate with other investors.

In both the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we did not propose to change the other current ABS shelf offering transaction requirements related to the amount of delinquent assets in the asset pool and the residual values of leases.[942] Therefore, those transaction requirements remain unchanged and have been moved to new Form SF–3.

(1) Certification

(a) Proposed Rule

As part of the 2010 ABS Proposing Release, we proposed to require a certification by the depositor's chief executive officer as a criterion for shelf eligibility.[943] After considering the

[933] 17 CFR 229.1101(c).

[934] We also proposed to make conforming changes throughout our rules to refer to the new forms. *See, e.g.,* proposed revisions to Securities Act Rules 167 and 190(b)(1) and the exhibit table in Item 601 of Regulation S–K.

[935] *See* letters from ABA I and MBA I.

[936] For example, prior to the adoption of these new registration forms for ABS, ABS form requirements were included with some other form requirements that were not applicable to ABS offerings. New Form SF–1, as proposed, does not include the instructions as to summary prospectuses. We also note that we are adopting, as proposed, some disclosure requirements that were previously located in Form S–3 that are now in Form SF–3, such as transaction requirements from Form S–3 relating to delinquent assets and residual value for certain securities. *See* General Instruction I.B.1(e)–(f) of Form SF–3. We are also retaining the existing registrant requirement in Form S–3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF–3.

[937] Economic analysis of the new disclosure requirements required by the new forms, such as asset-level data, and the new shelf eligibility requirements are discussed in the sections describing those changes.

[938] *See* the 2010 ABS Proposing Release at 23338.

[939] *See* the Security Ratings Release.

[940] The four proposed shelf criteria from the 2010 ABS Proposing Release included: (1) A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments on the securities as described in the prospectus; (2) Retention by the sponsor of a specified amount of each tranche of the securitization, net of the sponsor's hedging (also known as ''risk retention'' or ''skin-in-the-game''); (3) A provision in the pooling and servicing agreement that requires the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased; and (4) An undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets. *See* the 2010 ABS Proposing Release at 23338–48.

[941] *See* footnotes 876 and 877.

[942] *See* footnote 874.

[943] In the 2010 ABS Proposing Release, we proposed that the depositor's chief executive officer certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to

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comments received on the proposed certification in the 2010 ABS Proposing Release, we re-proposed the requirement in the 2011 ABS Re-Proposing Release. The re-proposed requirement would require the CEO or the executive officer in charge of securitization for the depositor to certify that:

- The executive officer has reviewed the prospectus and is familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements, and the material terms of all contracts and other arrangements entered into to effect the securitization;
- Based on the executive officer's knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- Based on the executive officer's knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus; and
- Based on the executive officer's knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by the certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.

In the 2011 ABS Re-Proposal, we stated, as we did when we proposed the certification for Exchange Act periodic reports, that a certification may cause these officials to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction, which is intended to result in shelf-eligible ABS being of a higher quality than ABS structured without such oversight.[944]

(b) Comments on Proposed Rule

Comments on the certification requirement in the 2010 ABS Proposing Release were mixed. Some commenters supported our proposed certification by noting, among other things, that the certification would create accountability at the highest levels of an issuer's organization and more careful issuer review of the securitization.[945] Other commenters generally opposed the proposed certification in the 2010 ABS Proposing Release for various reasons, including that the certification would constitute a guarantee or would cause undue reliance on the certification.[946]

In response to comments on the proposed certification, in the 2011 ABS Re-Proposing Release, we re-proposed the certification taking into account commenters' concerns and recommendations. Comments received on the re-proposed certification requirement were mixed. Several commenters generally supported the re-proposed certification for similar reasons as articulated in comments on the 2010 proposed certification.[947] For example, one commenter agreed with our view that the certification may result in a more careful review of the disclosure and transaction by the issuer, and ultimately in higher-quality ABS eligible for shelf.[948] Other commenters generally opposed the re-proposed certification shelf requirement.[949] Although the investors of a trade association applauded the intention behind the proposed certification requirement and concurred with us that executive oversight of a securitization transaction is important, they also expressed concern about the certification imposing a barrier to new ABS issuance.[950] Some of these commenters contended that the proposed certification would not provide any additional benefits by noting the existing regulatory framework for accountability and their trust in the market's determination of the issuer's soundness.[951]

Commenters provided differing views on the scope of the certification. Some commenters believed the certification should encompass both the structure of the transaction and the prospectus disclosure, as proposed.[952] One commenter, supportive of the re-proposed certification, emphasized that the quality of an ABS offering is fundamentally a function of whether the assets and structure are capable of producing sufficient cash flows to service payments.[953] On the other hand, several commenters believed that the certification should focus only on the disclosure in the prospectus and not on the performance of the assets for various reasons, including the role of the executive officers and their limited credit analysis expertise.[954]

Many commenters also offered alternative language or specific changes

believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. Under the 2010 ABS Proposal, the chief executive officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.

[944] *See* the 2011 ABS Re-Proposal at 47951–52 and the 2010 ABS Proposal at 23345. *See also Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 34–46079 (June 14, 2002) and *Concerning Implementation of the Sarbanes-Oxley Act of 2002: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 108th Cong. (2003) (statement of William H. Donaldson, Chairman of the U.S. Securities and Exchange Commission) (noting that a consequence of ''the combination of the certification requirements and the requirement to establish and maintain disclosure controls and procedures has been to focus appropriate increased senior executive attention on disclosure responsibilities and has had a very significant impact to date in improving financial reporting and other disclosure'').

[945] *See* letters from CalPERS, CFA I, Mass. Atty. Gen., SIFMA I (expressed views of investors only), and Vanguard.

[946] *See* letters from ABA I, ABAASA I, ASF I, BoA I, CNH I, CREFC I, FSR, J.P. Morgan I, MetLife I, MBA I, Sallie Mae I, SIFMA I (expressed views of dealers and sponsors only), and Wells Fargo I.

[947] *See* letters from Better Markets, CFA II, and ICI II.

[948] *See* letter from CFA II (also noting support for the proposed requirement that an officer sign the certification, as opposed to engaging ''an independent evaluator'').

[949] *See* letters from ABA II, Bank of America Corp. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''BoA II''), CREFC II, Kutak Rock, LLP dated Sept. 27, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''Kutak''), MBA III, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II.

[950] *See* letter from SIFMA II-investors (noting that, as investors, they would like nothing more than to have individual officers stand firmly behind the product of their employers; however, also noting that the certification requirements, as proposed, were broad and executives would fear litigation if, in fact, the securities failed to perform as expected).

[951] *See* letters from BoA II, CREFC II, Kutak, and Sallie Mae II.

[952] *See* letters from Better Markets (specifically stating that the certification must cover expected cash flows from the offering) and ICI II.

[953] *See* letter from Better Markets.

[954] *See* letters from ABA II, American Bankers Association/ABA Securities Association dated Nov. 10, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ABAASA II''), AFME, American Securitization Forum dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (''ASF III''), CREFC II, Kutak, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (suggesting that the certification should consist only of paragraph 2).

to the text of the certification to address their concerns. The specific changes included: Using defined terms, adding materiality to certain parts of the certification, replacing the term ''fairly presented,'' and permitting the certifier to take into consideration external credit enhancement. We considered these specific changes and made revisions to the certification, which are reflected in the final version of the certification that we are adopting. Below we discuss these recommendations and the revisions made to each paragraph of the certification in order to highlight how we have addressed commenters' concerns.

(c) Final Rule and Economic Analysis of the Shelf Certification Requirement

After taking into consideration the comments we received and alternatives to the re-proposed certification, we are adopting as one of the transaction requirements for shelf eligibility that a certification about the disclosures contained in the prospectus and the structure of the securitization be provided by the chief executive officer of the depositor at the time of each takedown. We believe, as discussed more fully below, that requiring the chief executive officer to sign a certification at the time of each takedown will help to ensure that he or she is actively involved in the oversight of the transaction when the actual structuring occurs. We have made significant changes to the language of the certification to address commenters' concerns, which are described below.

The financial crisis revealed several failures of the ABS market. Some issuers of asset-backed securities were creating securitization transactions without considering whether the assets or the structuring of cash flows could support the scheduled distributions due to investors.[955] In addition, it has been difficult to hold senior officers of ABS issuers accountable for the failure to provide accurate information.

At the time of filing a shelf registration statement, the chief executive officer of the depositor, as well as the depositor's other principal officers, are required to sign the registration statement and are liable under Securities Act Section 11 for material misstatements or omissions in the registration statement, subject to a due diligence defense. As a result, signers of a registration statement are expected to satisfy themselves about the accuracy of disclosure at the time of effectiveness. The disclosure at the time of effectiveness of the shelf registration statement does not typically include transaction specific information because the shelf registration process permits a separation between the time of effectiveness and the time securities are offered in a takedown. Shelf takedowns sometimes occur long after the effectiveness of the registration statement, and the signers of a registration statement are not required to sign a prospectus supplement for a takedown. Thus, the process that an officer signing the registration statement would undertake at the time of shelf effectiveness might not necessarily be followed at the time of a takedown. At the time of a takedown, some of these officers may not have carefully reviewed the prospectus disclosures for the accuracy of the disclosures of the pool assets, cash flows, and other transaction features. We believe that investors' willingness to participate in ABS offerings may have suffered, in part, because of a belief by investors that sufficient attention may not have been devoted to the preparation of the disclosures in prospectuses, especially in asset classes characterized by the largest losses and due diligence failures.

Prior to today, a certification by the chief executive officer of the depositor has not been a requirement at the time of registered offerings of ABS. As part of the Sarbanes-Oxley Act (''SOX'') enacted in 2002, CEOs of operating companies are required to certify to the accuracy of the financial statements of their companies.[956] Those SOX certifications are filed with their periodic reports and then incorporated by reference into their shelf registration statements. The same does not apply to ABS. The SOX certifications that are provided by ABS issuers are limited to the disclosures regarding periodic distributions and servicing of the underlying assets since ABS issuers do not provide financial statements. Further, the information in periodic reports relates to an individual ABS transaction, and therefore in most cases, periodic reports of one ABS offering would be unrelated to future offerings of ABS off the same shelf. Thus, the periodic reports of an ABS issuer are not typically incorporated into the shelf registration statement.

We believe, therefore, that because of the market failures described above and where the depositor is a limited purpose entity created by the sponsor for a particular securitization program, it is appropriate to condition shelf eligibility on a certification requirement that should result in a review of the disclosure at the time of a takedown similar to what would occur if the offering were being conducted at the time of effectiveness of the initial registration statement. As noted above, the shelf requirements and practices under the existing regulatory structure were not sufficient to address the failures in the market to provide accurate and full information to investors. An ABS offering most resembles an IPO,[957] which under our rules would not be eligible for shelf registration. The principal executive officer signs the registration statement for an IPO, but no similar process is involved at the time of an offering of ABS off a shelf registration statement. Corporate issuers that are eligible for shelf registration file periodic reports that are certified by their principal executive and financial officers and, for Section 11 purposes, the filing of the annual report on Form 10–K is considered an amendment to a shelf registration statement with a new effective date. We believe that requiring the certification with each takedown will put ABS issuers on a similar footing in that this requirement will provide an incentive for all CEOs to participate more extensively in the oversight of the transaction at the time of takedown. We acknowledge that the certification shelf transaction requirement will impose additional costs on ABS issuers, as discussed more fully below.

The depositor's chief executive officer will need to certify to the characteristics of the asset pool, the payment and rights allocations, the distribution priorities and other structural features of the transaction. We note that because the chief executive officer could rely, in part, on the review that is already required in order for an issuer to comply with Securities Act Rule 193, much of the additional costs will relate to reviewing the securitization structure to have a reasonable basis to conclude that the expected cash flows are sufficient to service payments or distributions in accordance with their terms.[958] We also

[955] *See, e.g.,* Susanne Craig & Kara Scannell, *Goldman Settles Its Battle with SEC,* Wall St. J., July 16, 2010, at A1 and John Griffin and Gonzalo Maturana, ''Who Facilitated Misreporting in Securitized Loans?,'' working paper, 2013 (for evidence that underwriters were aware of some types of asset quality misrepresentation by loan originators, but nevertheless facilitated issuance of RMBS backed by such assets).

[956] Pub. L. 107–204, Section 302, 116 Stat. 745 (2002).

[957] *See* footnote 923.

[958] *See* Securities Act Rule 193 (requiring, at a minimum, that the issuer review must be designed and effected to provide reasonable assurances that the disclosure regarding the pool assets in the prospectus is accurate in all material respects). In that rulemaking, we also added Item 1111(a)(7) to

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note that the certification requirement does not dictate that the chief executive officer follow any particular procedures in order to make the certification. By allowing the issuers to determine what procedures are necessary to meet the obligations of the certification, we have attempted to mitigate the costs associated with compliance. The new certification, however, is intended to increase oversight by the chief executive officer, which will likely require that issuers create or strengthen internal controls and procedures to enable the chief executive officer to meet the certification obligation under the new requirement. To the extent that issuers already regularly monitor and evaluate their policies and procedures, their incremental costs will be lower than those issuers with less robust controls and procedures. Because the size and scope of these internal systems is likely to vary among issuers, it is difficult for us to provide an accurate cost estimate.[959]

The final rules may also affect competition in the asset-backed securities market. For example, the requirement that the chief executive officer provide a certification concerning the disclosures contained in the prospectus and the structure of the securitization is based on the intent that the certification will strengthen oversight over the transaction. Prior to today, a certification by the chief executive officer has not been a requirement of public offerings of ABS. Just as every issuer in an IPO must go through a process to satisfy itself with the disclosure in a prospectus, ABS issuers must institute controls in order to provide the certification. The burden of the certification requirements will likely fall disproportionately on smaller-sized sponsors to the extent that there are direct fixed (i.e., non-scalable) costs related to administrative and legal expenses. This could ultimately result in smaller sponsors not registering their offerings on shelf (by registering their ABS on Form SF–1 instead), offering them through unregistered offerings, or quitting the securitization markets altogether, thereby reducing competition.[960]

As noted above, commenters expressed concern that the certification could be interpreted as a guarantee of the future performance of the assets underlying the ABS. In an attempt to mitigate these costs and taking into account commenters' suggestions, we have revised the certification language to reflect that it is a statement of what is known by the certifier at the time of the offering and that he or she has a reasonable basis to conclude that the securitization is structured to produce, but the certification is not a guarantee that it will produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.[961] In addition, to address some commenters' concerns about increased certifier liability, which would in turn increase costs, the final certification includes a new paragraph that clarifies that the certifier has any and all defenses available under the securities laws.[962]

When deciding whether to conduct a shelf offering, an issuer may consider the review and due diligence costs, the liability implications, and the reputational consequences to the chief executive officer of signing the certification. We believe that for securitizations of low-risk pool assets, simple structures, or structures used previously that have performed well in the past, issuers likely will conclude that the due diligence, liability, and reputation costs will be relatively low. For such securitizations these costs will likely be justified by the benefits of quick access to the capital markets, and these securitizations will continue to be offered off a shelf registration statement. On the other hand, for securitizations of high-risk assets and complex cash-flow structures, the expected costs of shelf offerings may increase. Issuers may choose not to use shelf registration because the chief executive officer may need to dedicate additional time to review the pool assets and the securitization structure in order to provide the assurances included in the certification. In addition, for such securitizations, the potential litigation risk to the chief executive officer may be higher, even when prudent measures are employed to structure an offering, thus further increasing the costs of shelf registration.

We also acknowledge a commenter's concern that certification is not a requirement for any other debt or equity offering and another commenter's opinion that the certification requirement will impose a barrier to new ABS issuance.[963] We note, however, unlike other offerings, ABS issuers can go directly to shelf without any reporting and operating experience for the trust or any size requirement designed to be a proxy for market following.[964] We also note that the

Regulation AB [17 CFR 229.1111(a)(7)] to require disclosure in the prospectus regarding the nature of the review performed by the issuer, and the findings and conclusions of the review of the assets. *See* the January 2011 ABS Issuer Review Release.

[959] The number of ABS deals by each depositor annually varies widely. According to ABS issuance databases ABAlert and CMAlert, the maximum annual number of ABS issued by a single depositor was 175 (Countrywide Home Loans in 2005), the maximum annual number issued post-crisis was 15 (Citibank in 2013), and, in the real estate sector, 14 (Redwood Trust in 2013), the median is 2 deals per year per depositor both pre- and post-crisis.

[960] We considered academic studies that examined the overall impact of the SOX requirements, which included officer certification as one element, for information about the possible differential impact of a certification requirement on differently-sized sponsors. Because the SOX requirements apply primarily to operating companies and include the internal control report requirement and the auditor's attestation of the report in addition to officer certification, we do not believe these studies provide a direct comparison for assessing the impact of the certification alone. For a general discussion of costs related to these requirements under the Sarbanes-Oxley Act, see, e.g., Office of Economic Analysis, Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements (2009), *available at http://www.sec.gov/news/studies/2009/sox-404_study.pdf* (finding that the start-up costs related to SOX Section 404 compliance and the internal control report requirement weighed proportionally more on smaller companies, but dissipated over time and noting that 79% of executives surveyed acknowledged that compliance had a positive impact on the quality of their internal control structure); Cindy R. Alexander, Scott W. Bauguess, Gennaro Bernile, Yoon-Ho Alex Lee, & Jennifer Marietta-Westberg, *Economic Effects of SOX Section 404 Compliance: A Corporate Insider Perspective,* 56 J. Acct. & Econ. 267 (2013) (finding that corporate executives perceived significant benefits from compliance, particularly for larger companies); Ehud Kamar, Pinar Karaca-Mandic & Eric Talley, *Sarbanes-Oxley's Effects on Small Firms: What is the Evidence?, in* In the Name of Entrepreneurship? The Logic and Effects of Special Regulatory Treatment for Small Business 143 (Susan M. Gates & Kristin J. Leuschner, eds., Kauffman-RAND Inst. for Entrepreneurship Pub. Pol'y 2007) (discussing the impact of the entire Sarbanes-Oxley Act, not only the CEO certification requirement); Ellen Engel, Rachel M. Hayes & Xue Wang, *The Sarbanes-Oxley Act and Firms' Going Private Decisions,* J. Acct. & Econ. (2007) (finding that the frequency of going-private transactions increased after the passage of SOX, that SOX compliance costs were more burdensome for smaller and less liquid firms, and that small firms with highly concentrated ownership structures had higher going-private announcement returns); and Peter Iliev, *The Effect of SOX Section 404: Costs, Earnings Quality and Stock Prices,* J. Fin. (2010) (finding that among small companies, SOX compliance reduced the market value of those that had to comply with Section 404 relative to those that did not because they were under the $75 million compliance threshold).

[961] *See, e.g.,* letters from AFME, J.P. Morgan Chase & Co. dated Oct. 4, 2010 submitted in response to the 2010 ABS Proposing Release (''J.P. Morgan II''), SIFMA III-dealers and sponsors, and Wells Fargo II.

[962] *See, e.g.,* letters from ABA II, ABAASA II, ASF V, and J.P. Morgan II.

[963] *See* letters from Kutak and SIFMA II-investors.

[964] We further note that we have replaced the investment-grade rating shelf criterion for non-

principal executive and financial officers certify the Exchange Act reports that are incorporated by reference into a shelf prospectus of a corporate issuer. The certification requirement is not intended to be a barrier to new issuance of ABS since the certification is not a condition for selling or registering ABS as they may be offered in unregistered transactions or registered on new Form SF–1. The certification requirement, along with the other shelf transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate to be offered to the public off a shelf without prior staff review. For these reasons, we are not limiting the certification to disclosure alone as suggested by some commenters, but we have taken into account those commenters' concerns in developing the text of the final certification.

Other financial regulators, including foreign counterparts, have adopted similar rules designed to enhance accountability for the transaction structure. For example, the European Union adopted requirements that ABS issuers disclose in each prospectus that the securitized assets backing the issue have characteristics that demonstrate a capacity to produce funds to service any payments due and payable on the securities.[965] Although we considered adopting an issuer disclosure requirement, we believe that requiring the chief executive officer to provide a certification is a stronger approach and more appropriate for purposes of determining shelf eligibility.

Therefore, while we recognize that the new shelf certification requirement introduces new costs to issuers, we believe that its net effect on capital formation in the ABS markets would be positive. The certification will help to ensure that the chief executive officer of the depositor is actively involved in the oversight of the transaction, and, as discussed above, along with the other shelf transaction requirements, it should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. As a result, we believe that the certification may also improve investor perceptions about the accuracy and completeness of the disclosures, which may, in turn, help restore investors' willingness to invest and participate in the ABS markets. The impact of certification requirements in other contexts—in particular, certification requirements under the Sarbanes-Oxley Act—provides information about the potential consequences of certification in the securitization market.[966] Several academic studies found that the overall effect on issuer's capitalization and on measures of market efficiency has been estimated to be either neutral[967] or positive,[968] suggesting that many investors perceived that the benefits of SOX certification outweighed the costs. We believe there will be potentially similar benefits for capital formation and market efficiency resulting from the new shelf certification. The final certification consists of five paragraphs.[969] We discuss each one in order below.

(i) Paragraph One

The first paragraph of the final certification is substantially similar to the re-proposed text, with some modifications made in response to comments. The chief executive officer must make the following statement:

> I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the ''securities'') and am familiar with, in all material respects, the following: The characteristics of the securitized assets underlying the offering (the ''securitized assets''), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

As proposed, the certifier is required to certify that he or she has reviewed the prospectus and the necessary documents to make the certification. We believe that the chief executive officer should be sufficiently involved in overseeing the transaction and should review the prospectus and the documents necessary to make the certification. Several commenters suggested that we clarify that the chief executive officer may rely on senior officers under his or her supervision that are more familiar and involved with the structuring of the transaction in order to more accurately reflect the team-oriented nature of the transaction.[970] We understand that a principal officer of the depositor may rely on the work of other parties, thus we are not requiring that the chief executive officer actually structure the transaction. We continue to believe, however, that the chief executive officer should provide appropriate oversight so that he or she is able to make the certification. Furthermore, the text of this certification in this respect is consistent with the text of other certifications, which do not specifically state that the certifier relied on the work of others.[971]

convertible securities with alternative criteria that serve as proxies for market following. *See* the Security Ratings Release.

[965] Annex VIII, Disclosure Requirements for Asset-Backed Securities Additional Building Block, Section 2.1 (European Commission Regulation (EC) No. 809/2004 (Apr. 29, 2004). *See also* the North American Securities Administrators Association's (''NASAA'') guidelines for registration of asset-backed securities, in which sponsors are required to demonstrate that for securities without an investment-grade rating, based on eligibility criteria or specifically identified assets, the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking certain allowed expenses into consideration. The guidelines are available at *http://www.nasaa.org/.*

[966] We note that there are some differences between the SOX certification requirements and the certification requirements in the rule we are adopting. First, the burdens are different, as SOX mandates that a CEO sign certifications that require a sizeable commitment of resources, whereas the rule we are adopting may require hundreds of ABS deals to be certified each year (see footnote 959 for the estimates of annual certification burden per depositor) but with a significantly lower burden for each certification. Second, the SOX CEO certification carries both civil and criminal penalties for false certification, and, thus, due in part to the availability of criminal penalties, likely imposes higher litigation costs for certifying officers and issuing corporations than the new shelf certification.

[967] *See* Utpal Bhattacharya et al., *Is CEO Certification of Earnings Numbers Value-Relevant?,* 14 J. Empirical Fin., 611 (2007) and Brett R. Wilkinson & Curtis E. Clements, *Corporate Governance Mechanisms and the Early-Filing of CEO Certification,* 25 J. Acct. & Pub. Pol'y, 121 (2006). These papers examined the market reaction to early filing of CEO certifications that the Commission required in advance of the passage of SOX using event-study methodology and found no reaction to early filing for the market as a whole. The Battacharya et al. study also found that certification had a neutral effect on returns, volatility of returns, and volume of trade not only for early certifiers around their certification date, but for the non-certifiers as well.

[968] *See* Hsihui Chang et al., *CEOs'/CFOs' Swearing by the Numbers: Does It Impact Share Price of the Firm?,* 81 Acct. Rev. 1 (2006) (finding also that certifying firms benefited from a significant decline in information asymmetry, as measured by bid-ask spread, after certification) and Beverly Hirtle, *Stock Market Reaction to Financial Statement Certification by Bank Holding Company CEOs,* 38 J. Money Credit and Banking, 1263 (2006) (finding a positive market reaction to certification requirements among bank holding companies, given the inherent opacity in the banking system, with the certification providing valuable information to investors). Because we are requiring new asset-level disclosure to address asymmetric information in addition to the shelf certification, we recognize that the results from these studies may not provide a fully comparable basis for the potential impact of requiring certification for asset-backed securities.

[969] Consistent with other certifications, the language of the certification must not be revised in providing the required certification. *See* the 2004 ABS Adopting Release at 1570.

[970] *See* letters from ABA II, ABAASA II, ASF V, BoA II, and Wells Fargo II.

[971] *See, e.g.,* the 2004 ABS Adopting Release at 1569 (amending Item 601 of Regulation S–K to add

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At the suggestion of commenters, we are adding defined terms for ''securities'' and ''securitized assets'' for purposes of the certification and incorporating those defined terms throughout the remainder of the certification to ease readability.[972] In the final rule, the term ''securities'' refers to all of the securities that are offered and sold with the related prospectus. The term ''securitized assets'' refers to the assets underlying the securities that are being offered.

Commenters also requested that the paragraph be revised to make it more explicit that the certifier is responsible for knowing material aspects of the assets and the material underlying transaction agreements.[973] Commenters argued that ''material'' is consistent with customary disclosure principles, including Regulation AB, and therefore provides consistency.[974] Additionally, commenters explained that the contracts for the transaction and the documents for each underlying asset are extensive and that the certifying officer should not be expected to be familiar with all of the terms in these documents.[975] We have revised the first paragraph to clarify that the certifier is speaking of material facts by inserting ''in all material respects.'' We have also used this phrase at the beginning of paragraphs three and four to address similar concerns by commenters.

We have deleted ''including without limitation'' in response to commenters' suggestions that this language made the scope of the certification unclear.[976] In addition, some commenters requested that we add ''described therein'' following ''am familiar with the structure of the securitization'' to clarify that the certification is based on the certifier's review of the prospectus.[977] The final text does not incorporate this suggestion because we do not believe the chief executive officer's review should necessarily be based solely on the review of the prospectus, which we discuss in more detail below.

Finally, under the re-proposed rule, the certifying officer could take into account only internal credit enhancements in making the certification.[978] Commenters, however, believed that the certifier should be permitted to take into consideration external credit enhancement in providing the certification. One commenter noted, for example, that investors in ABS with external credit enhancement rely on and give credit for external credit enhancement just as they do for internal credit enhancement.[979] Another commenter noted that external credit enhancements can play an integral role in maximizing the likelihood that securities will receive payment.[980] Further, one issuer noted that it could not provide the certification unless it is able to take into account external credit enhancements.[981]

In light of comments, under the final rule, the certifier is permitted to consider internal and external credit enhancement in providing the certification. We continue to believe, however, that the primary focus of the certification should be on the underlying assets rather than on any credit enhancement since, consistent with the Regulation AB definition of asset-backed security, the cash flows from the pool assets should primarily service distributions on the ABS.[982] We also note that we decided not to list ''credit enhancement'' specifically in the final certification because we believe that the phrase ''the structure of the securitization'' encompasses, among other things, credit enhancement and cash flows.

(ii) Paragraph Two

We did not receive any comments suggesting specific changes to paragraph two and we continue to believe that it is appropriate to expect signers of a registration statement to satisfy themselves about the accuracy of the disclosure at the time of each takedown. The chief executive officer must make the following statement:

Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(iii) Paragraph Three

The third paragraph of the final certification is substantially similar to the proposed text, with some modifications. The chief executive officer must make the following statement:

Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

Paragraph three requires a certification that the disclosures in the prospectus and other information in the registration statement are fairly presented.[983] Several commenters requested that we delete the term ''fairly present'' and suggested that we use alternative language.[984] Some commenters noted that the term ''fairly presents'' is customarily used by experts primarily in certifying the accuracy of the financial information.[985] For example, one commenter stated that because the certifying officer is not certifying to the accuracy of the financial information, but rather to the adequacy of the disclosure in the prospectus regarding the securitization it would be more appropriate to use a different term.[986] Commenters differed as to an appropriate replacement. Several commenters recommended ''describe,''[987] and several other commenters suggested ''disclose.''[988] The term ''fairly presents'' is used in our regulations with respect to financial information; however, we do not intend for the term to have the same meaning in this context. We are retaining the phrase in the certification because we

specific form and content of the required ABS Section 302 certification to the exhibit filing requirements).

[972] *See* letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

[973] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[974] *See, e.g.,* letter from ABA II.

[975] *See, e.g.,* letter from Wells Fargo II.

[976] *See* letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, and J.P. Morgan II.

[977] *See* letters from ABA II, ABAASA II, ASF V, CREFC II, and J.P. Morgan II.

[978] *See* footnotes 33 and 55 in the 2011 ABS Re-Proposal. In the 2011 ABS Re-Proposing Release, we noted that internal credit enhancement would include subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts, as well as guarantees applicable to an underlying loan, whereas, external credit enhancement would include third-party insurance to reimburse losses on the pool assets or the securities.

[979] *See* letter from SIFMA III-dealers and sponsors.

[980] *See* letter from ASF V.

[981] *See* letter from Sallie Mae II (noting that it could not certify student loan transactions without taking into account related government guarantees). In the 2011 ABS Re-Proposing Release, we noted internal credit enhancement would include guarantees applicable to the underlying loans.

[982] *See* Regulation AB definition of asset-backed security in Item 1101(c) of Regulation AB.

[983] For the same reasons articulated in our discussion of paragraph one, we have also added ''structure of the securitization'' here in paragraph three and in paragraph four.

[984] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[985] *See* letters from ABA II, ASF V, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[986] *See, e.g.,* letter from ABA II.

[987] *See* letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II.

[988] *See* letters from ABA II (recommending the term ''disclose fairly''), AFME, CREFC II, and SIFMA III-dealers and sponsors.

believe it articulates the appropriate standard for the certification. The term ''fairly presents,'' as adopted, will require the CEO to consider whether the disclosure is tailored to the risks of the particular offering and presented in a clear, non-misleading fashion. Commenters also requested that we insert the term ''material'' in certain places in the paragraph similar to their requests in connection with paragraph one.[989] We are not adding the term ''material'' in multiple parts of the paragraph as requested because we believe that the phrase ''in all material respects'' sufficiently captures materiality across all the statements in the paragraph and therefore use of the term ''material'' elsewhere in the paragraph would be redundant.

In addition, paragraph three, as re-proposed, would have required that the certifier consider the risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus. Commenters requested that we revise our reference to ''risk factors'' [990] so that the certifier considers instead ''all material risks'' because disclosure of risks related to the securitized assets is not limited to the information included under the risk factors section of the prospectus but also includes information in other parts of the prospectus, such as historical static pool ''loss'' data.[991] One commenter recommended that instead of referring to ''all risk factors,'' as proposed, that the certification be limited to only the most significant risks because a certifying officer cannot reasonably anticipate that an insignificant risk might cause significant losses at the time the officer signs the certification.[992] The same commenter noted that the existing standard for risk factor disclosure requires ''a discussion of the most significant risk factors that make the offering speculative or risky'' and expressed concern that the language in paragraph three could lead to increased disclosure of risk factors that are not significant to the ABS transaction.[993]

We have considered the comments received and are revising the language of the certification to replace the phrase ''all risk factors'' with ''the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms.'' We agree with commenters that the disclosure related to the risks of the securitized assets is not limited to only the risk factor section of the prospectus and may be appropriately presented in other parts of the prospectus. Some commenters also believed that the certification with regard to material risks related to the securitized assets should be further qualified to include only those that would ''adversely'' affect the cash flows ''available'' to service payments on the ABS ''in accordance with their terms.'' [994] We are not inserting the word ''adversely'' because we believe that the concept is incorporated in the term ''risk'' and therefore would be redundant to include. We are, however, revising the phrase ''cash flows sufficient'' to ''cash flows available'' in order to more accurately reflect the nature of pass-through certificates and junior tranches of registered ABS. We are also adding the phrase ''in accordance with their terms'' as suggested, because we believe it better describes the certification that we are requiring by paragraph three (i.e., fair presentation of the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms).[995]

(iv) Paragraph Four

Paragraph four of the final certification has also been modified. As described below, we have also added a fifth paragraph to address concerns related to paragraph four. The chief executive officer must make the following statement:

> Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

We have made revisions to this paragraph similar to revisions made to paragraph one. First, commenters suggested that we add the word ''material'' because, in general, the paragraph should relate only to material information about the securitized assets, the structure of the securitization (as discussed below, which includes any credit enhancement) and the related risks of the offering.[996] We are adding the phrase ''all material aspects of'' to paragraph four. Second, commenters asked that we remove the limitation that the certifier consider only internal credit enhancement in providing the certification.[997] In response to comments, we have revised paragraph four to remove this limitation for the same reasons articulated in our discussion of paragraph one.[998]

[989] *See, e.g.,* letters from ABA II, AFME, BoA II, SIFMA III-dealers and sponsors, and Wells Fargo II (recommending adding ''material'' before ''credit enhancements''). *See also* letters from BoA II and Wells Fargo II (proposing to add ''material'' before ''characteristics of the securitized assets'').

[990] *See* letters from ABA II, ABAASA II, and ASF V. *See also* letter from CREFC II (recommending a slightly different qualification, namely that ''all risks relating to the Assets that would *materially* and adversely affect the cash flows'') (emphasis added).

[991] *See, e.g.,* letter from ABA II.

[992] *See* letter from BoA II.

[993] *See id. See also* Item 1103(b) of Regulation AB and Item 503(c) of Regulation S–K.

[994] *See* letters from ASF V and J.P. Morgan II.

[995] We are also making revisions to enhance readability by listing each element of the certification in paragraph three, which eliminates redundancies from the proposed language, as phrases in the proposed language such as ''described therein'' and ''as described in the prospectus'' are no longer necessary to include. *See* letters from ABAASA II, ASF V, BoA II, J.P. Morgan II, and Wells Fargo II (noting that it was unclear how the language after the third comma modifies the prior portion of the sentence and also whether this language is intended to extend the certification beyond the disclosure to the performance of the transaction and recommending that ''including all material credit enhancements'' should be moved to follow ''the material characteristics of the securitized assets underlying the offering described therein'').

[996] *See* letters from ABA II, ABAASA II, ASF V, BoA II, CREFC II, J.P. Morgan II, and Wells Fargo II.

[997] Several commenters contended that the certifying officer must be permitted to take into account the external credit enhancements given that they can play a critical role in certain transactions. *See* letters from ABAASA II, ASF V, AFME, and SIFMA III-dealers and sponsors. Another commenter requested that the Commission clarify that external credit enhancement that is ultimately backed by the full faith and credit of the United States government may be considered by the certifying officer. *See* letter from Sallie Mae II. This commenter explained that a certifying officer cannot certify that ''a transaction backed by FFELP loans is designed to produce cash flows at times and in amounts sufficient to service expected payments on the ABS'' unless it is able to take into account external credit enhancement. To address this issue, this commenter recommended that the Commission either exempt ABS transactions backed by FFELP loans from the proposed certification requirement or clarify that external credit enhancements from sources backed by the full faith and credit of the United States government may be considered by the certifying officer.

[998] As we emphasized in connection with paragraph one, while we are permitting the certifier to consider credit enhancement in providing the certification, the primary focus in providing the certification should be on the assets, not the credit enhancement. We note that we have also removed the phrase ''any other material features of the transaction'' from paragraph four since we also

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We also received several detailed comments on the remaining text of paragraph four. Some commenters suggested that we replace the word ''designed'' with ''structured'' when certifying to the cash flows that will service payments on the securities.[999] Commenters explained that the term ''structured'' is better understood in the context of these transactions and also reflects the nature of these securitizations as a type of structured finance.[1000] Several commenters recommended adding that the securitization is structured ''to be expected to produce'' rather than just ''structured to produce'' for further clarification that paragraph four does not constitute a guarantee.[1001] We are revising the final certification to use the term ''structured'' as requested by some commenters; however, we note that we believe the term ''structured'' to encompass more than tranching to include, among other things, selection of the assets, credit enhancement, and other structural features designed to enhance credit and facilitate timely payment of monies due on the pool assets to security holders.[1002] We are not inserting the term ''expected'' before ''to produce'' because we believe that the concept of expected is implicit in the phrase ''structured to produce'' and that the phrase ''is not guaranteed by this certification to produce'' adequately addresses some commenters' concern about paragraph four constituting a guarantee.

Many commenters stressed that they were unsure what the ''expected payments'' would be with respect to any particular securitization, such as with pass-through certificates or more junior tranches of registered ABS. With respect to the issue of pass-through certificates, one commenter noted that ''no fixed principal payments are required to be made.'' [1003] Additionally, several commenters explained that the proposed language failed to account for the possibility that more junior tranches of registered ABS may bear a moderate credit risk somewhere in between the most senior registered tranches and the most subordinated unregistered tranches.[1004] Several commenters recommended deleting ''expected payment'' and inserting ''the assets will produce cash flows at times and in amounts sufficient to service payments on the offered securities in accordance with the terms described in the prospectus.'' [1005] One commenter expressed concern that the proposed form of the certification could be interpreted to suggest that the adverse effects of the potential risk had been negated through structuring.[1006] Therefore, this commenter supported modifying the certification so that it clearly states that the risks described in the prospectus could adversely affect the cash flows.[1007] Other commenters similarly noted that the certification fails to acknowledge the Commission's intent, as stated in the 2010 ABS Proposing Release, to qualify the certification by the disclosure in the prospectus.[1008]

To address commenters' concerns with ''expected payments,'' we have revised paragraph four so that the certification relates to ''expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.'' We agree with commenters that certain ABS may not be required to produce fixed payments, as is the case with pass-through certificates, and that using the term ''expected payments'' may have caused confusion.[1009] We believe the revised language provides greater clarity as to what the chief executive officer is certifying to and more precisely captures the varying terminology used to describe the amounts due to investors depending upon the type of ABS transaction.

We also recognize that characterizing the cash flows as ''sufficient'' to service the payments or distributions may have inadvertently implied that there will always be adequate cash flows to service such payments or distributions regardless of whether the ABS is of a lower tranche or structured as a pass-through security. We have deleted the term ''sufficient'' to eliminate this possible confusion.[1010] We believe, however, that even if fixed payments are not required to be made, a securitization is structured with the expectation that cash flows from the assets will provide distributions at certain times and amounts, and accordingly we believe that certification should reflect that expectation. We have therefore moved ''expected'' to before ''cash flows'' to clarify the requirement. We also believe that this change addresses some commenters' concerns about lower tranches of shelf registered ABS in that the expectation is not so much related to payment as to how the cash flow has been structured to allocate distributions of interest and principal.

One commenter suggested inserting language to indicate that the certifying officer's statements are his or her ''current beliefs'' and that there may be future developments that would cause his or her opinion to change or result in the assets not generating sufficient cash flows.[1011] Also, commenters stressed the importance of including cautionary statements in the certification that identify those risks and uncertainties as factors that could cause the actual results to differ materially from those set forth in the certification.[1012] Several commenters supported the Commission's language outlined in Request for Comment No. 4 in the 2011 ABS Re-Proposal.[1013] As we note above,

believe that ''structure of the securitization'' encompasses such features.

[999] *See* letters from ABA II, ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1000] *See, e.g.,* letter from ABA II.

[1001] *See* letters from J.P. Morgan II and Wells Fargo II.

[1002] *See, e.g.,* Item 1113 of Regulation AB (describing the disclosure required for the structure of transaction).

[1003] *See* letter from ABA II (noting that many pass-through securities ''require payment only to the extent of cash flows actually received and available in accordance with the priority of payments waterfall'' and also indicating that credit rating agencies, in evaluating the likelihood of the payment on ABS classes, typically refer to ''scheduled payments'' of interest and ''ultimate'' repayment of principal and recommended using those terms here).

[1004] *See* letters from AFME, J.P. Morgan II, and SIFMA III-dealers and sponsors.

[1005] *See* letters from AFME, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1006] *See* letter from ABA II. *See also* letter from Wells Fargo II (stating that the certification, as currently drafted, could be interpreted to say that the certifying officer has taken into consideration all the material information included in the prospectus and that, notwithstanding the risks and uncertainties described in the prospectus, the certifying officer has certified that the securitization is designed to produce cash flows sufficient to service the ABS).

[1007] *See* letter from ABA II (recommending the following language: ''provided that the risks described in the prospectus may adversely affect such cash flows'').

[1008] *See* letters from ABAASA II, AFME (stating that it is important that the certification specifically state that its conclusion takes into account any assumptions described in the prospectus, and also that it state that cash flows may vary if and to the extent that any of the risk factors described in the prospectus come to pass), ASF V, and SIFMA III-dealers and sponsors.

[1009] *See, e.g.,* letter from ABA II.

[1010] We also removed the term ''sufficient'' in paragraph three for the same reason where we changed the language from ''the cash flows sufficient'' to ''cash flows available.''

[1011] *See* letter from J.P. Morgan II.

[1012] *See* letters from ABA II, AFME, BoA II, CREFC II, J.P. Morgan II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1013] *See* letters from ABAASA II, AFME, ASF V, and SIFMA III-dealers and sponsors. *See also* the 2011 ABS Re-Proposal Release at 47954, Request for Comment No. 4 (requesting comment on whether to allow the certification to state, among other things, that it is only an expression of the executive officer's current belief and is not a guarantee that those assets will generate such cash flows).

the certification will be a statement of what is known by the certifier at the time of the offering. This is made clear by the introductory language to paragraphs three and four (''based on my knowledge'') and therefore we have not made this change.[1014] We are also revising the text to insert the phrase ''a reasonable basis to conclude,'' as suggested by some commenters to further clarify that the certification applies to what is known at the time of securitization.[1015] Many commenters argued that paragraph four represents an assessment and forecast of the future performance of the securitized assets and the ABS, which would make it a forward-looking statement, and thus the issuers should be entitled to protections afforded by the safe harbor for forward-looking statements.[1016] We do not believe that paragraph four is protected by the statutory safe harbor for a forward-looking statement.[1017] We have, however, included ''related risks'' of the securitized assets and structure as described in the prospectus to address comments that the certifier should be allowed to take risk disclosure into account. We also note that because the language of the certification cannot be altered, any issues in providing the required certification must be addressed through disclosure in the prospectus. For example, if the prospectus describes the risk of nonpayment or other risk that such cash flows will not be produced, then the certifier would take those disclosures into consideration in signing the certification.

(v) Paragraph Five

As discussed above, some commenters expressed concern over potential increased liability with the certification. We acknowledge that the potential litigation risk to the chief executive officer may be higher, and we recognize that participants in securities offerings who make statements about those offerings can face liability for their statements, but we believe that possible additional risk to the certifier is justified where each takedown provides investors with offering information about the underlying assets and structure of the securities and recent market events persuade us that these were insufficient incentives for proper oversight over the transaction. In this regard, we also note that the certification is tied to the disclosure in the prospectus. For example, if the prospectus includes disclosure that the terms of the securities do not include any expectation (or limited expectation) that the structure will produce cash flows sufficient to make distributions, the certifier would nonetheless be able to sign the certification because the certification is based, in part, on the disclosure in the prospectus. In response to commenters' concerns about certifier liability,[1018] we note that the CEO can take steps to mitigate the risks of signing. In addition, the final certification includes a fifth paragraph to further clarify that the certifier has any and all defenses available to him or her under the federal securities laws. The chief executive officer must make the following statement:

> The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

(vi) Signature Requirement

In the 2010 ABS Proposing Release, we had proposed that the depositor's chief executive officer sign the certification. We explained that the chief executive officer of the depositor is already responsible for the disclosure as a signer of the registration statement.[1019] We also asked, in the 2010 ABS Proposing Release, whether an individual in a different position should be required to provide the certification, such as the senior officer of the depositor in charge of securitization, in order to be consistent with other signature requirements for ABS. In response to comments, as part of the 2011 ABS Re-Proposal, we re-proposed to allow either the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor sign the certification.

We received various comments on the appropriate party to sign the certification. One commenter supported the re-proposal to allow ''the executive officer in charge of securitization'' to sign the certification but suggested modifying it to require the signature of ''*an* executive officer in charge of the securitization.'' [1020] This commenter explained that it may be the case that more than one person may satisfy the role of executive officer in charge of securitization, and it would be appropriate to permit the executive officer with particular knowledge of the specific securitization to sign the certification. In response to a request for comment in the 2011 ABS Re-Proposal regarding whether we should conform signature requirements across forms (e.g., Form 10–K and proposed Form SF–3),[1021] one commenter recommended that the ''senior officer in charge of securitization'' sign the certification,[1022] and another suggested we broaden the list of signers to include the principal executive officer, the principal financial officer and controller or the principal accounting officer of the depositor.[1023] One commenter recommended requiring an executive officer with a title such as ''chief transaction officer'' if the Commission is seeking a party to assume more responsibility for disclosure.[1024]

Commenters also provided comments as to why an executive officer would be

[1014] Also note that paragraph one requires that the certifier review the prospectus and the necessary documents regarding the assets, transactions and disclosures.

[1015] *See* letters from ABAASA II, ASF V, J.P. Morgan II (noting that this language is also consistent with the defenses that an officer of a registrant would have under the federal securities laws), and Wells Fargo II.

[1016] *See* letters from ABAASA II, AFME, ASF V, BoA II, CREFC II, J.P. Morgan II, MBA III, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1017] The statutory safe harbor for forward-looking statements is only available to an issuer that is subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. The depositor for the issuing entity of an asset-backed security is a different ''issuer'' from that same person acting as a depositor for any other issuing entity or for purposes of that person's own securities. *See* Securities Act Rule 191 [17 CFR 230.191], and Exchange Act Rule 3b–19 [17 CFR 240.3b–19]. Therefore, at the time of an ABS takedown, other than in the case of master trusts, the entity acting as issuer is not subject to the reporting requirements of Section 13(a) or Section 15(d) of the Exchange Act. *See* Securities Act Section 27A (15 U.S.C. 77z–2).

[1018] *See* letter from ASF V (requesting that the Commission make clear that the certifying officer have any and all defenses available under the federal securities laws as a person signing the registration statement and providing recommended language to include in the certification). *See also* letters from ABA II & J.P. Morgan II (supporting ASF's recommended language).

[1019] *See* the 2010 ABS Proposing Release at 23346.

[1020] *See* letter from MBA III (stressing that in the context of CMBS it is common for more than one person to satisfy the definition of executive officer who has worked closely with the securitization).

[1021] *See* Request for Comment No. 3 in the 2011 ABS Re-Proposing Release. The Form 10–K [17 CFR 249.310] report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report.

[1022] *See* letter from Sallie Mae II.

[1023] *See* letter from J.P. Morgan II.

[1024] *See* letter from Kutak (proposing ''chief transaction officer'' (without defining this position) because the proposed certification would not provide any additional oversight than what is presently required with regard to the signers of a registration statement).

unable to provide the certification. For example, some commenters argued that executive officers lack the expertise to perform the credit analysis necessary to provide the certification.[1025] Another commenter recommended that, with respect to paragraph four as to any assurance about the structure and cash flows of the securitization, the issuer, not a principal officer, should provide the certification because the chief executive officer may be too removed from the process and the team approach to securitization may not leave any one person in a position to evaluate all of the material attributes of the securitization.[1026]

Similarly, some commenters explained why an executive officer might be unwilling to provide the certification. One commenter noted that depositors would be unable to effectively price for the possibility of liability under such a broad certification.[1027] The commenter explained that to the extent that an executive officer is willing to sign it, he or she will likely do so only in the most conservative circumstances, which may result in shelf-offered ABS of only the highest quality and thus preclude shelf offerings of securities with different credit risk and profiles. Another expressed concern that principal officers may be discouraged from taking such positions due to exposure to personal litigation.[1028]

After considering the comments, the final rule requires that the certification be signed by the chief executive officer. We are not adopting the suggestion that the executive officer in charge of the securitization for the depositor sign the certification, as re-proposed, because we are not acting at this time on the proposal to revise the signature requirements for the registration statement. We believe that the certification should be signed by a signatory to the registration statement. Furthermore, we believe that having the chief executive officer as the sole signatory is appropriate for other policy reasons. Although we understand that the chief executive officer may not personally undertake credit analysis and that he or she will likely rely on the work of others to assist him or her with structuring the transaction and preparing the certification as noted by some commenters, we believe that the depositor's chief executive officer, as an officer of the depositor at the highest level, should be responsible for providing proper oversight over the transaction and thus should be held accountable for the structuring of the transaction and for the disclosure provided in the prospectus supplement. In that regard, we believe, as we did when we proposed the certification for Exchange Act periodic reports, that a certification should cause the chief executive officer to more carefully review the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of each transaction.[1029]

(vii) Date of the Certification

The date of the certification, as proposed, is required to be as of the date of the final prospectus.[1030] One commenter supported the proposed date because the deal structure will be final at that time and the final deal structure is what is being addressed in the certification.[1031]

(viii) Opinion by an Independent Evaluator Alternative

In the 2011 ABS Re-Proposing Release, we also requested comments on whether, in lieu of the requirement that the chief executive officer or executive officer in charge of the securitization of the depositor provide a certification, the Commission should allow an opinion to be provided by an ''independent evaluator.'' [1032] Several commenters supported allowing an opinion by an ''independent evaluator'' in lieu of the proposed certification.[1033] One commenter believed that allowing an opinion by an independent evaluator meeting particular requirements would provide a more detached and objective basis for certification.[1034] The other commenter stressed that an independent evaluator is particularly important in evaluating the structure of a transaction given that structures are often the product of investment bankers or third parties who know what securities will sell in the market.[1035] Relatedly, several commenters noted that a credit rating agency is the more appropriate party to perform the credit analysis required.[1036]

In contrast, one commenter noted its opposition to allowing the use of an independent evaluator, stating that the certification, as proposed, may result in a more careful review of the disclosure and transaction by the issuer and ultimately higher-quality ABS in shelf offerings.[1037] Another commenter recommended that we not mandate the use of an independent evaluator, explaining that it is uncertain, especially in the RMBS market, whether there are companies willing to serve as an independent evaluator given the possibility of increased liability and preclusion from performing other more desirable roles in the transaction.[1038]

As reflected in the comments above, an independent evaluator alternative may provide benefits to investors and issuers. For issuers that conduct offerings on an infrequent basis, such an alternative may be less costly than implementing an infrastructure in order for the chief executive officer to conduct the review required by the certification. However, as one commenter noted with respect to RMBS, such issuers may encounter difficulty hiring a company that is willing to provide such services and sign the certification.[1039] A certification by the chief executive officer is designed to increase internal oversight within the issuer. For investors, the independent evaluator may be able to provide a more detached and objective opinion; however, investors should also benefit from the enhanced internal oversight by the issuer obtained from the CEO certification. We are therefore not adopting the independent evaluator as

[1025] *See* letters from AFME and SIFMA III-dealers and sponsors (noting that executives may not be trained to perform the type of credit analysis that would be required to give a certification and that credit rating agencies are the more appropriate parties to perform the credit analysis).

[1026] *See* letter from ABA II.

[1027] *See* letter from SIFMA III-dealers and sponsors.

[1028] *See* letter from SIFMA II-investors.

[1029] *See* the 2011 ABS Re-Proposing Release at 47951 and the 2010 ABS Proposing Release at 23345.

[1030] *See* Item 601(b)(36) of Regulation S–K [17 CFR 229.601(b)(36)]. The certification should be filed as an exhibit to the final 424(b)(2) or (5) prospectus. *See also* new Item 1100(f) of Regulation AB [17 CFR 229.1100(f)] (specifying procedures for filing required exhibits).

[1031] *See* letter from Sallie Mae II.

[1032] *See* Request for Comment No. 12 in the 2011 ABS Re-Proposing Release.

[1033] *See* letters from C. Barnard (recommending independence, experience, and related disclosure requirements related to the independent evaluator) and Kutak (suggesting limiting information disclosed to identification of the independent evaluator, compensation, and affiliations and that the person not be considered an expert).

[1034] *See* letter from C. Barnard (acknowledging that such opinion could reduce the executive oversight of the transaction structure but emphasized that the responsibility for the certification would still reside with the executive).

[1035] *See* letter from Kutak.

[1036] *See* letters from AFME and SIFMA III-dealers and sponsors (noting that any conflict of interest inherent in the rating agency's credit analysis would be magnified exponentially were such analysis to be effectively required to be undertaken by an affiliate of an issuer). Additionally, SIFMA III-dealers and sponsors was troubled that given the Commission's express intent to reduce the reliance on credit analysis by NRSROs, that shelf eligibility would instead be conditioned on a credit analysis by an officer of the depositor.

[1037] *See* letter from CFA II.

[1038] *See* letter from MBA III.

[1039] *See* letter from MBA III.

an alternative to providing a certification.

(2) Asset Review Provision

(a) Proposed Rule

Investors have expressed concerns about the effectiveness of the contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors about potential breaches.[1040] A significant hurdle faced by investors seeking to enforce repurchase obligations has been that transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Further, investors have had to rely upon the trustees to enforce repurchase covenants because the transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand. Investors have been frustrated with this structure and process because trustees have not enforced repurchase rights, and investors have been unable to locate other investors in order to force trustees to do so.[1041] Furthermore, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether a representation or warranty relating to a pool asset has been breached.[1042] The impact of these difficulties for investors is particularly concerning given the pervasiveness of misrepresentation among securitized residential real estate loans in the 2000's.[1043]

To address this concern, we proposed in the 2011 ABS Re-Proposal as one of the transaction requirements for shelf eligibility, that the underlying transaction documents of an ABS include provisions requiring a review of the underlying assets of the ABS for compliance with the representations and warranties upon the occurrence of certain post-securitization trigger events. Specifically, we proposed that the transaction agreements require, at a minimum, a review of the underlying assets (1) when the credit enhancement requirements, as specified in the transaction documents, are not met, or (2) at the direction of investors pursuant to processes provided in the transaction agreement and disclosed in the prospectus.[1044] We proposed that the review would be conducted by a ''credit risk manager'' who would have access to the underlying loan documents to assist in determining whether the loan complied with the representations and warranties provided to investors.[1045] A report of the findings and conclusions of the review would be provided to the trustee to use in determining whether a repurchase request would be appropriate, and would also be filed as an exhibit to the Form 10–D.

Finally, we proposed to require certain provisions in the underlying transaction agreements that would help to resolve repurchase request disputes. We discuss the dispute resolution provision requirement below in Section V.B.3.a)(3) Dispute Resolution Provision because we are adopting it as a stand-alone shelf eligibility condition.

As noted above, studies have highlighted the extent of misrepresentations among securitized residential real estate loans in the 2000's; however, we are unable to quantify the extent to which enforcing representations and warranties was an issue during the crisis. While recently adopted Exchange Act Rule 15Ga–1 implementing Section 943 of the Dodd-Frank Act requires disclosure of fulfilled and unfulfilled repurchase request activity, as a practical matter, it does not address directly the enforceability of put-back provisions in the underlying transaction agreements. Further, the historical data provided by Rule 15Ga–1 is limited, as initially only those securitizers that issued ABS between January 1, 2009 and December 31, 2011 were required to report on Form ABS–15G demand and repurchase history that occurred during that same period.[1046] As we discussed in the Section 943 Adopting Release, we limited the rule to a three-year look-back period because we recognized concerns regarding the availability and comparability of historical information related to repurchase demands.[1047] While we recognize these limitations, we used the information contained in recent Form ABS–15G filings in order to provide some baseline information on current market practices. Based on Form ABS–15G filings of the first quarter of 2013, we find that more than 99% of repurchase requests are in dispute, and with respect to the resolved requests: 16.5% were satisfied, 48.5% were withdrawn, and 35% were rejected.[1048] These numbers highlight the fact that enforcing representations and warranties may be time-consuming and lead to uncertain outcomes for investors. We believe that the asset review shelf requirement will help to address this problem and enhance the

[1040] In the underlying agreements for an asset securitization, sponsors or originators typically make representations and warranties about the pool assets and their origination, including representations about the quality of the pool assets. Upon discovery that a pool asset does not comply with the representation or warranty, an obligated party (typically the sponsor) must repurchase the asset or replace it with an asset that complies with the representations and warranties. *See* the 2011 ABS Re-Proposal at 47956–57. *See also* the Section 943 Adopting Release at 4489–90.

[1041] Typically, investor rights require a minimum percentage of investors acting together in order to enforce the representation and warranty provisions contained in the underlying transaction agreements. *See Housing Finance Reform: Fundamentals of a Functioning Private Label Mortgage Backed Securities Market Hearing Before the S. Comm. on Banking, Housing & Urban Affairs,* 113th Cong. 39 (2013) (statement of Adam J. Levitin, law professor at Georgetown University Law Center) (noting that ''before PLS [private label securities] investors are able to spur a trustee to take action to protect their interests, they face the challenge of limited information available on which to determine if an event of default has occurred, the information problem of identifying other PLS investors in their deal, and the collective action problem of coordinating the required threshold of PLS investors (who do not always have identical incentives and may trade in and out of their positions), and the expense of indemnifying the trustee).

[1042] *See, e.g.,* Kathryn Brenzel, *$615M MBS Suit Aims To Rewrite Deal's Terms, Deutsche Says,* Law360, May 6, 2013 (noting that the defendant argued that the notification provided by the trustee did not adequately show misrepresentations). Our requirement addresses this problem because the review required will provide evidence of misrepresentations that the trustees and investors can then use in making a repurchase request.

[1043] Between 10% and 30% of securitized residential real estate loans exhibited some indication of potential misrepresentation. *See* Tomasz Piskorski et al., *Asset Quality Misrepresentation by Financial Intermediaries: Evidence from RMBS Market,* (Nat'l Bureau of Econ. Research, Working Paper No. 18843, 2013) and John Griffin & Gonzalo Maturana, *Who Facilitated Misreporting in Securitized Loans?,* (University of Texas at Austin, Working Paper, 2013), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2256060&download=yes.*

[1044] We also proposed that disclosure of the findings and conclusions of the review be required on Form 10–D if an event triggers a review.

[1045] Under the proposal, the credit risk manager would be appointed by the trustee and could not be affiliated with any sponsor, depositor, or servicer in the transaction. Disclosure about the experience of the credit risk manager in prospectuses would also be required.

[1046] *See* Exchange Act Rule 15Ga–1(c)(1). After December 31, 2011 all securitizers are required to report, on a quarterly basis, demand and repurchase activity for any new or outstanding ABS. *See* Exchange Act Rule 15Ga–1(c)(2).

[1047] *See* the Section 943 Adopting Release at 4498–99. We noted that the three-year look-back period for initial disclosures struck the right balance between the disclosure benefits to investors, availability of historical information and compliance costs to securitizers. In doing so, we acknowledged that older data may be very hard or impossible for securitizers to obtain if they have not had systems in place to track the data required for the required disclosures, which may lead to less comparable data.

[1048] We found similar figures for Form ABS–15G filings in other quarters.

enforceability of the representations and warranties regarding the pool assets.

(b) Comments on Proposed Rule

Several commenters generally agreed that a review of assets for compliance with representations and warranties should be a shelf eligibility requirement.[1049] Commenters made it clear that investors desire more robust representation and warranty enforcement mechanisms.[1050] Many commenters noted that a review mechanism would enhance investor protection and promote the integrity of asset-backed securities.[1051] Some commenters argued that the proposed requirement should not be imposed upon transactions other than RMBS transactions.[1052] They were concerned that enforcement mechanisms could increase costs on transactions where there have been only a limited number of repurchase requests historically.[1053] Some commenters responded to the 2011 ABS Re-Proposal by suggesting that the Commission adopt, as an alternative criterion for shelf eligibility for asset classes other than RMBS, the original proposed shelf requirements that there be a quarterly third-party review of the assets for compliance with the representations and warranties, which we did not re-propose in light of comments.[1054] Below we discuss comments about the various parts of the proposal.

Commenters provided varying comments on the appropriateness of the proposed review triggers. Several commenters suggested that a trigger for review should not be tied to credit enhancement, as proposed.[1055] Commenters stated that, for most transactions, a credit enhancement trigger would not be a feasible measurement across asset classes because many deals provide for a buildup of credit enhancement over time and, under the proposed rule, the first distribution could trigger a review.[1056] One commenter stated that certain transactions do not have pool-level credit enhancements that would trigger a review.[1057] Given these potential issues with a credit enhancement trigger, some commenters suggested as an alternative that the trigger for review be based on a more common measurement of asset performance such as delinquencies.[1058]

As part of the 2011 ABS Re-Proposal, we requested comments on certain aspects of the investor-directed trigger. For example, we requested comment on whether we should require that at least 5% of investors must first call for an investor vote on the question of whether to initiate a review before a vote occurs.[1059] Although comments received were mixed, several commenters supported such a provision.[1060] Additionally, many commenters agreed that investors should have the ability to direct a review of assets and suggested procedures that would provide investors with an effective means to request a review while minimizing baseless claims that could impose costs.[1061]

We also requested comment on whether, as an alternative to specifying voting procedures, it would be appropriate to specify certain maximum conditions, where the percentage of investors required to direct review could be no more than a certain percentage, such as 5%, 10%, or 25%. Commenters provided differing views on imposing maximum conditions. Several commenters suggested that 25% would be the appropriate percentage of investors that should agree to a review before one is required.[1062] Another

[1049] *See* letters from C. Barnard, ICI II, MBA III, Metlife II, Prudential II, SIFMA II-investors, and Sallie Mae II.

[1050] *See* letters from Metlife II, Prudential II, and SIFMA II-investors (stating that they do not believe the ABS market will recover without a mechanism to enforce breaches of representations and warranties).

[1051] *See* letters from ASF III, C. Barnard, ICI II (noting that ''it would provide investors with a stronger basis to pursue remedies under the transaction agreement for violations of representations and warranties relating to pool assets, and create better incentives for obligated parties to consider and monitor the quality of the assets in the pool''), Prudential II, and SIFMA II-investors.

[1052] *See* letters from ABA II (stating that transactions with assets that have no meaningful history of repurchase demands should not be subject to the requirement), ABAASA II (noting that the proposed requirement should be required only for RMBS transactions), ASF III, J.P. Morgan II, and Wells Fargo II (stating that credit card and auto transactions should not be subject to the requirement), BoA II (recommending a tailored approach), Sallie Mae II (noting student loans should not be subject to the proposal), and VABSS III (noting that auto deals have not had a history of significant repurchases and thus should not incur the costs associated with the proposed requirement).

[1053] *See* letters from ABA II, ABAASA II, ASF III, and Wells Fargo II (all supporting a review system for residential mortgage-backed securities transactions and opposing a requirement for other asset-backed securities that do not typically have repurchase demands).

[1054] *See* letters from ASF III, BoA II, and VABSS III. In the 2010 ABS Proposing Release, the Commission proposed to require a provision in the pooling and servicing agreement requiring the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased. In the 2011 ABS Re-Proposal, we replaced the quarterly third-party opinion proposal with a proposed review of the underlying assets upon certain triggers being reached in response to the comments received on the 2010 ABS Proposal.

[1055] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, J.P. Morgan II, Kutak, MBA III, SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II.

[1056] *See, e.g.,* letters from ASF III, SIFMA III-dealers and sponsors, and Wells Fargo II (explaining that transactions involving assets with interest rates in excess of the rates required to be paid on the ABS may initially be structured with little or no initial overcollateralization and that the required credit enhancement is built up over time by applying excess interest to pay principal on the ABS, resulting in overcollateralization), BoA II (noting that in cases where credit enhancement is built over time, credit enhancement levels do not meet required target levels during most of the early life of the deal), VABSS III (noting that while credit enhancement may increase over time, in other transactions, credit enhancement can be reduced if certain performance results are achieved).

[1057] *See* letter from MBA III.

[1058] *See* letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies, or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six months of the loan's origination or four months from being included in the pool) and Sallie Mae II (recommending ''linking the action of the CRM to an element that can arise across all asset classes and all structures, namely losses'').

[1059] *See* Request for Comment No. 30 in the 2011 ABS Re-Proposing Release at 47958.

[1060] *See* letters from Metlife II (suggesting that we require 5% of investors to initiate a vote), Prudential II, and SIFMA II-investors (suggesting that at least 5% of the total interest in the pool may poll other investors to determine whether a review should be performed). *See also* letter from Metlife I (explaining that the vast majority of securitization transactions require a ''25%-in-interest voting threshold'' before the trustee can be directed by investors to undertake actions such as polling investors as to whether to exercise rights or remedies under the transaction agreements).

[1061] *See, e.g.,* letters from ASF III (stating that its investor members generally favor the proposal while issuer members generally oppose it), J.P. Morgan II (stating their belief that investors representing a minimum of 25% of the pool be required to trigger a review), MBA III (noting that a threshold of investors should be required to agree to a review due to the potential costs), Prudential II (stating that note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted), SIFMA II-investors (stating their belief that a review be triggered if investors with at least 25% (by principal balance) of the total interest in the pool of securitized assets agree to a review), and Sallie Mae II (suggesting specific requirements if the final rule permits investors to direct a review independently of the credit enhancement trigger).

[1062] *See* letters from J.P. Morgan II (stating that ''if there is a requirement for review based on a certain percentage of investors, we strongly recommend that the required percentage of investors required to direct a review be no less than 25% of each class of securities outstanding''), Prudential II (''Note holders should be permitted to request a credit risk manager review if 25% of the note holders believe a review is warranted. A 25% threshold would

commenter suggested that we consider a majority or plurality of those casting a vote, and that we also specify a quorum requirement.[1063] One commenter suggested that a super-majority would be appropriate.[1064]

With respect to disclosing the report on the findings and conclusions of the review, several commenters recommended that we require a summary of the report instead of the proposed requirement that the full report be filed as an exhibit to Form 10–D because of privacy concerns or potential problems that the requirement would cause with workouts or modifications with delinquent borrowers.[1065]

We also received comments on the selection and appointment of the credit risk manager. Commenters, in general, opposed the proposal to require that the trustee appoint the credit risk manager. Commenters noted that the trustee would not be a suitable party to appoint the credit risk manager and would not be likely to accept the responsibility for appointing the credit risk manager.[1066] Furthermore, commenters generally explained that the appointment by a trustee would be unworkable since the trustee is not typically a party to the transaction until it closes, therefore the trustee would technically not have the authority to appoint the manager until after the transaction closes.[1067] One of these commenters stated that it is important to have details about the manager disclosed in the prospectus so that investors can fully understand their impact on the transaction.[1068]

With respect to the proposed prohibited affiliations between the credit risk manager and certain transaction parties, several commenters supported the proposal, although some commenters suggested that we not permit the credit risk manager to be affiliated with other additional transaction parties, such as the trustee or any investor.[1069] One commenter stated that the credit risk manager should not be affiliated with any party hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets.[1070] However, one commenter suggested that the proposal to limit affiliations was overly broad.[1071]

Additionally, commenters provided comments about other aspects of the credit risk manager. For example, some commenters recommended that we revise the title ''credit risk manager'' as it may not properly describe its function.[1072] Commenters also stated that it was important for managers to have access to the underlying documents in order to perform their duties.[1073] Some commenters also offered their views about the process and conditions for the removal and replacement of a credit risk manager. One commenter stated that it would be acceptable for the trustee to appoint a new credit risk manager if the existing one needs to be removed or replaced for any reason.[1074] Another commenter suggested that we require an affirmative vote of 25% of the investors in order for investors to initiate replacement.[1075] One commenter recommended that the transaction documents detail the conditions and process for removal.[1076]

(c) Final Rule and Economic Analysis of the Asset Review Provision

We are adopting, as a second shelf eligibility requirement, that the underlying transaction agreements include provisions requiring a review of pool assets in certain situations for compliance with the representations and warranties made with regard to those assets. Under the final rule, the agreements must require a review, at a minimum, upon the occurrence of a two-pronged trigger based first upon the occurrence of a specified percentage of delinquencies in the pool and if the delinquency trigger is met, then upon direction of investors by vote. We have made modifications to the review triggers, discussed below, that we believe help to address some of the cost concerns expressed by commenters for asset classes that historically have seen a limited number of repurchase requests. Because we are unable to predict which asset classes may experience problems in the future, we believe that it is prudent to impose this requirement for all asset classes.[1077]

We have taken into consideration the array of comments received related to the triggers and potential costs, while at the same time balancing the need for stronger mechanisms to enforce underlying contract terms. As we noted above, most transaction agreements lack a specific mechanism for investors to not only identify potential assets that fail to comply with the representations and warranties made but also to resolve a question of whether noncompliance of the representations and warranties constitutes a breach of the contractual provisions. These problems have been compounded by the fact that investors typically cannot make repurchase requests directly, thus they have had to rely upon the trustees who have not enforced repurchase requests in most circumstances. We believe that adopting this shelf provision coupled with the new dispute resolution and investor communication shelf requirements should provide investors with effective tools to address the enforceability of repurchase obligations and help overcome collective action problems. In that regard, we see these shelf requirements working together to help investors enforce repurchase obligations. Our investor communication provision, discussed below, will help investors to communicate with each other in order to determine whether they should vote to direct a review of the assets and later

serve to limit both the number of frivolous claims and any unnecessary credit risk manager expenses.''), and Sallie Mae II (stating that if an investor is allowed to direct a review, among other requirements, the requesting investor must own at least 25% of the outstanding principal balance of the related ABS).

[1063] *See* letter from Metlife II.

[1064] *See* letter from Wells Fargo II.

[1065] *See* letters from ASF III (noting that the report may include confidential or non-public personal information on obligors), CREFC II (stating too much detailed information provided to the public could provide a borrower with an inappropriate advantage in negotiations), MBA III, and Wells Fargo II.

[1066] *See, e.g.,* letters from ABA II (noting that appointing any transaction party is outside the scope of a trustee's duties), ASF III (stating that in conversation with trustees the trustees have indicated their discomfort with appointing a manager), BoA II, J.P. Morgan II, SIFMA III-dealers and sponsors (noting that trustees would not likely accept the responsibility of appointing a manager), and VABSS III (stating that the independent reviewer should be appointed in the relevant agreement but not solely by the trustee).

[1067] *See* letters from ABA II, ABAASA II, ASF III, BoA II, SIFMA II-investors, and VABSS III.

[1068] *See* letter from ABAASA II.

[1069] *See* letters from Better Markets (stating that, to ensure independence, the proposal must provide that the manager have no conflicts of interest with any party including investors), J.P. Morgan II (suggesting that the manager not be affiliated with other transaction parties such as the trustee or any investor), Metlife II (noting that independence from other parties in the securitization is imperative), Prudential II (also stating the manager not be affiliated with the trustee), and SIFMA II-investors.

[1070] *See* letter from SIFMA II-investors.

[1071] *See* letter from MBA III.

[1072] *See* letters from ASF III and VABSS III (both noting that prior credit risk managers had varied functions including loss mitigation and reporting advice to the servicer), and Wells Fargo II (noting that the title ''credit risk manager'' could be misleading because the credit risk manager would not guarantee the credit of an underlying borrower).

[1073] *See* letters from Metlife II, Prudential II, and SIFMA III-dealers and sponsors (generally expressing support for the proposal to require the manager to have access to all underlying documents including the underwriting guidelines and credit underwriting files and any other documents necessary to investigate compliance).

[1074] *See* letter from MBA III (RMBS).

[1075] *See* letter from Prudential II.

[1076] *See* letter from MetLife II.

[1077] We note, for example, that there was not a need to enforce representations and warranties for RMBS and CMBS until the crisis.

whether to initiate a repurchase request. The review of the assets required once certain triggers are met will not only benefit investors in determining whether the assets have breached the representations and warranties but also whether to move forward with a repurchase request. Additionally, should those parties with repurchase obligations fail to address investors' repurchase requests in a timely manner, investors will now have a means to demand resolution through arbitration or mediation. We believe that these transactional safeguards will collectively enhance the enforceability of representations and warranties about the pool assets and provide incentives for obligated parties to more carefully consider the characteristics and quality of the assets that are included in the pool. Therefore, this shelf transaction requirement should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. It is these transactions that are appropriate for public offerings off a shelf without prior staff review. The magnitude of these benefits will depend on whether the reviewers are able to correctly evaluate the contractual terms to identify non-compliance with the representations and warranties about the pool assets. Such evaluations may be challenging to the extent that the contractual language for the representations and warranties are incomplete or ambiguous. Nonetheless, we conclude that the asset review provision will enhance investor protection for the reasons stated above. We also note that the review requirement we are adopting is similar to post-crisis industry efforts, such as the American Securitization Forum's Project RESTART, which includes repurchase principles for investigating, resolving, and enforcing remedies with respect to representations and warranties in RMBS transactions.[1078] Additionally, some recent CMBS deals have included a provision for a third-party review of the underlying assets.

While we believe that this review requirement will enhance the enforceability of repurchase obligations, we acknowledge that it will also increase costs, particularly on investors, who will incur the expense of the reviews. A group of investors noted that despite the additional costs, increased investor protection will produce net economic benefits to investors.[1079] We expect that the bulk of the costs for this shelf requirement will be incurred with individual reviews of pool assets directed by investors. There will also be some expense arising from retaining a reviewer to conduct the reviews in the form of an annual retainer fee.[1080] Although the exact magnitude of the expenses incurred in connection with the reviews is not possible to predict, we expect that they will depend on the frequency with which a review is triggered and on the extent of the review.[1081] For instance, securitizations of high-risk assets are more likely to meet the delinquency threshold and therefore more likely to undergo a review and incur the review expenses. Additionally, sponsor representations about pool assets characterized by low or no documentation may require more time for the reviewer to examine and therefore may result in higher expenses. We have attempted to mitigate the potential costs by not requiring a review of the assets until after the occurrence of a two-pronged trigger as described below. We expect that investors will weigh the benefits of a review of the assets against the costs and vote for a review only if the benefits justify the costs. This revised approach should address concerns about potentially frivolous review requests being made at the cost of other investors.

We also recognize that our approach to require that a reviewer be engaged at the time of issuance, as opposed to when the above two triggers are met, will be more costly. For asset classes that rarely experience breaches of representations and warranties, the benefits of this shelf provision may be smaller than for other asset classes and thus there may be situations where the costs may be greater than the benefits. We believe, however, that for asset classes where the likelihood of investors using the review provision is low, the upfront retainer fee should also be low. We note also that the requirement that the reviewer be engaged at the time of issuance could potentially create incentive alignment issues. Because of this requirement, a reviewer could seek to be appointed to as many ABS transactions as possible, thus potentially creating an incentive to submit reports favorable to sponsors and win future business from them. This could potentially impact the quality and usefulness of the reports if the reviews are not—or are not perceived as being—objective.[1082] The significance of this problem should be reduced to the extent that the reviewer's compensation is paid by investors, particularly if done so after the objective triggers for the asset reviews are met. In addition, transaction agreements may prescribe mechanisms to replace reviewers in the event of failure to meet their obligations. Finally, reputational concerns could potentially influence reviewers' decisions to adhere to their limited role of determining whether the assets comply with the representations and warranties made. As discussed below, the investors through the trustee, not the reviewer, are responsible for determining whether to initiate a repurchase request.[1083] Furthermore, we have chosen to require that the reviewer be named in the offering documents because the identity and competency of the reviewer is an important consideration for investors in making an ABS investment decision.

(i) Triggers for Review

As noted above, the 2011 ABS Re-Proposal specified two separate events, either of which would trigger a review of the underlying assets under the new shelf eligibility requirement. One proposed trigger would have required a review when the credit enhancement requirements of the transaction are not met. The other proposed trigger would have permitted investors to direct a review of the assets, pursuant to

[1078] *See* letter from ASF III.

[1079] *See* letter from SIFMA II-investors (''The concept of increasing costs to investors in order to increase investor protections is not new. On balance, the strict enforcement of the deal documents by an independent credit risk manager, we believe, will in the ordinary course produce net economic benefits to the investors.'').

[1080] The staff is aware of only several recent unregistered RMBS transactions that include a comparable provision for which we have some cost information. According to Kroll's Pre-Sale Report for J.P. Morgan Mortgage Trust 2013–1, the reviewer will be paid an annual retainer fee of $20,000 for the first six years and $12,000 annually thereafter. The reviewer will also be paid $525 for each mortgage loan subject to a review. *See* Kroll's Pre-Sale Report: J.P. Morgan Mortgage Trust 2013–1 (Mar. 20, 2013). We believe that these costs figures are generally comparable to the costs that RMBS issuers and investors will likely incur in connection with our review requirement. The costs for other asset classes may be more or less than these costs figures depending upon the quality of the assets, the extensiveness of the representations and warranties, and the volume of documents required to review.

[1081] In a typical ABS transaction, fees are paid before distributions are made to investors. We remind issuers that information related to the review fees should be disclosed in accordance with Regulation AB requirements. *See, e.g.,* Items 1109(b)(4) and 1113 of Regulation AB.

[1082] We note that our rules do not mandate the particular contents of the report. Should these reports ultimately include subjective elements, the potential incentive misalignments could increase.

[1083] As we have indicated above, investors have encountered difficulty with getting the trustees to initiate repurchase obligations. We believe that the required report of the conclusions and findings to the trustee, which should provide evidence of any noncompliance, will make it difficult for trustees to ignore possible breaches of the contractual provisions.

procedures specified in the transaction agreements. After taking into account the comments received related to the applicability of the proposed triggers and potential costs, we are modifying the triggers for review.

Under the new shelf eligibility requirement, the pooling and servicing agreement, or other transaction agreement, must provide for a review of assets, at a minimum, upon the occurrence of a two-pronged trigger with the first prong being a percentage of delinquencies in the pool and the second prong being the direction of an investor vote, in each case as specified in the transaction agreements. Because these thresholds are negotiated by sponsors and investors in advance of the ABS issuance, and could vary by asset class, deal structure, or takedown, this approach allows the market to optimize and determine the most effective thresholds, subject to caps discussed below. In developing this two-prong trigger approach, we have attempted to balance some commenters' concerns about potentially unfounded claims by requiring that an objective threshold based on delinquencies first be met while protecting investors' ability to effectively direct a review at a time when rising delinquencies may begin to cause concern that the assets in the pool may not have met the representations and warranties made in the transaction documents.

(a) Delinquency Prong

Rather than tying the trigger to credit enhancement levels, we are adopting an objective trigger based on delinquencies.[1084] As summarized above, although commenters generally supported the requirement of an objective trigger, many stated that the proposed credit enhancement trigger did not easily apply across different asset classes and deal structures.[1085] We received some recommendations for alternative objective triggers and, in particular, commenters noted that a trigger based on delinquencies would work across all deal types.[1086] The amount of delinquencies in an asset pool is a metric that is required to be reported at the time of offering and on an ongoing basis.[1087]

We are not specifying the threshold amount of delinquencies that must first be reached, given the variety of thresholds that may be relevant and the differing approaches offered by commenters. For instance, we note that some ABS transactions include delinquent loans at the onset. Furthermore, the shelf eligibility requirements permit registration of offerings of ABS that include up to 20% of delinquent assets.[1088] We also acknowledge that transaction participants should have some flexibility across deal structures and asset classes so that they may negotiate the terms appropriate for each particular offering, including the appropriate delinquency threshold.[1089] We recognize, however, that providing the transaction parties with such flexibility may impose costs to investors depending on the procedures established. In particular, we recognize that by not prescribing a particular delinquency threshold, transaction parties could theoretically set this threshold high and thereby make it difficult for investors to exercise their rights under this provision. To address this concern, we are requiring disclosure in the prospectus that describes how the delinquency trigger was determined to be appropriate.[1090] The disclosure must include a comparison of the delinquency trigger against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type. Using this disclosure, investors will be able to analyze the reasonableness of the delinquency trigger.

The final rule provides some specificity as to how the delinquency threshold must be calculated in order to provide clarity to issuers and consistency to investors across various transactions and assets classes, and to prevent possible mechanisms from reducing the effectiveness of the trigger. The delinquency prong requires that the delinquency threshold be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period in accordance with the issuer's reporting obligations. By requiring that the delinquency calculation be measured as a percentage of the aggregate dollar amount of all assets in the pool, the calculation will better reflect the magnitude of delinquencies, as compared to a delinquency calculation measured by counting only the number of delinquent assets without consideration of the delinquent assets' relative dollar values.[1091] Furthermore, to prevent issuers from imposing a higher hurdle to trigger the delinquency threshold for transactions with multiple sub-pools, we are also requiring that the percentage be based on the percentage of delinquencies in the sub-pool. For example, if a transaction has divided the underlying assets into three sub-pools, there will be three separate delinquency trigger calculations. If the delinquencies in one sub-pool triggers an investor vote (and, as explained below, the subsequent vote is attained to trigger a review), the final rule requires that the transaction documents specify, at a minimum, that the assets of the respective sub-pool would be subject to review.[1092] We believe that requiring the delinquency threshold to be calculated on a sub-pool basis also recognizes the notion that investors would be primarily concerned about the

[1084] Current Regulation AB does not establish a standard for determining delinquencies, and we are not providing a definition of delinquency for purposes of the asset review provision. Regulation AB requires disclosure of the methodology for determining delinquencies in the prospectus and accordingly, we expect that the transaction agreements provide the method of determining delinquencies. *See* Item 1101(d) of Regulation AB [17 CFR 229.1101(d)]. If the transaction agreements do not use delinquencies to measure late or non-payment of an underlying obligor, then in order to meet this shelf requirement, a comparable metric measuring late or non-payment should be used and disclosed. As discussed below, the final rule requires disclosure regarding how the delinquency trigger was determined to be appropriate. *See* Item 1113(a)(7)(i) of Regulation AB [17 CFR 229.1113(a)(7)(i)]. Under the new rule, in the case of a transaction using a metric other than delinquencies, disclosure regarding why a different metric is appropriate would need to be included.

[1085] *See* letters from ASF III, BoA II, MBA III, SIFMA II-investors, VABSS III, and Wells Fargo II (all noting that many transactions do not provide for a specific level of credit enhancement to be maintained or the credit enhancement levels build up over time to a target. In these situations, the review would be triggered before there would be any real indication that there have been breaches of representations or warranties).

[1086] *See* letters from ASF III (suggesting objective factors such as cumulative losses, delinquencies or average loss severity be the trigger), Metlife II (noting the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction), and Prudential II (stating that a review should be triggered if the 60+ day delinquencies percentage is greater than the currently available credit support or if a loan becomes 90 days delinquent within six month of the loan's origination or four months from being included in the pool).

[1087] *See* Items 1100(b), 1101(c), 1105, 1111(c) and 1121(a)(9) of Regulation AB.

[1088] *See* General Instruction I.B.1(e) of Form SF–3.

[1089] We also note that our proposed credit enhancement trigger provided the transaction parties with the flexibility to set the target levels of the credit enhancement requirements so that they could tailor the procedures to each ABS transaction, taking into account the specific features of the transaction and/or asset class.

[1090] *See* Item 1113(a)(7)(i) of Regulation AB.

[1091] We also note that this requirement is similar to how delinquencies are reported by servicers in their monthly reports (as a percentage of the ending pool balance).

[1092] Transaction participants may, however, provide for reviews of additional assets in this instance.

assets that support their respective pool.[1093]

(b) Investor Vote Prong

The underlying transaction documentation must include a provision that, after the delinquency threshold has been reached or exceeded, investors have the ability to vote to direct a review. In formulating the final rule, we considered whether an investor vote would be necessary given that the final rule would require an objective trigger first be satisfied. We appreciate the costs that will be incurred by the investors in connection with these reviews.[1094] Furthermore, we acknowledge that there may be cases where some investors may not wish to incur the cost of an asset review, for example, when the transaction is performing as expected. For these reasons, the review is not automatic but rather must be initiated by investors as specified in the transaction documents. In order to balance the concern that the transaction parties may impose stringent voting requirements in the transaction documents in an effort to diminish investors' voting rights, we have imposed certain restrictions on the voting requirements in response to comments that we received.

Under the final rule, if the transaction agreement includes a minimum investor demand percentage in order to trigger a vote on the question of whether to direct a review, then the maximum percentage of investors' interest in the pool required to initiate a vote may not be greater than 5% of the total investors' interest in the pool (i.e., interests that are not held by affiliates of the sponsor or servicer).[1095] We are imposing this restriction because we believe that a higher threshold will blunt its effectiveness.[1096] Once the requisite percentage of investors' interest seeks to initiate a vote, as required by the transaction agreement, investors will proceed to vote on whether to direct a review. Our interpretation of ''pool,'' as discussed above in connection with the delinquency trigger, is also applicable for the voting procedures. Thus, if there are multiple sub-pools, then the calculation of whether there is the requisite percentage of investors' interest to initiate a vote would be determined based on that particular sub-pool.

Under the proposed rule, the transaction parties would have been given significant flexibility in setting the voting requirements for the investor vote trigger. We are concerned, however, that the transaction parties could establish a high delinquency threshold and high investor vote threshold as noted by one commenter, thus making it difficult for investors to utilize this shelf provision.[1097] We requested comments in the 2011 ABS Re-Proposal on whether we should establish maximum conditions for voting. Commenters offered a range of thresholds from 25% to a supermajority.[1098] Under the final rule, the transaction parties will be able to specify the percentage of investors' interest required to direct a review, provided that the threshold of approval shall be no more than a simple majority of those interests casting a vote. The final rule requires a simple majority of those interests casting a vote as the maximum condition because we believe that a simple majority threshold will help to reduce potentially frivolous claims while also helping to ensure that investors will be able to use the review provision. In addition to imposing restrictions on the voting requirements, we note that issuers are required to provide disclosure in the prospectus regarding the voting procedures for the review under existing Regulation AB, which will permit investors to analyze the reasonableness of the voting procedures.[1099]

We also recognize that the rule may complicate the voting process for investors in transactions that include assets consisting of previously issued ABS. In particular, when trigger conditions for a review are met in connection with the previously issued ABS, the trustee acting on behalf of the investors in the second securitization must vote since they are also investors in the first securitization via the resecuritization. To address this potential issue, each securitization will need to have clearly delineated voting rules and eligibility criteria in the event that some of its investors are through a resecuritization. It is hard for us to evaluate the extent to which this problem may affect the ABS markets because, over the past several years, there have been no registered resecuritizations of RMBS, CMBS, or Auto ABS.

The requirements of this shelf eligibility criterion are meant to be the minimum procedures that should be included in the transaction documents to provide investors with a means to trigger a review of the assets. We acknowledge that transaction parties have and may develop more specific and robust procedures for monitoring and reviewing assets that support the ABS.[1100] The adoption of this rule will not preclude the transaction parties from specifying additional, separate triggers for a review in the transaction agreements, as appropriate for a particular deal or asset class. To clarify, while we are permitting additional triggers to be established by the transaction parties, the final rule does not allow the transaction parties to add additional restrictions or requirements on the two triggers that we are establishing in order to make it more onerous for investors to utilize the provision.

(ii) Scope of the Review

We are also modifying the proposal to add some specificity regarding the scope of the review, since we have changed the objective trigger from being based on credit enhancement to one based on delinquencies and received varied comments regarding the appropriate scope for a review based on delinquencies.[1101] Under the final rule, once both prongs have been met (the delinquencies have reached or exceeded the threshold and investors have voted to conduct a review), a review must be

[1093] *See* letter from Metlife II (noting that the review should be based on delinquencies as a percentage of the original subordination for the senior-most class in a transaction).

[1094] *See* letter from SIFMA II-investors (noting that although the review requirement would result in additional costs, it would also increase investor protections).

[1095] The final rule does not require that the transaction agreement include a minimum investor demand percentage to trigger a vote; rather the final rule requires that if such provision is part of the transaction agreement, then it may require no more than 5% of the total interest in the pool.

[1096] *See* letter from Metlife I (noting that many securitization transactions impose a 25%-in-interest voting threshold before the trustee can be directed by investors to undertake certain actions such as polling investors on questions as to whether to exercise certain rights or remedies, thereby making it difficult for investors to act).

[1097] *See* letter from Metlife II (explaining, for example, that in a case where a transaction agreement requires 25% of all investors to initiate a vote, and 75% of all investors to approve a resolution, the likelihood of meeting a voting threshold would be slim at best).

[1098] *See* letters from J.P. Morgan II and Sallie Mae II (recommending a 25% threshold), MetLife II (suggesting a majority or plurality of those casting a vote), and Wells Fargo II (recommending a supermajority).

[1099] *See* Item 1113(a)(12) of Regulation AB (requiring disclosure regarding allocation of voting rights among security holders).

[1100] For example, the shelf requirement would not preclude an ABS issuer from including a review trigger for any asset delinquent for 120 days or more, without requiring an investor vote, if such a trigger is appropriate for that transaction. The transaction documents for the shelf registration statement would, however, need to include, at minimum, the asset review requirements that we are adopting.

[1101] *See* letters from Metlife II (stating that a random sample of all 60+ day delinquent loans should be reviewed once a review is triggered) and Prudential II (stating that once a review is triggered the reviewer should be required to ''review all 60+ day delinquent loans and prior defaults'').

conducted of all assets that are 60 or more days delinquent as reported in the most recent periodic report, at a minimum, for compliance with the related representations and warranties, as suggested by commenters. We are also adopting, as proposed, that the transaction agreement must provide the reviewer with access to copies of the underlying loan documents in order to determine whether the loan complied with the representations and warranties.[1102] As discussed below, a summary of the reviewer's report must be included in the Form 10–D.[1103]

(iii) Report of the Findings and Conclusions

As proposed, under the final rule, a report of the reviewer's findings and conclusions for all assets reviewed will be required to be provided to the trustee.[1104] The trustee could then use the report to determine whether a repurchase request would be appropriate under the terms of the transaction agreements. We are also requiring, as proposed, that disclosure be provided about any event triggering a review of the assets in the Form 10–D filing for the period in which the event occurred.[1105]

We proposed to require that any report of results provided to the trustee also be filed on periodic report Form 10–D. Commenters generally supported filing the reports on Form 10–D. Several commenters indicated, however, that privacy concerns may arise related to the information about the underlying loans if a full report is filed and recommended that we instead require summaries of the reports.[1106] We are persuaded by commenters that only a summary of the report of the findings and conclusions needs to be included on the Form 10–D. We acknowledge, however, a potential cost of this approach is that investors may not receive all of the information necessary to determine whether the trustee, or another party with demand rights, has made an appropriate decision regarding whether to initiate a repurchase request.

(iv) Selection of the Reviewer

In response to comments received, we are not adopting the proposal to require that the trustee appoint the reviewer. We are requiring, instead, that the pooling and servicing agreement or other transaction agreement provide for the selection and appointment of the reviewer since we believe that the transaction parties should be able to agree on who should serve as the reviewer.[1107]

We are requiring, as proposed, disclosure in the prospectus of the name of the reviewer, its form of organization, the extent of its experience serving as a reviewer for ABS transactions involving similar pool assets, and the manner and amount in which the reviewer is compensated.[1108] ABS investors will benefit from this increased disclosure as they will be able to assess the qualifications of the reviewer. ABS issuers will incur some additional disclosure costs to provide this information. In addition, as proposed, under the new rule disclosure is required with respect to: The reviewer's duties and responsibilities under the governing documents and under applicable law; any limitations on the reviewer's liability under the transaction agreements; any indemnification provisions; any contractual provisions or understanding regarding the reviewer's removal, replacement, or resignation, and how any related expenses would be paid.[1109] In addition, we are adopting, as proposed, a requirement that if, during the reporting period, the reviewer has resigned, or has been removed, replaced or substituted, or if a new reviewer has been appointed, then disclosure regarding the event and circumstances surrounding the change must be provided in the report for the period in which the event occurred.[1110]

We are also adopting a requirement that prohibits the reviewer from being affiliated with certain transaction parties and from performing certain duties due to concerns over potential conflicts of interest. Under the final rule, the reviewer, at a minimum, cannot be affiliated with the sponsor, depositor, servicer, the trustee, or any of their affiliates.[1111] In addition, a conflict may arise if the reviewer is also assigned the responsibility under the transaction documents to determine whether non-compliance with representations and warranties constitutes a breach of any contractual provision. Therefore, the reviewer shall not be the party to determine whether the non-compliance constitutes a breach. We believe that the role of the reviewer should be limited to reviewing the assets' compliance with the representations and warranties since we believe that the investors through the trustee are the most appropriate parties for determining, after reviewing the report of the conclusions and findings, whether to pursue a repurchase claim. In response to comments, particularly in the context of CMBS, the final rule will permit that the reviewer may be the same party serving another role in the transaction, provided that it is not affiliated with the sponsor, depositor, servicer, trustee, or any of their affiliates. As recommended by one commenter, however, the final rules prohibit the reviewer from being the same party or an affiliate of the party hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets due to the inherent conflict posed by the same party performing the pre-closing review and the review required by this shelf provision.[1112] The reviewer is also prohibited from being affiliated with the trustee in light of several commenters recommending this prohibition given the economic relationships the trustee or its affiliates may have with other transaction parties and the conflicts of interest that such relationships may create.[1113] We have not, however, added investors as a prohibited affiliation, as some commenters requested.[1114] We understand that issuers might view investor affiliation with the reviewer as a possible conflict; however, since issuers will be responsible for selecting the reviewer, they will be able to address any concern. We do not think such an affiliation will likely cause harm or conflict to investors as a whole because, if there is evidence of high or growing delinquencies in the asset pool, it would be in the best interest of investors as a whole to have a review conducted in order to determine whether investors should make a repurchase demand.[1115] Because the

[1102] *See* General Instruction I.B.1(b)(B) of Form SF–3.

[1103] We would expect that the reviewer would conduct the review and provide its report to the trustee in a reasonably prompt manner once the review is triggered.

[1104] *See* General Instruction I.B.1(b)(E) of Form SF–3.

[1105] If the transaction parties decide to include additional triggers beyond the minimum two-prong trigger required by this shelf eligibility rule, then disclosure is required about those trigger events as well.

[1106] *See* letters from ABAASA II, ASF III, CREFC II, MBA III, VABSS III, and Wells Fargo II.

[1107] *See* General Instruction I.B.1(b) of Form SF–3.

[1108] *See* Item 1109(b) of Regulation AB [17 CFR 229.1109(b)].

[1109] *Id.*

[1110] *See* Item 1121(d)(2).

[1111] *See* Item 1101(m) of Regulation AB (defining the reviewer).

[1112] *See* letter from SIFMA II-investors.

[1113] *See* letters from Better Markets, J.P. Morgan II, and Prudential II.

[1114] *See* letters from Better Markets and J.P. Morgan II.

[1115] However, any investor, or affiliate of an investor, affiliated with a sponsor, depositor, or any servicer would not qualify as a reviewer. For example, in the context of CMBS, an investor that

Continued

rule establishes the minimum restrictions on affiliations, the transaction parties could agree to exclude other parties based on their relationships. As proposed, the final rule requires disclosure about those relationships in the prospectus, which will help alert investors to any potential conflicts.[1116]

As noted above, some commenters suggested, as an alternative, that we revert back to an approach proposed in the 2010 ABS Proposing Release. They recommended that we allow issuers of asset classes other than residential mortgages the option to choose between the 2011 ABS Re-Proposal to require review of the assets upon certain triggers being met or the 2010 ABS Proposal to allow for a third-party review opinion.[1117] These commenters explained that the 2010 ABS Proposal for a third-party review opinion would limit costs on the issuers where repurchases have not presented the same difficulties as they have in RMBS.[1118] However, in response to the 2010 ABS Proposal, some commenters stated that the third-party opinion provision would not provide investors with the protection they would need in the event issues arise with the enforcement of representations and warranties provisions because, in general, transaction agreements have not included mechanisms to identify potential breaches of representations and warranties.[1119] The rule we are adopting is designed to protect against potential risks even where they have not surfaced in the past. As noted above, a group of investors commented that despite the additional costs, increased investor protections will produce net economic benefits to investors.[1120] In light of these considerations, rather than permitting a third-party opinion as an alternative requirement for shelf eligibility, we have revised the review process to address the costs concerns.

(3) Dispute Resolution Provision

(a) Proposed Rule

In the 2011 ABS Re-Proposal, along with the credit risk manager proposal, we proposed to require that underlying transaction documents include repurchase request dispute resolution procedures. As we have noted elsewhere, not only have investors lacked a mechanism to identify potential breaches of the representations and warranties, they have also lacked a mechanism to require sponsors to address their repurchase requests in a timely manner.[1121] Under the proposal, the transaction agreements would be required to provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not repurchased by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method. As noted above, the dispute resolution provision, along with the other new shelf transaction requirements, should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that the dispute resolution provision will enhance the enforceability of the transaction terms and should incentivize issuers to provide investors with accurate and complete information at the time of the offering. We believe that these requirements are appropriate for asset-backed securities transactions to be offered to the public off a shelf registration statement.

(b) Comments on Proposed Rule

Commenters generally supported a dispute resolution process.[1122] Several commenters recommended that we require that binding arbitration be the sole process.[1123] We received a significant number of comments stating that 180 days is an appropriate time period for the obligated party to review repurchase requests.[1124] One commenter stated that 180 days may not be long enough for RMBS.[1125] Another commenter noted that transactions backed by assets that have shorter maturity dates should have a shorter timeframe.[1126] Although the proposed rule did not specifically address payment of the costs of the dispute resolution process, several commenters made recommendations for which party should pay.[1127] We also received comments that we specify that a repurchase is not the only way a repurchase request can be satisfied.[1128]

(c) Final Rule and Economic Analysis of the Dispute Resolution Shelf Requirement

As a third transaction requirement for shelf registration, we are requiring, as proposed but with slight modification, that the underlying transaction documents include dispute resolution procedures for repurchase requests.[1129] We note that our original proposal for the dispute resolution requirement appeared in the same subsection of Form SF–3 as our credit risk manager proposal, even though we intended them to operate separately from each other. Thus, while we believed that our asset review shelf requirement would help investors evaluate whether a repurchase request should be made, we structured the dispute resolution provision so that investors could utilize the dispute resolution provision for any repurchase request, regardless of whether investors direct a review of the assets. We believe that organizing the dispute resolution requirement as a separate subsection in the shelf eligibility requirements will help to

is affiliated with a special servicer would not qualify as a reviewer.

[1116] Item 1119 of Regulation AB requires disclosure of any known, material relationships among the various parties to the transaction and the character of those relationships.

[1117] *See* letters from ASF III, BoA II, and VABSS III. *See also* footnote 1054.

[1118] *See* letters from ASF III, BoA II, and VABSS III.

[1119] *See* letters from ABAASA I, ASF I, BoA I, J.P. Morgan I, Metlife I, Prudential I, SIFMA I, VABSS I, Vanguard, and Wells Fargo I.

[1120] *See* letter from SIFMA II-investors.

[1121] *See* the 2011 ABS Re-Proposal at 47956–57. *See also* the Section 943 Adopting Release at 4489–90.

[1122] *See* letters from ASF III, BoA II, J.P. Morgan II, MBA III, Metlife II, Prudential II, SIFMA III-dealers and sponsors, and Wells Fargo II.

[1123] *See* letters from BoA II, J.P. Morgan II, Prudential II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Wells Fargo II (all noting that binding arbitration would be the best form of dispute resolution).

[1124] *See* letters from ASF III, J.P. Morgan II, Metlife II, and Prudential II.

[1125] *See* letter from MBA III (stating that due to rebuttals it may take longer than 180 days to resolve a dispute).

[1126] *See* letter from Metlife II (stating that 180 days may be too long for shorter term transactions since some investors may hold classes that pay off sooner).

[1127] Nine commenters suggested that the party that loses the dispute should pay for all legal fees incurred by the prevailing party. *See* letters from ABASA II, BoA II, J.P. Morgan II, MBA III, Metlife II, SIFMA II-investors, SIFMA III-dealers and sponsors, and Sallie Mae II. One commenter recommended that the arbitrator should be responsible for determining who pays. *See* letter from Prudential II. Another suggested that the transaction documents specify who pays for the resolution. *See* letter from Wells Fargo II.

[1128] *See* letters from ASF III (stating that the requirement, as written, may have the unintended effect of restricting the resolution of a repurchase request to only repurchasing the asset), MBA III (stating ''given the potential for non-repurchase resolution of a breach, MBA recommends changing the focus of the Re-proposal from 'repurchases' not completed in 180 days to 'resolutions' not completed within 180 days''), and SIFMA II-investors and SIFMA III-dealers and sponsors (noting that remedies for a breach would be ''cure of the breach, repurchase of the affected pool asset for the purchase price specified in the transaction documents, or, if applicable and if provided in the transaction documents, substitution of a pool asset having substantially similar characteristics as the defective pool asset'').

[1129] Disclosure regarding the dispute resolution procedures is required in the prospectus under Item 1111(e) of Regulation AB.

clarify the scope of the dispute resolution provision.

As we have discussed above, the shelf eligibility conditions that we are adopting are intended to help ensure that ABS shelf offerings have transactional safeguards and features that make securities appropriate to be issued off a shelf. We believe that the dispute resolution provision will provide a key procedural safeguard for investors to resolve disputes over repurchase requests in an effective and timely manner. We expect that the dispute resolution provision should generate efficiencies in the repurchase request process. We believe that, as a result of the asset review provision and the dispute provision, sponsors may have an increased incentive to carefully consider the characteristics of the assets underlying the securitization and to accurately disclose these characteristics at the time of the offering. We also believe that investors should benefit from reduced losses associated with nonperforming assets since, as a result of this new shelf requirement, sponsors will have less of an incentive to include nonperforming assets in the pool.

Under the new rule, the transaction agreements must provide that if an asset subject to a repurchase request pursuant to the terms of the transaction agreements is not resolved by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request will have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase or replace must agree to the selected resolution method.[1130] In response to comments, the final rule applies to those assets subject to a repurchase request that has not been resolved. We agree with several commenters that indicated that the term ''resolved'' is more appropriate than ''repurchased,'' which was proposed, since ''repurchased'' could have the unintended effect of restricting resolution of a repurchase request only to repurchasing the asset.[1131] We also believe that investors should be able to utilize the dispute resolution provision not only in connection with those requests in which the sponsor has failed to respond in a timely manner but also for those requests in which investors believe that the resolution offered by the sponsor does not make them whole.

We realize there are possible costs associated with setting the waiting period at 180 days before the party submitting the request has the right to refer the matter to mediation or arbitration. On the one hand, we recognize that there is the possibility that 180 days may not be long enough to come to a resolution due to numerous rebuttals in some situations, as noted by one commenter.[1132] This commenter recommended that the 180 days serve as a timeframe for due diligence and discussion and that the transaction parties be permitted to specify in the transaction agreements how much additional time beyond the 180 days the responsible party should be provided before the requesting party has the right to refer the dispute to mediation or arbitration. We believe that such an approach, however, may result in investors having to wait too long before being able to proceed to mediation or arbitration. On the other hand, we also recognize that the 180-day period may be too long for shorter term transactions since some investors may hold classes of assets that pay off sooner than 180 days. Although commenters generally supported the 180-day waiting period, one commenter recommended, for shorter term transactions, that the timeframe be reduced to 90 days before investors could proceed to mediation or arbitration.[1133] While we appreciate the timing issues raised by shorter term transactions, it is not clear that 90 days provides the responsible party with enough time to complete due diligence and engage in discussions with the requesting party. For these reasons, we believe 180 days, in general, fairly balances the need of investors for quick resolution with the desire of issuers for time to address the request.

In addition, some commenters recommended that we require binding arbitration as the single form of dispute resolution. Because we believe that investors should have access to all options available to resolve a dispute, we are not requiring a specific form or process to resolve disputes. The final rule permits a demanding party to determine what form of dispute resolution is appropriate.

Finally, after considering the comments received, we are requiring that the transaction documents specify that if arbitration occurs, the arbitrator will determine the party responsible for paying the dispute resolution fees and in the case of mediation, the parties, with the assistance of the mediator, will mutually agree on the allocation of the expenses incurred. While some commenters recommended that the losing party should pay the expenses, we believe that letting the arbitrator or the parties in mediation determine who pays balances competing concerns. On the one hand, some commenters expressed concern about the possibility of investors using the dispute resolution process for frivolous disputes and therefore recommended that we require the transaction documents to specify that the losing party pays.[1134] On the other hand, there may be instances where the requesting party uses the dispute resolution process for a legitimate claim and the arbitrator rules against the claim but believes that the requesting party should not be required to bear all the expenses associated with the dispute resolution.[1135] By giving the arbitrator the discretion to make this determination based on the facts and circumstances of the repurchase claim at issue, we believe investors will not be discouraged from using the dispute resolution process for valid claims while also curbing potentially frivolous claims, given the possibility of having to pay the fees associated with the dispute resolution.

We recognize that the dispute resolution provision could result in increased costs for ABS issuers and investors. We believe that these costs will likely be similar to other securities industry dispute resolution costs, which typically include filing fees, hearing session fees, and other miscellaneous arbitrator or mediator expenses. According to FINRA, arbitration and mediation filing fees depend on the size of the claim and can be up to $500 for an amount in controversy over $100,000.[1136] In addition, the dispute parties will incur the costs of arbitrator/mediator compensation, which depends on the length of the hearing and the complexity of the case. A typical arbitration hearing of three days can cost from $2,700 to $6,750 for an amount in controversy in the $100,000 to $500,000 range.[1137] A typical

[1130] Several commenters asked us to clarify that a repurchase is not the only way a repurchase request can be satisfied. *See* letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors.

[1131] *See* letters from ASF III, MBA III, SIFMA II-investors, and SIFMA III-dealers and sponsors. We made a similar change in an asset-level data point capturing repurchase requests in order to use consistent terminology and to help ensure accurate tracking of the status of repurchase requests. *See* footnote 225.

[1132] *See* letter from MBA III.

[1133] *See* letter from MetLife II.

[1134] *See, e.g.,* letters from BoA II, J.P. Morgan II, and MBA III.

[1135] *See* letter from Prudential II.

[1136] For more information about securities-related arbitration and mediation, including typical costs, see FINRA's Dispute Resolution Web site, *http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/.*

[1137] *See* FINRA Manual, Section 12902, Hearing Session Fees, and Other Costs and Expenses, *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4190.*

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mediation hearing of one day can cost between $1,000 and $6,400.[1138] The parties will also incur attorneys' fees with arbitration or mediation hearings, which will depend upon the length of the hearing, the number of attorneys involved, and the amount of preparation required.

Because the dispute resolution provision is not limited strictly to repurchase requests connected with a review pursuant to the asset review provision, there is a possibility that frivolous repurchase requests could be made and thus subject to the dispute resolution process. As discussed above, under the final rule the requesting party could be responsible for paying the dispute resolution expenses based on a determination by the arbitrator (or if the parties mutually agree that the requesting party should incur these expenses in the case of mediation). This is intended to limit the number of potentially frivolous claims.

(4) Investor Communication

(a) Proposed Rule

In the 2011 ABS Re-Proposing Release, we proposed, as a shelf eligibility requirement, a method for facilitating investor communication with other investors related to their rights under the terms of the ABS. In particular, the proposed rule would require that the transaction agreements contain a provision requiring the party responsible for filing the Form 10–D to include in ongoing distribution reports on Form 10–D any request received from an investor to communicate with other investors related to investors exercising their rights under the terms of the asset-backed security. The request to communicate would be required to include: the name of the investor making the request, the date the request was received, and a description of the method by which other investors may contact the requesting investor. As we discussed in the 2011 ABS Re-Proposing Release, investors have raised concerns about the inability to locate other investors in order to enforce rights contained in the transaction documents, such as those relating to the repurchase of underlying assets for breach of representations and warranties.[1139] Frequently, in order to act, the transaction agreements require a minimum percentage of investors acting together. Additionally, as one investor noted, since most ABS are held by custodians or brokers in ''street name'' through the Depository Trust Company (DTC), investors face further difficulties in trying to locate one another to communicate about exercising their investor rights.[1140]

While we did not propose specific procedural requirements for verifying that the person requesting to communicate is a beneficial owner of the particular ABS, we proposed to include an instruction to limit investor verification requirements, if the underlying transaction agreements contain such procedures, to no more than the following: (1) If the investor is a record holder of the securities at the time of a request to communicate, then the investor would not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders; and (2) if the investor is not the record holder of the securities at the time of the request to communicate, the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, the investor beneficially held the securities.

(b) Comments on Proposed Rule

Many commenters were generally supportive of the concept to allow for mechanisms for investors to contact and communicate with each other.[1141] Some commenters generally supported the proposal that investors' requests to communicate be reported on Form 10–D.[1142] Other commenters suggested that the Commission allow for alternative methods of communication and recommended that the Commission permit the use of investor registries and trustee Web site processes currently in practice for many recent CMBS transactions.[1143] Some of these commenters noted that it would be quicker for investors to communicate with each other on a Web site compared to requiring the issuer to include the notice on Form 10–D and would be less costly.[1144] One of these commenters also recommended a Web site approach because it would provide investors with more privacy, which investors may want in certain situations.[1145] The other commenter noted that a Web site approach could provide investors with an open and instant dialogue with other investors.[1146]

Commenters suggested other methods to simplify the verification process. One commenter opposed the proposed instruction on how an investor's ownership of the securities is verified because most certificates are held through DTC, which may make it difficult and costly to determine who the ultimate holders are.[1147] Several commenters suggested requiring investors to complete a certification regarding their ownership.[1148] Another commenter suggested a written certification plus one or more items to verify interest.[1149] One commenter suggested that the right to communicate be limited to current investors and that the nature of communication be limited to a ''factual statement that the investor wishes to communicate with other investors with respect to exercising a right under the transaction documents.'' [1150] This commenter explained that limiting the nature of the

See also Seth Lipner, *Is Arbitration Really Cheaper?,* Forbes, July 14, 2009, *available at http://www.forbes.com/2009/07/14/lipner-arbitration-litigation-intelligent-investing-cost.html* (stating that the average arbitration requires three days of hearings).

[1138] *See* FINRA's Mediation Web site, *http://www.finra.org/ArbitrationAndMediation/Mediation/Process/MediationSessions/index.htm* (stating that mediations usually take one day). We used mediation hourly rates provided by the American Arbitration Association for cost estimates for mediation since FINRA does not provide information on mediator's hourly rates. For more information about the costs of mediation, see the American Arbitration Association's Web site, *www.adr.org.*

[1139] *See* the 2011 ABS Re-Proposing Release at 47959. *See also* Alex Ulam, *Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight,* American Banker (June 24, 2011) (noting that many attempted put-backs have ''flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer''); Tom Hals & Al Yoon, *Mortgage Investors Zeroing in on Subprime Lender,* Thomson Reuters (May 9, 2011) (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a laborious task).

[1140] *See* letter from MetLife I. DTC is a securities depository and a clearing agency registered with the Commission and provides settlement services, including immobilizing securities and making book-entry changes to ownership of securities deposited by its participants, in order to facilitate the end-of-day net settlement in multiple markets. For a more detailed description of DTC's services see *The Depository Trust Company Assessment of Compliance with the CPSS/IOSCO Recommendations for Securities Settlement Systems* (Dec. 12, 2011), *http://dtcc.com/en/legal/policy-and-compliance.aspx.*

[1141] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, ICI II, MBA III, Metlife II, Prudential II, VABSS III, and Wells Fargo II.

[1142] *See* letters from ASF III, BoA II, ICI II, Metlife II, and VABSS III.

[1143] *See* letters from ABA II, ABAASA II, ASF III, BoA II, CREFC II, Metlife II, MBA III, Prudential II, VABSS III, and Wells Fargo II.

[1144] *See* letters from CREFC II and Wells Fargo II.

[1145] *See* letter from CREFC II.

[1146] *See* letter from Wells Fargo II.

[1147] *See* letter from CREFC II.

[1148] *See* letters from MBA III and Wells Fargo II.

[1149] *See* letter from ABA II (stating ''in circumstances in which rapid verification of investor status has been required, trustees have accepted screen shots from DTC, letters from registered broker-dealers affirming the identity of the beneficial owner on whose behalf they hold a position, and copies of trade confirmations'').

[1150] *See* letter from MBA III.

communication would eliminate any need for the filing party to monitor or edit the communication and also would address any liability concerns associated with the inclusion of references to a specific party to the transaction or as to what contractual standard may have been violated. Responding to a request for comment in the 2011 ABS Re-Proposing Release,[1151] some commenters stated the disclosure should include a reason for the communication that would be specified in a pre-set list.[1152] One commenter, however, opposed requiring the issuer to disclose the type or category of matter that the investor wishes to discuss with other investors.[1153]

(c) Final Rule and Economic Analysis of the Investor Communication Shelf Requirement

We are adopting, as proposed, a shelf eligibility requirement that an underlying transaction agreement include a provision to require the party responsible for making periodic filings on Form 10–D to include in the Form 10–D any request from an investor to communicate with other investors related to an investor's rights under the terms of the ABS that was received during the reporting period by the party responsible for making the Form 10–D filings.[1154] Without an effective means for investors to communicate with each other, investors may be unable to utilize the contractual rights provided in the underlying transaction agreements.[1155] Therefore, we are requiring that the investor communication provision be included in an underlying transaction agreement so that the party responsible for making Form 10–D filings will be contractually obligated to disclose an investor's desire to communicate.[1156] We continue to believe that this is an appropriate requirement for ABS shelf eligibility because facilitating communications among investors enables them to more effectively exercise the rights included in the underlying transaction agreements, which we believe will enhance the enforceability of representations and warranties regarding the pool assets. As noted above, the new shelf transaction requirements should encourage ABS issuers to design and prepare ABS offerings with greater oversight and care. We believe that stronger enforcement mechanisms should incentivize issuers to provide investors with accurate and complete information at the time of the offering. This shelf eligibility requirement, for example, will assist investors in exercising their rights related to the new asset review provision required for shelf eligibility. Those rights would include the right to direct a review of underlying assets to determine whether the assets comply with the representations and warranties. Consequently, we believe that these new shelf requirements aimed at helping investors exercise their contractual rights will assist in increasing investors' participation in the ABS markets and thereby foster greater capital formation.

In previous releases, we have recognized that in certain circumstances the Internet can present a cost-effective alternative or supplement to traditional disclosure methods. We considered whether a Web site or investor registry would be a more effective approach to facilitate investor communication, including consideration of the comments received supporting a Web site approach. While we appreciate some of the potential benefits that may be afforded by a Web site approach, such as faster dissemination of the notices and more robust communication capabilities as noted by some commenters,[1157] we believe that requiring that the investor communication notices be filed with the Form 10–D is the best way to ensure that these requests reach investors. This approach is consistent with our efforts to facilitate the distribution of all investor information regarding the ABS in one place at an expected time—that is, through distribution reports that are attached as exhibits to the Form 10–D. We also believe that this approach is a cost-effective means for issuers to provide investors with communication notices since we are using an existing periodic report. Additionally, by requiring issuers to file the notices with the Commission, as opposed to posting the notices on a Web site, we will be able to more effectively monitor compliance with this shelf requirement and provide investors with reliable access to the notices through EDGAR, even at times when the markets are in distress and issuers' Web sites are not accessible. Finally, we note that while our shelf requirement is intended to provide investors with at least one method to contact other investors, the final rule does not preclude issuers from utilizing Web sites to provide investors with more robust communications capabilities and we encourage issuers to do so.

We acknowledged in the 2011 ABS Re-Proposing Release that transaction parties might want to specify procedures in the underlying transaction agreements for verifying the identity of a beneficial owner in a particular ABS prior to including a notice in a Form 10–D. While we did not propose specific procedural requirements to be added to the agreements, we did propose to limit the extent of the verification procedures that the transaction parties could impose to verify investor ownership. As summarized above, several commenters consisting of issuers, investors, trustees, and trade associations suggested that the investor verification procedures should be easy and quick to perform and provided various recommendations for the Commission to consider.[1158] Taking into account suggestions from commenters, we are modifying part of the proposed instruction to specify that, if the investor is not the record holder of the securities, an issuer may require no more than a written certification from the investor that it is a beneficial owner and another form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document verifying ownership.[1159] We are making this

[1151] *See* Request for Comment No. 43 in the 2011 ABS Re-Proposing Release (requesting comment as to whether a pre-set list of reasons for communication should be required—the pre-set list would include the following categories: Servicing, trustee, representations and warranties, voting matters, pool assets, and other).

[1152] *See* letters from ABAASA II and BoA II.

[1153] *See* letter from ABA II (noting its belief that ''such information is more appropriately conveyed directly by the investor itself and should not be given an imprimatur of the issuer (or trustee) involved in facilitating the request'').

[1154] Most ABS issuers report and distribute payments to investors on a monthly basis. The Form 10–D is required to be filed within fifteen days after a required distribution date, and a distribution date is typically two weeks after the end of a reporting period. For example, under our final rule, for the month of June, a request from an investor would have to be received prior to the close of the reporting period on June 30, a distribution would be due to investors by July 15, and the Form 10–D filing due date would be July 30.

[1155] *See* Paul A. Burke & Michael C. Morcom, *Improving Issuer-Investor Communication in U.S. Securitization Transactions,* J. Structured Fin., Summer 2013, at 27–31 (discussing the problems associated with the current communication process between issuers and investors and arguing that ''[a] critical piece of an effective bondholder communication system is [the] initial 'push' of information out to the investor'').

[1156] *See also* new Item 1121(e) (requiring disclosure of investors' request to communicate on Form 10–D).

[1157] *See, e.g.,* letters from CREFC II and Wells Fargo II.

[1158] *See* letters from ABA II, BoA II, CREFC II, and MBA III.

[1159] We note that these ownership verification procedures are less prescriptive than the ownership eligibility requirements to submit a proposal under Exchange Act Rule 14a–8; however, we believe that this flexibility is appropriate because the provision is more limited in its scope to only providing

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change since ownership of most ABS is held in book-entry form through DTC.[1160] We are also adopting, as proposed, the other part of the instruction that states that if the investor is the record holder of the securities, an investor will not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders.

Under the final rule, the disclosure in Form 10–D is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors about the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.[1161] While we requested comment on whether we should prescribe a pre-set list of objective categories from which an investor could choose for the purpose of indicating why it is requesting communication with other investors, we are not requiring that the investor specify the substance of the communication due to concerns raised by commenters. As summarized above, some commenters opposed imposing any obligation on the party responsible for filing the Form 10–D to monitor or edit the communications.[1162] We also agree with one commenter that the substance of the communication is more appropriately conveyed directly by the investor and should not be given an imprimatur of the party involved in facilitating the communication request.[1163] Thus, the purpose of this communication requirement is not to communicate specific issues or concerns of an investor but rather is intended to be a method for investors to notify other investors of their interest to communicate.

As proposed, we are also including an instruction to Item 1121(e) of Regulation AB to define the type of notices that are required to be on Form 10–D. The party responsible for filing the Form 10–D will be required to include disclosure of only those notices of an investor's desire to communicate where the communication relates to the investor exercising its rights under the terms of the ABS. Thus, the party responsible for filing is not required to disclose an investor's desire to communicate for other purposes, such as identifying potential customers or marketing efforts.[1164]

While we acknowledge that issuers will incur some cost to implement this provision, we believe, taken together with the new asset review provision, that the disclosure will benefit investors by helping them establish communication and overcome collective action problems. As a result, this requirement should help investors exercise their rights under the transaction agreements, including those that are required to be included in the transaction documents to comply with shelf eligibility requirements. We acknowledge that the rule will minimally increase the costs for the party responsible for making the periodic filings on Form 10–D since it will need to modify its existing information systems to receive investors' requests to communicate. However, this is a very low cost method to help distinguish shelf appropriate ABS offerings. The Form 10–D is an existing periodic report that provides investors with, among other things, distribution information and pool performance information for the distribution period. Given the nature and frequency of the Form 10–D, we believe that adding the investor communication request requirement to the Form 10–D is appropriate and beneficial to investors because it will facilitate the distribution of all investor information regarding the ABS in one place, at an expected time. Using an existing form will also limit the cost for issuers because a separate reporting mechanism will not be necessary. While we have sought to limit costs by using Form 10–D, we recognize for those issuers that currently offer investor registries or Web sites and decide to continue to offer those methods of communication that there will be additional costs.

(b) Shelf Eligibility—Registrant Requirements

In the 2010 ABS Proposing Release, we proposed new registrant requirements related to compliance with the proposed transaction requirements for shelf eligibility (i.e., risk retention, a third-party opinion provision in transaction agreements, an officer certification, and an undertaking to file ongoing Exchange Act reports).[1165] We proposed that prior to filing a registration statement on proposed Form SF–3 to the extent the depositor, any issuing entity that was previously established by the depositor, or an affiliate of the depositor is or was at any time during the previous twelve months required to comply with the proposed transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class, such depositor, each such issuing entity, and any affiliate of the depositor must have filed all material required to be filed during the twelve months (or shorter period that the entity was required to have filed such materials). Also, such material, other than certain specified reports on Form 8–K, must have been filed in a timely manner.[1166] Finally, we proposed a separate registrant requirement that there be disclosure in the registration statement stating that the proposed registrant requirements have been complied with.

In light of the changes to proposed amendments to the transaction requirements for shelf eligibility, we revised the proposed registrant requirements to make conforming changes in the 2011 ABS Re-Proposal. We re-proposed that to the extent the depositor, any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the proposed transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class then the registrant must meet certain registrant requirements at the time of filing the shelf registration statement. The re-proposed registrant requirements would require that such depositor, each such issuing entity, and any affiliate of the depositor must have timely filed all required certifications and all transaction agreements that contain the required provisions relating to the credit

notification to other investors of their interest to communicate.

[1160] *See* letter from CREFC II (explaining that although the trustee can request a list of beneficial owners from DTC, the process can be costly and can take days or weeks to complete).

[1161] *See* Item 1121(e) and Item 1.B. of Form 10–D.

[1162] *See* letters from ABA II and MBA III.

[1163] *See* letter from ABA II.

[1164] To the extent an investor wishes to communicate with other investors about other matters, the investor must consider independently the potential applicability of other regulatory provisions under the federal securities laws. For example, an investor proposing to commence a tender offer for securities in the ABS class must evaluate whether such a communication is subject to Exchange Act Sections 14(d) and 14(e) and Regulations 14D and 14E thereunder.

[1165] For a list of existing shelf eligibility conditions that we are including in new Form SF–3, see footnote 874.

[1166] *See* General Instruction I.A.2 to Form SF–3.

risk manager, repurchase request disputes, and investor communication.

In addition, we re-proposed to make the proposed separate registrant requirement that would have required the registrant to include disclosure in the registration statement stating the depositor has complied with the registrant requirements an instruction rather than a shelf eligibility registrant requirement.

Because we did not receive any comments on the revised registrant requirements for shelf eligibility, we are adopting the revised registrant requirements largely as re-proposed. Under the final rule, we are retaining the registrant requirement that was previously in Form S–3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of new Form SF–3. Since registrants are already required to comply with this particular existing shelf registrant requirement, registrants should not incur additional compliance costs.

The final rule also requires that to the extent the depositor or any issuing entity that was previously established by the depositor, or any affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the transaction requirements of Form SF–3 with respect to a previous offering of asset-backed securities involving the same asset class, then such depositor, each such issuing entity, and any affiliate of the depositor, must have timely filed all required certifications and all transaction agreements that contain the required provisions relating to the asset review provision, dispute resolution, and investor communication.

We believe that connecting the registrant requirements to the transaction requirements of prior offerings by the depositor, or affiliates of the depositor, will incentivize the depositor to timely file all required transaction documents with the required provisions and the required certifications.

In addition, as proposed, we are including an instruction stating that the registrant must disclose in a prospectus that it has met the registrant requirements. We believe disclosure of compliance with the registrant requirements will provide a means for market participants (as well as the Commission and its staff) to better gauge compliance with the shelf eligibility conditions of Form SF–3.

(c) Annual Evaluation of Form SF–3 Eligibility in Lieu of Section 10(a)(3) Update

(1) Annual Compliance Check Related to Timely Exchange Act Reporting

(a) Proposed Rule

As we noted in the 2010 ABS Proposing Release, Form S–3 eligibility is determined at the time of filing the registration statement and again at the time of updating the registration statement under Securities Act Section 10(a)(3) by filing audited financial statements.[1167] We explained that, because ABS registration statements do not contain financial statements of the issuer, we believe a different periodic determination of continued shelf eligibility must be established. We believed that such an evaluation would provide us and the staff with a better means to oversee compliance of the new Form SF–3 eligibility conditions that would replace the investment-grade ratings requirement. Therefore, in lieu of the Section 10(a)(3) updating, we proposed to revise Securities Act Rule 401 to require, as a condition to conducting an offering off an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. An ABS issuer wishing to conduct a takedown off an effective shelf registration statement would be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor that was required to report under Sections 13(a) and 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis, as of 90 days after the end of the depositor's fiscal year end.[1168] Under this proposal the related registration statement could not be utilized for subsequent offerings for at least one year from the date the depositor or the affiliated issuing entity that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

(b) Comments on Proposed Rule

We received only a few comments on our proposal. One commenter expressed concern that it is not possible for ABS issuers to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after the end of the depositor's fiscal year end because there could be an unknown defect, latent or otherwise, in one or another of the relevant issuing entities' reports or reporting history.[1169] Another commenter suggested that the loss of shelf eligibility should not be automatic.[1170] This commenter suggested allowing for an explanation and any resulting penalty should be at the staff's discretion.[1171]

(c) Final Rule and Economic Analysis of the Final Rule

Under the new rule, an ABS issuer with an effective shelf registration statement will be required to evaluate whether the depositor, any issuing entity previously established by the depositor or any affiliate of the depositor was required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous twelve months for asset-backed securities involving the same asset class, have filed such reports on a timely basis. As noted above, one commenter expressed concern that ABS issuers would be unable to fully verify compliance with the Exchange Act reporting registrant requirements as of 90 days after fiscal year end due to an unknown defect in one or another of the relevant issuing entities' periodic reports or reporting history.[1172] We note that this annual compliance check is the same evaluation undertaken today by registrants at the time of filing the registration statement and at the time of filing Form 10–K; therefore, we expect that issuers would use the same procedures that are used to verify compliance at the time of filing the registration statement. As a result, this rule conforms the ABS process to the corporate issuers' process. Additionally, we believe that the costs will be minimal and limited to ABS issuers performing the same procedures they perform at the time of filing a registration statement. We believe that

[1167] 15 U.S.C. 77j(a)(3).

[1168] *See* the 2004 ABS Adopting Release at 1525 (noting our belief that given past deficiencies in Exchange Act reporting compliance in the ABS sector that issuers that fail to comply with their responsibilities under the Exchange Act for prior transactions should not continue to receive the benefits of shelf registration and, further, that issuers should not be able to create a new special purpose depositor to avoid the consequences of Exchange Act reporting noncompliance).

[1169] *See* letter from ASF III.

[1170] *See* letter from SIFMA III-dealers and sponsors.

[1171] *Id.*

[1172] *See* letter from ASF III (also suggesting that we follow Rule 401(g) and deem the registration statement to be filed on the proper registration form unless and until the Commission notifies the issuer of its objection). We note that Rule 401(g) applies to automatically effective registration statements, and those are not the type of registration statements in question here.

this annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their Exchange Act reports in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge, however, that there will be costs to those issuers that determine, as a result of their annual evaluation, that they did not timely file their Exchange Act reports and lose shelf access since they will be required to use Form SF–1. These costs are related to market timing given the possibility of additional staff review that may occur with a Form SF–1 compared to Form SF–3. We believe that this new provision simply ensures that the shelf process for ABS includes a mechanism to check whether the shelf issuer is current and timely with its Exchange Act reporting obligations as is currently required for corporate shelf issuers.

(2) Annual Compliance Check Related to the Fulfillment of the Transaction Requirements in Previous ABS Offerings

(a) Proposed Rule

In the 2010 ABS Proposing Release, we also proposed to require that, for continued shelf eligibility, an ABS issuer would be required to conduct an evaluation at the end of the fiscal quarter prior to the takedown of whether the ABS issuer was in compliance with the proposed transaction requirements relating to risk retention, third-party opinions, the officer certification, and the undertaking to file ongoing reports. If the ABS issuer was not in compliance with the transaction requirements, then it could not utilize the registration statement or file a new registration statement on Form SF–3 until one year after the required filings were filed.

In the 2011 ABS Re-Proposal, we re-proposed this registrant requirement to require an annual evaluation of compliance with the transaction requirements of shelf registration rather than an evaluation on a quarterly basis as we had originally proposed. Therefore, notwithstanding that the registration statement may have been previously declared effective, in order for the registrant to conduct a takedown off an effective registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements. Under the 2011 ABS Re-Proposal, to the extent that the depositor or any issuing entity previously established by the depositor or any affiliate of the depositor, is or was at any time during the previous twelve months, required to comply with the proposed new transaction requirements related to the certification, credit risk manager and repurchase dispute resolution provisions, and investor communication provision, with respect to a previous offering of ABS involving the same asset class, such depositor and each issuing entity must have filed on a timely basis, at the required time for each takedown, all transaction agreements containing the provisions that are required by the proposed transaction requirements as well as all certifications.

In response to commenters' concerns that the one-year penalty for non-compliance with the transaction requirements was too extreme, we revised and re-proposed to allow depositors and issuing entities to cure any failure to file the required certification or transaction agreements with the required shelf provisions. Under the proposed cure mechanism, the depositor or any issuing entity would be deemed to have met the registrant requirements, for purposes of Form SF–3, 90 days after the date all required filings were made.

(b) Comments on Proposed Rule

Commenters recommended that we reduce the waiting period after curing the deficiency. Some commenters requested that the waiting period after curing the deficiency be reduced to 30 days.[1173] Another commenter recommended changing the period to 30 or 45 days.[1174]

(c) Final Rule and Economic Analysis of the Final Rule

The final rule includes a registrant requirement that requires an annual evaluation of compliance with the transaction requirements of shelf registration, as re-proposed in the 2011 ABS Re-Proposing Release. Under the final rule, notwithstanding that the registration statement may have been previously declared effective, in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to evaluate, as of 90 days after the end of the depositor's fiscal year end, whether it meets the registrant requirements, which is the same look-back period for the ABS issuer as the compliance evaluation for Exchange Act reporting described above.

Under the final rule, a depositor and issuing entity may cure the deficiency if it subsequently files the information that was required. After a waiting period, it will be permitted to continue to use its shelf registration statement.[1175] Under the cure mechanism, the depositor and issuing entity will be deemed to have met the registrant requirements, for purposes of Form SF–3, 90 days after the date all required filings are filed.

Because the issuer can cure the deficiency while it continues to use the shelf and before the required annual evaluation, the issuer can avoid being out of the market. For example, a depositor with a December 31 fiscal year end has an effective shelf registration statement and on March 30 of Year 1, it evaluates compliance with all registrant requirements under new Rule 401(g) (90 days after the last fiscal year end) and determines that it is in compliance. The depositor then offers ABS but does not timely file the required transaction agreements that should have been filed on June 20 of Year 1. The depositor would be able to continue to use its existing shelf until it is required to perform the annual evaluation required by new Rule 401(g), on March 30 of Year 2. After March 30 of Year 2 and until June 20 of Year 2 (one year after the agreements should have been filed), the depositor would not be able to offer ABS off of the shelf registration statement, and would not be permitted to file a new shelf registration statement. However, if the depositor had cured the deficiency by filing the agreements on July 1 of Year 1, under the final rule, a new registration statement could be filed 90 days after July 1 of Year 1 (or September 29 of Year 1), instead of waiting until June 20 of Year 2 (when it otherwise would meet the twelve month timely filing requirement). In that case, at the time of the next annual evaluation for the registration statement on March 30 of Year 2, the depositor would be deemed to have met the registrant requirements because it would have cured the deficiency more than 90 days earlier on July 1 of Year 1, and thus the depositor could continue to use its existing shelf registration statement.[1176]

[1173] *See* letters from CREFC II and Kutak.

[1174] *See* letter from MBA III.

[1175] Curing the deficiency also allows the depositor, or its affiliates, to file a new registration statement if it also meets the other registrant requirements. *See* General Instruction I.A.1. of Form SF–3. As we emphasized in the 2011 ABS Re-Proposing Release, failure to file the information required (i.e., the required certification and transaction agreements with required provisions) will be a violation of our rules, and subject to liability accordingly. Furthermore, failing to provide disclosure at the required time periods may raise serious questions about whether all required disclosure was provided to investors prior to investing in the securities.

[1176] Using the example above, if the failure occurs in the first 90 days of the year before the March 30 annual compliance evaluation, but the issuer

Our approach is designed to strike a balance between encouraging issuers' compliance with the shelf transaction requirements and commenters' concerns that the one-year time out period in the 2010 ABS Proposals was too long. Also, as discussed above, we received comments that 90 days was still too long and that a 30 or 45 day waiting period would be more appropriate.[1177] We continue to be concerned that 30 or 45 days would not adequately incentivize issuers to comply with the transaction requirements. Based on staff observations of shelf offerings since the crisis, registrants typically conduct between two and three offerings during the course of a year. Under such conditions, a short waiting period such as 30 or 45 days would provide minimal, if any, incentive to comply with transaction requirements.

We are not adopting another commenter's suggestion that the loss of shelf eligibility not be automatic and that issuers should instead be allowed to explain and be penalized at the staff's discretion.[1178] The eligibility requirement is an incentive for issuers to comply with the shelf transaction requirements—providing the market with information about the issuer and thus an appropriate eligibility criterion to offer securities off the shelf. Furthermore, an ad hoc review of justifications for delays or missing filings would be inefficient use of the Commission's resources and would not incentivize issuers to monitor compliance.

We believe that the annual shelf eligibility compliance check will benefit investors because it will encourage issuers to file their transaction documents in connection with prior offerings at the required time and therefore enhance informed investment decisions. We acknowledge that the annual evaluations of compliance with the transaction requirements will impose additional costs on ABS issuers in the form of systems needed to examine compliance with the filing requirements. However, we believe that these costs should be minimal because issuers should already have, in most instances, systems designed to ensure that the transaction agreements are being filed timely in accordance with rules under the Securities Act.

4. Continuous Offerings

(a) Proposed Rule

In the 2010 ABS Proposing Release, we had proposed to amend Rule 415 to limit the registration of continuous offerings for ABS offerings to ''all or none'' offerings. In an ''all or none'' offering, the transaction is completed only if all of the securities are sold. In contrast, in a ''best-efforts'' or ''mini-max'' offering, a variable amount of securities may be sold by the issuer. In those latter cases, because the size of the offering would be unknown, investors would not have the transaction-specific information and, in particular, would not know the specific assets to be included in the transaction. Thus, information about the asset pool required by Item 1111 of Regulation AB, either in its existing form or as amended today, could not be complied with.[1179] As noted in the 2010 ABS Proposing Release, we believe that our proposed restriction would help ensure that ABS investors receive sufficient information relating to the pool assets, if an issuer registered an ABS offering to be conducted as a continuous offering.[1180]

(b) Comments on Proposed Rule

Only one commenter commented on the proposal to limit the use of continuous offerings on shelf to ''all or none'' offerings.[1181] This commenter agreed that ''in a continuous offering where the ultimate size of the offering is unknown, investors would not necessarily know the specific assets to be included in the transaction'' and the proposal properly eliminates this issue. However, this commenter suggested more guidance on what constitutes an ''all or none'' offering.[1182]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the rule as proposed. The new rule will provide ABS investors in continuous ABS offerings with information about all relevant pool assets and would close a potential gap in our regulations for ABS offerings. Under the final rule, the continuous offering must be commenced promptly and must be made on the condition that all of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by the seller by a specified date.[1183]

As one commenter noted, in some ABS offerings, all or a portion of one or more classes of ABS that are offered for sale to investors through one or more underwriters may initially be retained by the depositor or sold to one or more of its affiliates.[1184] In these cases, the offerings may be conducted as a firm commitment underwritten offering or as a best efforts offering. The commenter believed that such offering would not be a ''mini-max'' offering because the total size of the offering is known and disclosed in the prospectus. We agree with the commenter that these offerings would not be a ''mini-max'' offering if the prospectus includes all transaction-specific information, including information about the specific assets included in the pool.

This rule will be beneficial to investors in continuous offerings by ensuring that the information they receive is about all pool assets underlying the asset-backed securities they purchase. While ABS offerings are typically not conducted as a continuous offering, we believe that it is important for us to close a potential gap in our regulations for ABS offerings so that ABS investors receive this material information when making an investment decision—irrespective of the type of public offering. We acknowledge that restricting continuous offerings to ''all or none'' limits issuers' choice and may potentially impose costs on those issuers that would have preferred to conduct the offering on a best efforts basis. However, we also note that the staff is not aware of any prior public offering of ABS that was conducted on a continuous offering—either as ''all or none'' or best efforts—and therefore we expect these costs to be minimal. For similar reasons, we do not believe that the amended rule will have an impact

corrects the deficiency by filing the required information before providing the evaluation on March 30, the issuer will still be deemed to satisfy the registrant requirements for purposes of continued shelf eligibility and thus not be required to wait until March 30 of the next year to use the existing shelf registration statement or file a new one. The issuer, however, must still wait 90 days after filing the required information before using the existing effective shelf registration statement or filing a new shelf registration statement. We have revised the requirement to make this clear.

[1177] *See* letters from MBA III and SIFMA III-dealers and sponsors.

[1178] *See* letter from SIFMA III-dealers and sponsors.

[1179] The staff has advised us that they believe that neither ''best efforts'' offerings nor any continuous offerings have been utilized in the past for public offerings of asset-backed securities.

[1180] *See* the 2010 ABS Proposing Release at 23350.

[1181] *See* letter from ASF I.

[1182] *See* letter from ASF I (suggesting that there are offerings that should not be included in the ''mini-max'' definition).

[1183] All or none offerings are described in Exchange Act Rules 10b–9 [17 CFR 240.10b–9] and 15c2–4 [17 CFR 240.15c2–4] in the same manner.

[1184] *See* letter from ASF I (noting that this typically arises when the offered securities have a lower return or carry a lower spread relative to market demand and confirming that any subsequent sale of the securities by the depositor or its affiliates would be undertaken in accordance with the registration provisions under the Securities Act).

on competition, efficiency, or capital formation.

5. Mortgage Related Securities

(a) Proposed Rule

In the 2010 ABS Proposing Release, we proposed to require that offerings of mortgage related securities be eligible for shelf registration on a delayed basis only if, like other asset-backed securities, they meet the registrant and transaction requirements for shelf registration. Under the proposal, delayed shelf offerings of mortgage related securities could be registered only on new Form SF–3, and accordingly, must meet the eligibility requirements of Form SF–3. We proposed eliminating the provision in Rule 415 that permits the registration of ''mortgage related securities,'' as that term is defined in Section 3(a)(41) of the Exchange Act, for shelf offerings without regard to form eligibility requirements. This was a provision that was added to Rule 415 contemporaneous with the enactment of SMMEA.[1185] Therefore, under the provision, an offering of mortgage related securities did not have to meet the requirements of Form S–3 and could have been registered on a delayed basis on Form S–1.[1186] As we stated in the 2010 ABS Proposing Release, we proposed this requirement based on our belief that mortgage related securities should be required to meet all the requirements that we proposed for shelf eligibility in order to be eligible for registration on a delayed basis since these securities present the same complexities and concerns as other ABS.[1187]

(b) Comments on Proposed Rule

One commenter agreed that mortgage related securities should be held to the same standards as other asset-backed securities.[1188] Another commenter believed that both proposed Forms SF–1 and SF–3 should be available for delayed offerings of mortgage related securities ''to accommodate issuers or transactions that may not have a need for an SF–3 registration or assets that are unique and better suited for an SF–1 filing,'' but the commenter did not provide specific examples or further explanation.[1189]

(c) Final Rule and Economic Analysis of the Final Rule

We are revising Rule 415 as proposed. The change requires that mortgage related securities meet all criteria for eligibility for shelf registration on new Form SF–3. We believe that mortgage related securities should meet all the requirements we are adopting in order to be eligible for shelf registration on a delayed basis since these securities present the same complexities and concerns as other asset-backed securities. If we continue to allow issuers of mortgage related securities to offer securities on a delayed basis off the shelf without regard to the shelf eligibility requirements, we would effectively allow mortgage related securities issuers to circumvent the requirements we are adopting.

We believe that the amendment to Rule 415 adopted today will result in consistent and fair treatment of all asset-backed securities, regardless of the nature of the underlying pool assets. We believe that the impact of this rule on competition and capital formation will be minimal since most, if not all, issuers of mortgage related securities have met the shelf eligibility requirements and conducted offerings off shelf registration statements.

C. Exchange Act Rule 15c2–8(b)

1. Proposed Rule

Except for securities issued under master trust structures, shelf-eligible ABS issuers generally are not reporting issuers at the time of issuance. Under Exchange Act Rule 15c2–8(b),[1190] with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, unless the issuer has been exempted from the requirement to file reports thereunder pursuant to Section 12(h) of the Exchange Act, a broker or dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation (''48-hour preliminary prospectus delivery requirement''). The rule contains an exception to the 48-hour preliminary prospectus delivery requirement for offerings of asset-backed securities eligible for registration on Form S–3. An exception to the 48-hour preliminary prospectus delivery requirement was first provided in 1995 by staff no-action position.[1191] This staff position was later codified in 2004.[1192]

In light of recent economic events and to make this rule consistent with our other proposed revisions, in the 2010 ABS Proposing Release, we proposed to eliminate this exception so that a broker or dealer would be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of asset-backed securities, including those involving master trusts. Because each pool of assets in an ABS offering is unique, we believe that an ABS offering is akin to an IPO, and therefore we believe the 48-hour preliminary prospectus delivery requirement in Rule 15c2–8(b) should apply. Even with subsequent offerings of a master trust, the offerings are more similar to an IPO given that the mix of assets changes and is different for each offering. Additionally, requiring that a broker or dealer provide an investor with a preliminary prospectus at least 48 hours before sending a confirmation of sale should be feasible and made easier to implement as a result of our proposal that a form of preliminary prospectus be filed with the Commission at least three business days in advance of the first sale in a shelf offering.

2. Comments on Proposed Rule

Commenters generally supported the proposal.[1193] Several trade associations agreed that investors should have sufficient time to review an offering.[1194] One trade association supported the proposal, but suggested an ''access equals delivery'' model akin to final prospectuses to satisfy the requirements.[1195] One individual commenter supported the proposal but suggested that ABS structured as master trusts be treated differently so as not to require information delivered previously to be delivered again.[1196]

[1185] *See* Section V.A. Background and Economic Discussion.

[1186] *See* footnote 61 of the 2004 ABS Adopting Release.

[1187] *See* the 2010 ABS Proposing Release at 23350.

[1188] *See* letter from CFA I.

[1189] *See* letter from MBA I.

[1190] 17 CFR 240.15c2–8(b).

[1191] *See* footnote 163 of the 2004 ABS Adopting Release and accompanying text (discussing staff no-action letters providing relief to ABS issuers from Rule 15c2–8(b)).

[1192] In the 2004 ABS Adopting Release, we noted some concerns that investors did not have sufficient time to consider ABS offering information. However, as we were considering other proposals at that time that sought to address information disparity in the offering process, we decided to codify the staff position.

[1193] *See* letters from ASF I, A. Zonca, BoA I, MBA I, Sallie Mae I, and SIFMA I.

[1194] *See* letters from ASF I, MBA I, and SIFMA I.

[1195] *See* letter from ASF. *See also* letters from MBA I and SIFMA I (focusing their comments in this area on the waiting period that would be required by proposed Rules 424(h) and 430D).

[1196] *See* letter from A. Zonca (also suggesting that ABS master trusts not be required to deliver the information if any changes to previously delivered information relates to new account additions with

3. Final Rule and Economic Analysis of the Final Rule

We are eliminating the exception in Rule 15c2–8(b) for shelf-eligible asset-backed securities from the 48-hour preliminary prospectus delivery requirement as proposed.[1197] Under the final rule, a broker or dealer is required to comply with the 48-hour preliminary prospectus delivery requirement with respect to the sale of securities by each ABS issuer, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act.[1198] In addition, the 48-hour preliminary prospectus delivery requirement also applies to ABS issuers utilizing master trust structures that are exempt from the reporting requirements pursuant to Section 12(h) of the Exchange Act. This requirement is necessary because assets in a master trust routinely change, whether or not they are exempt from or subject to Section 13(a) or 15(d) reporting requirements. In a master trust securitization, assets may be added to the pool in connection with future issuances of the securities backed by the pool.[1199] Although ABS issuers utilizing master trust structures may be reporting under the Exchange Act at the time of a ''follow-on'' or subsequent offering of securities, additional assets are added to the entire pool backing the trust in connection with a subsequent offering of securities.

The adoption of today's amendment will benefit investors by allowing them more time to consider the characteristics of the offering. We recognize that this benefit may be lower for investors in ABS structured as master trusts, because such offerings are issued from an existing issuing entity, which would have previously disclosed much of the information to be provided in the 48-hour preliminary prospectus. Nonetheless, such investors should benefit from having additional time to consider information about the new assets that is not provided in Exchange Act reports. The cost of today's amendment will be borne by issuers, who will have to prepare and provide to investors the preliminary prospectus. These costs will likely be small as a result of our other new rule requiring that a preliminary prospectus be filed with the Commission at least five days in advance of the first sale.[1200]

We considered one commenter's suggestion to provide for an ''access equals delivery'' model akin to final prospectuses.[1201] Access equals delivery is only permitted for a final prospectus and not a preliminary prospectus. The rule is the same for prospectuses of both corporate securities as well as ABS. The commenter did not address why ABS should be different from corporate securities in the context of delivery of a preliminary prospectus under Rule 15c2–8(b).[1202]

We are also adopting, as proposed, a correcting amendment to Rule 15c2–8(j). Paragraph (j) states that the terms ''preliminary prospectus'' and ''final prospectus'' include terms that are defined in Rule 434.[1203] In 1995, at the same time we adopted Rule 434, we added paragraph (j) to expand the use of the terms ''preliminary prospectus'' and ''final prospectus'' to reflect the terminology used in Rule 434.[1204] Rule 434, however, was later repealed in 2005.[1205] Accordingly, we are deleting paragraph (j), which is no longer applicable.

D. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

(a) Proposed Rule

We proposed to eliminate the current practice in shelf ABS offerings of providing a base prospectus and prospectus supplement by requiring the filing of a form of prospectus at the time of effectiveness of the Form SF–3 and a single prospectus for each takedown. As we noted in the 2010 ABS Proposing Release, we are concerned that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors.[1206] To address this concern, we proposed to add a provision in proposed Rule 430D and an instruction to proposed Form SF–3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF–3 and to file a single prospectus for each takedown, which would include all of the information required by Regulation AB. We also proposed to require each depositor to file a separate registration statement for each form of prospectus. Under this proposal, each registration statement would cover offerings by depositors securitizing only one asset class.

(b) Comments on Proposed Rule

Several commenters supported[1207] our proposal requiring the filing of one integrated prospectus rather than a base prospectus and prospectus supplement for each takedown, and one commenter opposed.[1208] One commenter, in support of the proposed rules, believed that our proposal will provide investors with clearer information relating to the assets that are the subject of the takedown by not being encumbered with information that may not relate to that particular transaction.[1209] Another commenter, opposing the proposal, argued that our concern that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors is unwarranted.[1210]

With respect to our proposal to limit each shelf registration statement to one

balances representing less than five percent of the master trust).

[1197] Because of the other changes we are adopting, we are also repealing Securities Act Rule 190(b)(7). Rule 190(b)(7) provides that if securities in the underlying asset pool of asset-backed securities are being registered, and the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity must distribute a preliminary prospectus for both the underlying securities and the expected amount of the issuer's securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation. Rule 190(b)(7) effectively overrules the exclusion in Rule 15c2–8 for ABS issuers from the 48-hour preliminary prospectus delivery requirement for particular types of ABS offerings. Because we are repealing the Rule 15c2–8 exclusion for ABS issuers, and because our disclosure requirements regarding the underlying securities for resecuritizations requires significantly more information than what is required in Rule 190(b)(7) to be provided in the preliminary prospectus, we are deleting Rule 190(b)(7).

[1198] *See* definition of issuer in relation to asset-backed securities in Exchange Act Rule 3b-19.

[1199] The typical master trust securitization is backed by assets arising out of revolving accounts such as credit card receivables or dealer floorplan financings.

[1200] *See* Section V.B.1 New Shelf Registration Procedures.

[1201] *See* letter from ASF I. *See also* the Securities Offering Reform Release at 44783.

[1202] However, as is the case today, delivery of a preliminary prospectus may be made electronically as permitted under our current rules. *See Use of Electronic Media for Delivery Purposes,* Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the 1995 Release).

[1203] 17 CFR 230.434. Securities Act Rule 434 allowed issuers and other offering participants to meet their prospectus delivery requirement by delivering a preliminary prospectus and a term sheet or abbreviated term sheet before or at the time of sale. The information contained in the preliminary prospectus, confirmation and term sheet or abbreviated term sheet must, in the aggregate, meet the informational requirements of Securities Act Section 10(a).

[1204] *See* Section II.B.4.a of *Prospectus Delivery; Securities Transactions Settlement,* Release No. 33–7168 (May 11, 1995) [60 FR 26604].

[1205] Rule 434 was repealed in the Securities Offering Reform Release.

[1206] *See* the 2010 ABS Proposing Release at 23352.

[1207] *See* letters from BoA I, CFA I, and MBA I.

[1208] *See* letter from ASF I.

[1209] *See* letter from CFA I.

[1210] *See* letter from ASF I (expressed views of issuers only). ASF investor members offered mixed views on the proposal.

asset class, one commenter asserted its belief that this proposal had no bearing on the nature and quality of disclosure for any particular shelf offering.[1211] This commenter also noted that our proposed limitation would not permit securitization platforms where more than one depositor transfers or sells pool assets into the same issuing entity to conduct shelf offerings. The commenter, although opposing the proposal, recommended that the Commission clarify the scope of any limitation so that multiple depositors who transfer or sell pool assets into the same issuing entity would be permitted under the final rule.

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments provided, we are adopting the rule regarding presentation of disclosure in prospectuses as proposed so that issuers must file a form of prospectus at the time of effectiveness of Form SF–3 and file a single prospectus for each takedown.[1212] We continue to believe that the current format has the unintended effect of encouraging ABS issuers to draft disclosure documents that build in maximum flexibility for as many differing transactions as possible with the investor bearing the burden of determining which disclosures are relevant to a particular transaction. Given that the registration statement is primarily for the benefit of investors, we believe that we should facilitate investor understanding and access to prospectuses for ABS and eliminate unnecessary disclosures given to investors.[1213] A single form of prospectus at the time of effectiveness and a single prospectus for each takedown should provide investors with clearer and more focused information relating to the assets that are the subject of the takedown by not encumbering investors with information that may not relate to that particular transaction. Additionally, because we believe that this rule will enhance investor understanding of the offering materials and the transaction, the rule will, in turn, promote more efficient capital formation. While we note one commenter's view that the existing practice did not result in unwieldy documents,[1214] we remain concerned about the usefulness of the prospectus supplement format for investors, especially in light of other commenters' support for our proposal and the staff's experience in reviewing prospectuses in registration statements and in takedowns.[1215]

We are also adopting our proposed limitation of one asset class per registration statement with one clarification in response to comments.[1216] We continue to note the practice of some issuers to include multiple depositors, multiple base prospectuses and multiple prospectus supplements all in one registration statement.[1217] We believe that this practice has made the disclosure difficult for investors to understand and difficult for market participants to locate and obtain offering documents. Although one commenter stated that limiting each shelf registration statement to one asset class has no bearing on the quality or nature of the disclosure for any particular shelf offering, we disagree.[1218] The cumulative effect of including multiple depositors, multiple base prospectuses and multiple prospectus supplements in one registration statement is an unwieldy registration statement for investors to navigate in determining what information they should review before making their investment decision and difficult for market participants to follow which registration statement relates to which takedown. By limiting a registration statement to one asset class, the quality and nature of the disclosure should be enhanced as the disclosure would be presented in a more accessible and useful format for investors. While the revisions to both presentation of disclosure as well as the limitation of one asset class per registration statement could place additional costs on issuers that need to file additional registration statements, we believe that these additional costs are reasonable in light of the expected improved transparency benefits for investors.[1219] Furthermore, we believe that our pay-as-you-go amendment that we are also adopting should offset some of the costs that issuers could incur with additional registration statements.

2. Adding New Structural Features or Credit Enhancements

(a) Proposed Rule

We proposed to restrict the ability of ABS issuers to add information about new structural features or credit enhancements by filing a prospectus under Rule 424(b).[1220] It has been our longstanding position, as articulated in the 2004 ABS Adopting Release, that structural features or credit enhancements must be fully described in the registration statement at the time of effectiveness.[1221] As part of this position, we have stated that a takedown off a shelf that involves new structural features or credit enhancements that were not described as contemplated in the base prospectus will usually require a post-effective amendment rather than describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.[1222] In that regard, we proposed to codify our position that when an issuer desires to add information that relates to new structural features or credit enhancements, the issuer must file that information by a post-effective amendment to the registration statement. By requiring the issuer to file a post-effective amendment, the Commission's staff would have an opportunity to review the disclosure regarding these new structural features and credit enhancements that would be contemplated for future takedowns from the shelf registration statement.

(b) Comments on Proposed Rule

Commenters were generally supportive of our proposal to codify the requirement of a post-effective amendment for new structural features or credit enhancements.[1223] One commenter believed that all market participants would benefit from the enhanced understanding of a transaction that would result from the proposed rule.[1224] One commenter noted that the proposed rule would provide the staff with time to focus on new structural features or credit

[1211] *See* letter from ASF I.

[1212] *See* General Instruction IV of Form SF–3.

[1213] *See* the 2010 ABS Proposing Release at 23352.

[1214] *See* letter from ASF I.

[1215] *See* letters from BoA I, CFA I, and MBA I.

[1216] *See* General Instruction IV of Form SF–3. We note existing market practice in the case of some master trust structures, such as credit card ABS involving a single platform, in which multiple affiliated depositors transfer credit card receivables into the issuing entity. We would view, in these limited instances, such master trust structure with a single securitization platform as one transaction (that is, one program), with multiple registrants.

[1217] *See* the 2010 ABS Proposing Release at 23352.

[1218] *See* letter from ASF I.

[1219] *See* Section X Paperwork Reduction Act (estimating this requirement will result in approximately four new registration statements to be filed annually by shelf ABS issuers).

[1220] *See* the 2010 ABS Proposing Release at 23353.

[1221] *See* the 2004 ABS Adopting Release at 1524.

[1222] *See id. See also* the 2010 ABS Proposing Release at 23353 (noting that although Rule 430B provides all issuers on Form S–3 with the ability to include information previously omitted in a prospectus filed pursuant to Securities Act Rule 424(b), the staff has continued to apply our position articulated in the 2004 ABS Adopting Release).

[1223] *See* letters from BoA I, CFA I, MBA I, Prudential I, and Wells Fargo I.

[1224] *See* letter from Prudential I.

enhancements.[1225] Another commenter noted that the proposed rule would allow the Commission to control the purpose of shelf filing and allow for more targeted review.[1226] One commenter noted that the term ''structural features'' is too vague and suggested that the Commission provide more specificity.[1227]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments, we are adopting, as proposed, new Securities Act Rule 430D(d)(2), which codifies a longstanding position of the Commission that an ABS issuer must file a post-effective amendment to the registration statement when it wants to add information about new structural features or credit enhancements that were not described as contemplated in the base prospectus of an effective registration statement. As noted above, one commenter stated that the term ''structural features'' was too vague to use as a trigger for a post-effective amendment and was concerned that the term could be interpreted to trigger a post-effective amendment for minor structural adjustments that would not have required a post-effective amendment under the existing standard.[1228] Because our new rule merely codifies the Commission's longstanding position, the final rule does not change when such requirement is triggered.[1229]

We believe that codification of our existing position will provide issuers with clarity about how the rules work. It will also help to ensure that the staff has the opportunity to review these new structural features or credit enhancements that would be contemplated for future offerings. Because this rule is simply a codification of our existing position, we believe that the new rule will result in no material increase in costs and will be neutral in terms of its impact on competition, efficiency, and capital formation.

E. Pay-as-You-Go Registration Fees

1. Proposed Rule

To alleviate some of the burden of managing multiple registration statements among ABS issuers, we proposed to allow, but not require, ABS issuers eligible to use Form SF–3 to pay filing fees as securities are offered off a shelf registration statement, commonly known as ''pay-as-you-go.'' [1230] Under the proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus.

2. Comments on Proposed Rule

Several trade associations agreed that the proposal would be a helpful change.[1231] Some commenters noted that they would like the Commission to clarify that, under existing Rule 457(p), if an ABS offering is not completed, or the size of the offering is reduced, after the fee is paid, the unused portion of the fee can be applied to future takedowns off the same or a replacement registration statement by the depositor or an affiliate of such depositor.[1232] One issuer requested that the timing of the fee payment be changed from the filing of the preliminary prospectus to the filing of the final prospectus in order to alleviate any risk that the issuer did not pay sufficient registration fees to cover any upsizing of the offering as well as to alleviate the possibility of overpayment of the registration fees if the offering is downsized.[1233]

3. Final Rule and Economic Analysis of the Final Rule

We are adopting, as proposed, revisions to our rules to permit ABS issuers to pay registration fees as securities are offered off a registration statement as opposed to paying all registration fees upfront at the time of filing a registration statement on Form SF–3. As proposed, under the new rule, a dollar amount or a specific number of securities is not required to be included in the calculation of the registration fee table in the registration statement, unless a fee based on an amount of securities is paid at the time of filing.[1234] As proposed, the fee table on the cover of the registration statement must list the securities or class of securities registered and must indicate if the filing fee will be paid on a pay-as-you-go basis.[1235]

Under the final rule, as proposed, the triggering event for a fee payment will be the filing of an initial preliminary prospectus.[1236] At the time of filing an initial preliminary prospectus,[1237] the ABS issuer is required to include a calculation of registration fee table on the cover page of the prospectus and to pay the appropriate fee calculated in accordance with Securities Act Rule 457. In light of one commenter's concern about the possibility of overpaying the registration fee by requiring it to be paid in connection with the preliminary prospectus, we note ABS issuers opting to pay the required registration fees with each takedown could rely upon Rule 457(p) to apply a portion of the fee associated

[1225] *See* letter from CFA I.

[1226] *See* letter from Wells Fargo I.

[1227] *See* letter from BoA I.

[1228] *See* letter from BoA I.

[1229] *See* the 2004 ABS Adopting Release at 1524 (''A takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (e.g., to include additional assets) or a post-effective amendment (e.g., to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.'').

[1230] In 2005, we first adopted pay-as-you-go rules to allow well-known seasoned issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering. *See* Section V.B.2.b.(D) of the Securities Offering Reform Release. Under the current pay-as-you-go procedure for WKSIs, an issuer can pay any filing fee, in whole or in part, in advance of takedown or at the time of takedown, providing flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. The fee rules applicable to the use of such account, also referred to as the ''lockbox account,'' apply. The amount of the fee is calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. This flexibility had been provided so issuers may determine the fee payment approach most appropriate for them. *See* footnote 529 of the Securities Offering Reform Release. *See* Securities Act Rules 456(b) [17 CFR 230.456(b)] and 457(r) [17 CFR 230.457(r)].

[1231] *See* letters from ABA I, ASF I, MBA I, and SIFMA I.

[1232] *See* letters from ASF I, BoA I, MBA I, and Sallie Mae I.

[1233] *See* letter from Sallie Mae I.

[1234] *See* new Securities Act Rule 457(s).

[1235] In the case of ABS, the fee table on the registration statement typically lists the offering of certificates and notes as separate classes of securities. Each class (or tranche) of those certificates and notes offered would not need to be separately listed on the fee table. However, if the ABS is a resecuritization, where registration of the underlying securities would be required under Rule 190 and the underlying security was not listed on the fee table of the Form SF–3 registration statement, the underlying securities would need to be registered on a different new registration statement. Likewise, if a servicer or trustee invests cash collections in other instruments which may be securities under the Securities Act, such as guarantees or debt instruments of an affiliate, under Rule 190 those underlying securities also may need to be registered concurrently with the asset-backed offering. If those underlying securities were not listed on the fee table of the registration statement, a new registration statement would be required.

[1236] *See* new Securities Act Rule 456(c). Unlike the pay-as-you-go rules for WKSIs, we do not believe that a cure period is necessary for ABS issuers because we are requiring ABS issuers to pay the required fee at the time the preliminary prospectus is filed. The timing of the fee payment for ABS would not give rise to the same effective date and registration concerns that arise with WKSIs. *See* Section V.B.2.b.(D) of the Securities Offering Reform Release.

[1237] If, after the initial preliminary prospectus, an issuer files a subsequent preliminary prospectus or prospectus supplement solely to update the fee table and pay additional fees, the subsequent preliminary prospectus will not trigger a new waiting period. *See* discussion in Section V.B.1 New Shelf Registration Procedures related to preliminary prospectuses and related waiting periods.

with the unsold securities under a previously-filed registration statement as an offset against the filing fee due at the time of the preliminary prospectus filing by the same depositor or affiliates of the depositor across asset classes. Similarly, such registrants could apply unused fees paid in connection with a preliminary prospectus filing toward a future takedown off the same registration statement. We believe that this amendment will alleviate some of the burden ABS issuers incur with managing multiple registration statements. Additionally, it should offset some of the additional costs that issuers will incur with our new rule, discussed earlier, requiring a separate registration statement for each form of prospectus. We also believe that our pay-as-you-go rule should produce some efficiencies in the shelf offering process by providing shelf issuers with greater payment flexibility.

F. Codification of Staff Interpretations Relating to Securities Act Registration

We proposed to codify several staff positions relating to the registration of asset-backed securities.[1238] In proposing these codifications, we sought to simplify our rules by making our staff's positions more transparent and readily available to the public.

1. Fee Requirements for Collateral Certificates or Special Units of Beneficial Interest

We proposed to amend Rule 190 [1239] of the Securities Act to clarify the existing requirement that if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest (SUBIs),[1240] then the offer and sale of those collateral certificates or SUBIs must be registered concurrently with the registration of the asset-backed securities. While the offer and sale of the certificates or SUBIs must be concurrently registered, we proposed to codify the staff position that no separate registration fee for the collateral certificates or SUBIs is required to be paid, provided that the certificates or SUBIs meet the requirements of Rule 190(c).[1241] Additionally, we proposed to amend Rule 457 [1242] of the Securities Act, governing the computation of registration fees, to reflect the staff's position that where the securities to be offered are collateral certificates or SUBIs underlying asset-backed securities which are being concurrently registered, no separate fee for the certificates or SUBIs will be payable.

Several commenters supported the proposal to codify the staff's position in Rule 190 and Rule 457 under the Securities Act.[1243] One commenter noted generally that codifying the staff's interpretations is a benefit for all market participants,[1244] and another commenter indicated that it concurred with the Commission's rationale.[1245] No commenter opposed the proposal. After considering the comments, we are adopting the amendments to Rule 190 and Rule 457 of the Securities Act as proposed.[1246]

2. Incorporating by Reference Subsequently Filed Exchange Act Reports

(a) Proposed Rule

Item 12(b) of Form S–3 requires that the registrant incorporate by reference all subsequently filed Exchange Act reports prior to the termination of the offering. In the 2004 ABS Adopting Release, we explained that Item 12(b) of Form S–3 is required for asset-backed issuers only ''if applicable.'' [1247] The staff has provided interpretive guidance to issuers as to which periodic reports and other Exchange Act reports the issuer may be required to incorporate by reference into the registration statement.[1248] The staff has noted that information filed with a current report on Form 8–K prior to the termination of the offering would often be required to be incorporated into the registration statement.[1249] In contrast, the staff has explained that Form 10–D or Form 10–K reports may not necessarily contain information that is required to be, or that the issuer desires to be, incorporated by reference into the registration statement.[1250]

To simplify our rules, we proposed to codify the staff's position that an issuer of asset-backed securities may modify the incorporation by reference language included in the registration statement to provide that only the current reports on Form 8–K subsequently filed by the registrant prior to the termination of the offering shall be deemed to be incorporated by reference into the registration statement.[1251]

(b) Comments on Proposed Rule

Several commenters supported the proposal, and no commenters opposed it.[1252] One commenter believed that the proposed rule struck the right balance by permitting issuers to incorporate by reference only Form 8–K filings rather than requiring issuers to incorporate all subsequently filed Exchange Act reports.[1253] Some commenters indicated that the proposed rule is consistent with current practice of issuers.[1254]

(c) Final Rule and Economic Analysis of the Final Rule

After consideration of the comments, we are adopting the proposed codification of the staff's position regarding incorporation by reference of subsequently filed periodic reports in Form SF–3. Thus, under Item 10(d) of Form SF–3, the prospectus shall provide a statement regarding the incorporation by reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways. The registrant may state that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus. In the alternative, the registrant may state that all current reports on Form 8–K subsequently filed by the registrant

[1238] *See* Section VII.A. of the 2010 ABS Proposing Release.

[1239] 17 CFR 230.190. Rule 190 governs the registration requirements for the underlying securities of an asset securitization.

[1240] In some ABS transactions backed by auto leases, the leases and car titles are originated in the name of a separate trust to avoid the administrative expenses of re-titling the physical property underlying the leases. The separate trust, commonly referred to as the ''origination trust'' or ''titling trust,'' will issue a collateral certificate, often called a ''special unit of beneficial interest,'' to the issuing entity for the asset-backed security. The issuing entity will then issue the asset-backed securities backed by the collateral certificate or SUBI.

[1241] Rule 190(c) provides for the conditions in which an asset-backed issuer is not required to register a pool asset representing an interest in or the right to the payments or cash flows of another asset.

[1242] 17 CFR 230.457.

[1243] *See* letters from BoA I, Prudential I, and SIFMA I.

[1244] *See* letter from Prudential I.

[1245] *See* letter from BoA I.

[1246] *See* 17 CFR 230.190(d) and 457(t).

[1247] *See* Section III.A.3 of the 2004 ABS Adopting Release.

[1248] *See* Interpretation 15.02 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules.

[1249] Examples of circumstances when an asset-backed issuer may be required to incorporate by reference its current reports on Form 8–K into the registration statement include filing required exhibits, such as legal and tax opinions, or to provide disclosure under Item 6.05 of Form 8–K regarding changes in the composition of the pool assets.

[1250] We explained in the 2010 ABS Proposing Release that because the Form 10-Ds and Form 10-Ks that are filed prior to the termination of the offering are generally for a different ABS issuer than the ABS issuer that has filed the prospectus, the Form 10–D and Form 10–K reports may not be relevant to the asset-backed offering that is the subject of the prospectus. *See* Section VII.B of the 2010 ABS Proposing Release.

[1251] *See* Section VII.B of the 2010 ABS Proposing Release.

[1252] *See* letters from BoA I, MBA I, Prudential I, and SIFMA I.

[1253] *See* letter from BoA I.

[1254] *See* letters from BoA I and MBA I.

pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

We believe that the codification of these staff positions will simplify our rules by making our staff's positions more transparent and readily available to the public. Because these codifications are consistent with current practice of issuers, we do not believe that they will pose a cost to either issuers or investors.

VI. Filing Requirements for Transaction Documents

A. Proposed Rule

Item 1100(f) of Regulation AB allows ABS issuers to file agreements or other documents as exhibits on Form 8–K and, in the case of offerings off a shelf registration statement, incorporate the exhibits by reference instead of filing a post-effective amendment. In the 2010 ABS Proposing Release, we noted our belief that the information in the transaction agreements and other documents provide important information on the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor. In the staff's experience with the filing of these documents, some ABS issuers have delayed filing such material agreements with the Commission until several days or even weeks after the offering of securities off a shelf registration statement. We also noted that investors have expressed concerns regarding the timeliness of information in ABS offerings, including the timeliness of the filing of these documents.[1255] In light of these concerns, we proposed to revise Item 1100(f) of Regulation AB to state explicitly that the exhibits filed with respect to an ABS offering registered on Form SF–3 must be on file and made part of the registration statement at the latest by the date the final prospectus is required to be filed.[1256] In response to the 2010 ABS Proposing Release, some commenters recommended that the exhibits should be available for investor review prior to making an investment decision.[1257] Therefore, in the 2011 ABS Re-Proposing Release, we re-proposed the amendments to Item 1100(f) of Regulation AB to also require that the underlying transaction documents, in substantially final form, be filed and made part of the registration statement by the date the preliminary prospectus is required to be filed rather than by the date that the final prospectus is required to be filed.

B. Comments Received on Proposed Rule

Comments on the re-proposed amendments to Item 1100(f) of Regulation AB were mixed with mostly investors supporting the amendments[1258] and issuers opposing them.[1259] The commenters that opposed the proposal generally believed that the preliminary prospectus provides all material information related to a particular transaction and, therefore, there is no material benefit to providing the transaction documents in substantially final form.[1260] The commenters also were concerned that the requirement would likely result in additional costs to issuers or consumers;[1261] that it would pose a restriction on the parties' ability to tailor the transaction to meet investor requests;[1262] revising the prospectus and the transaction documents at the same time could lead to more inconsistencies or errors;[1263] and may require the filing of the same documents three times.[1264] Some commenters also believed that for certain transactions the documents cannot be given in the proposed time frame.[1265] Similarly, another commenter contended that the requirement compels issuers to ''finalize transaction agreements'' by the time of the preliminary prospectus filing, which will inevitably delay issuers' access to the market and thereby potentially expose both issuers and investors to market movements that may be adverse to one or the other.[1266]

On the other hand, some investors believed that the transaction documents

[1255] *See* the 2010 ABS Proposing Release at 23388.

[1256] We permit the filing of these agreements with the Form 8–K and incorporated by reference into the registration statement in lieu of filing a post-effective amendment to the registration statement. As such, the filing requirements for these agreements, including the timing of the filing, is governed by our registration requirements, not the provisions of Form 8–K.

[1257] *See* letters from Tricadia Capital, Pacific Life Insurance Company, PPM America, Inc., Allstate Investments LLC, New York Life Investments, Guardian Life Insurance Company, AllianceBernstein L.P., Prudential Fixed Income Management, Principal Real Estate Investors, Capital Research Company, T. Rowe Price Associates, Inc., BlackRock, AEGON USA Investment Management, and State Street Corporation (collectively, ''CMBS Investors'') dated Feb. 25, 2011 submitted in response to the 2010 ABS Proposing Release (suggesting that the rules require that key disclosures, including the pooling and servicing agreement, be made available to investors during the marketing period so that investors have adequate time to review prior to making an investment decision), Prudential I (noting its concern with possible ''last minute financial engineering'' that contributes to poor understanding of the transaction), and SIFMA I (requesting for purposes of shelf eligibility that we clarify that if exhibits are timely filed in substantially final form, the fact that any such document is subsequently amended or otherwise corrected will not be viewed by the Commission as a failure to timely file the corrected document).

[1258] *See* letters from ASF V (expressed views of investors only), Better Markets, ICI II, MetLife II (stating that the prospectus and transaction documents in substantially final form should be provided at least five business days before the first sale in an offering), Prudential II (stating that a draft set of operative documents should be released at least five business days prior to the first sale in the offering and the executed set of operative documents should be released with the final prospectus filing at least three business days prior to closing), and SIFMA II-investors.

[1259] *See* letters from ABA II, AFME, ASF V (expressed views of dealers and sponsors only), Kutak, SIFMA III-dealers and sponsors, Sallie Mae II, VABSS III, and Wells Fargo II.

[1260] *See, e.g.,* letters from ABA II, Sallie Mae II (suggesting the transaction documents should be filed no earlier than the time the final prospectus is filed), SIFMA III-dealers and sponsors, VABSS III, and Wells Fargo II. *See also* letter from AFME (supporting SIFMA's (dealer and sponsor members) position and stating that any filing requirements adopted by the Commission should be consistent with the requirements already in place in the European Union and its member states, such as posting the relevant closing documents on an issuer Web site).

[1261] *See* letters from Sallie Mae II (focusing on increased costs to the issuer without any explanation or quantification), VABSS III (focusing on costs to the issuer without any explanation or quantification), and Wells Fargo II.

[1262] *See* letters from AFME and SIFMA III-dealers and sponsors.

[1263] *See* letter from ABA II (stating that the proposed amendments to Item 1100(f) will impose unnecessary costs and timing constraints on the issuer and introduce ''inefficiencies into the offering process,'' but if the Commission requires ''current documentation'' before pricing, the ABA believes that to the extent that deal-specific terms create significant changes to or clarifications of the forms filed with the registration statement, then the updated documents should be made available to investors one business day before they are asked to make an investment decision).

[1264] *See* letter from ASF V (stating that a filing may be necessary, at the time the preliminary prospectus is filed, again at the time the final prospectus is filed, in the event a change (other than a ''minor'' change) to the agreement occurs, and at or after the time those transaction agreements are executed because ''regulations appear to provide that an exhibit to a registration statement filed without signatures would be considered an incomplete exhibit and, therefore, could not be incorporated by reference in any subsequent filing under any Act administered by the Commission'').

[1265] *See* letters from ABA II (stating swap agreements are generally negotiated after the transaction has been priced to reflect pricing terms and market conditions on the date of entry and that some of the technical real estate mortgage investment conduit (''REMIC'') provisions that must be added into RMBS and CMBS documentation cannot be provided within the proposed time frame (but also have little relevance for investors, so long as they are properly drafted) and Kutak (suggesting the documents are constantly being revised, although in most cases, not materially, until the final prospectus is filed).

[1266] *See* letter from ASF V (without clarification as to why this requirement may delay pricing and the formation of contracts).

should be provided in substantially final form at least five business days before the first sale in an offering,[1267] and one of these investors believed that an executed set of operative documents should be released with the filing of the final prospectus (at least three business days prior to closing).[1268] One investor stated that access to these documents was necessary in order to conduct appropriate due diligence on transactions,[1269] and a group of investors also stated that the underlying transaction documents are material to their investment decision and should be available in substantially final form at the time the preliminary prospectus is filed.[1270] Another group of investors supported the proposal and stated that ''[t]he complexity of those transactions does not lend itself to abbreviated disclosure.'' [1271] Another commenter noted that ''access to the underlying transaction documents is also essential for the benefit of investors.'' [1272]

In the 2011 ABS Re-Proposing Release, we also requested comment on whether we should require issuers to file as an exhibit a copy of the representations, warranties, remedies, and exceptions marked to show how it compares to industry-developed model provisions. The comments that we received on our request for comment as to filing exhibits marked to industry-developed models were mixed with investors supporting the proposal [1273] and mostly issuers opposing it.[1274]

C. Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting the requirement, as proposed in the 2010 ABS Proposing Release, to clarify existing exhibit filing requirements by making explicit that the exhibits filed with respect to an ABS offering, registered on new Form SF–3, must be on file and made part of the registration statement at the latest by the date the final prospectus is filed. We believe that this revision should address the problem that we noted above about some issuers delaying their filing of the transaction agreements with the Commission until several days and, in some cases, even weeks after a shelf offering of the securities. We also note that ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing the exhibits and final prospectuses. Because all exhibits to Form SF–1 must be filed by the time of effectiveness, we believe that all transaction agreements for shelf offerings filed as exhibits should be filed and made part of the shelf registration statement by the time of the final prospectus.

We are not adopting at this time, however, the part of the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date the preliminary prospectus is required to be filed. We continue to consider the balance between investors' interest in having access to the transaction documents earlier and the costs and difficulties with requiring issuers to provide the transaction documents in substantially final form by the time of the preliminary prospectus. Also, in light of the new disclosure requirements that must be provided at the time of the preliminary prospectus, as well as the certification by the issuer that the prospectus must fairly present information about the transaction, including the structure of the transaction, we believe further consideration is warranted. Therefore, the proposal to require the transaction documents be filed, in substantially final form, and made part of the registration statement by the date of the preliminary prospectus is required to be filed remains outstanding and unchanged.

In light of the comments received, we are also not adopting any requirements that investors be provided with blacklines of how the issuer's representations and warranties compare against the industry-developed model provisions or blacklines of how the transaction documents compare to the transaction documents from prior transactions or from prior versions of the transaction documents filed for the current transaction. While we believe that these types of marked documents could be an important tool for the identification of discrete or material changes between original and revised documents, we acknowledge commenters' concerns that there is no consistent industry standard at this time nor a clear identity of what other agreements to use as a comparison. We also believe, at this time, that most investors should have the capacity to produce documents marked to show differences from prior documents.

VII. Definition of Asset-Backed Security

A. Proposed Rule

As part of our effort to provide more timely and detailed disclosure regarding the pool assets to investors, we proposed revisions to the Regulation AB definition of an asset-backed security.[1275] A security must meet the definition of an ''asset-backed security'' under Regulation AB in order to utilize the disclosure requirements of Regulation AB and be eligible for shelf registration as an asset-backed security.[1276] As noted in previous releases, a core principle of the Regulation AB definition of an asset-backed security is that the security is backed by a discrete pool of assets that by their terms convert into cash, with a general absence of active pool management. However, in response to commenters and previous staff interpretation, in 2004, we adopted certain exceptions to the ''discrete pool'' requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods.[1277]

In the 2010 ABS Proposing Release, we proposed to amend the ''discrete pool of assets'' exceptions to the current definition of ''asset-backed security'' by amending:

(i) The master trust exception to exclude securities that are backed by

[1267] *See* letters from ASF V (expressed views of investors only), MetLife II, Prudential II, and SIFMA II-investors.

[1268] *See* letter from Prudential II.

[1269] *See* letter from MetLife II (stating that in order to conduct due diligence, investors need access to the following documents: The pooling and servicing agreement and a blackline against the original pooling and servicing agreement contained in the shelf; the representations, warranties, and exceptions and a blackline against industry model representations and warranties (e.g., CMBS or other sectors that adopt these); or a blackline against original representations and warranties contained in the shelf; and the indenture (along with any blacklines thereto)).

[1270] *See* letter from ASF V (expressed views of investors only).

[1271] *See* letter from SIFMA II-investors.

[1272] *See* letter from Better Markets.

[1273] *See* letters from ASF V (expressed views of investors only), MetLife II (recommending that a copy of the current pooling and servicing agreement be marked against the original pooling and servicing agreement in the registration statement), and Prudential II (recommending that we should require certain marked copies of current filings against prior filings to assist investors in identifying structural changes and suggesting that the release of operative documents and blacklined documents should begin within 30 days after adoption of the new rules because this information is critical to an investor's understanding of a securitization).

[1274] *See* letters from Better Markets, CREFC II (noting that the representations and warranties will be in the ''substantially final mortgage loan purchase agreement'' filed with the Rule 424(h) filing), MBA II (with respect to CMBS), and SIFMA III-dealers and sponsors (noting its support of industry efforts to develop model provisions but emphasizing that such models do not currently exist for most asset classes and that identifying trade associations to be tasked with generating model provisions and doing so in a fair and open manner would be an enormous challenge while resulting in minimal additional investor protection).

[1275] *See* Item 1101(c) of Regulation AB.

[1276] *See* Item 1100 of Regulation AB.

[1277] *See* Item 1101(c)(3) of Regulation AB.

assets that arise in non-revolving accounts;

(ii) the revolving period exception to reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year; and

(iii) the prefunding exception to decrease the prefunding limit from 50% to 10% of the offering proceeds or, in the case of master trusts, from 50% to 10% of the principal balance of the total asset pool.[1278]

We were concerned that pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment, which may result in investors not receiving appropriate information about the securities being offered.[1279] Consequently, we proposed amendments to these exceptions in order to restrict deviations from the ''discrete pool of assets'' requirement.

B. Comments on Proposed Rule

While some commenters provided specific comments, several commenters provided general comments on the proposal to change the definition of asset-backed security. One commenter noted that the changes to the definition would not prohibit public issuances of ABS with larger prefunding accounts and revolving periods, and noted that such offerings would be governed by the more extensive disclosure requirements of Form S–1.[1280] Another commenter requested that the definition of asset-backed security be sufficiently narrow to restrict access to only those securities where sufficient and robust disclosure, including collateral pool disclosure, can be provided during the initial offering process and at the same time, the definition should be calibrated to permit a reasonable degree of flexibility to accommodate innovation and new product development.[1281]

1. The Master Trust Exception

One commenter supported the proposal to exclude securities that are backed by assets that arise in non-revolving accounts.[1282] This commenter noted that master trust structures are appropriate for sponsors with recurring variable collateral funding needs (e.g., credit cards, fleet leases, floor plans, and rental cars) and that any asset type that follows a traditional amortization schedule or without the ability to redraw on the loan generally should not be included in a publicly issued master trust structure.[1283]

However, other commenters opposed the proposal to limit the exception to master trusts backed by revolving accounts.[1284] Several commenters believed that distinguishing securities backed by revolving versus non-revolving assets is unwarranted. One commenter noted that it did not believe there is any credit, disclosure, or other investor protection reason to support the change.[1285] The issuer and investor members of another commenter agreed that, in applying the master trust exception, efforts to distinguish securities backed by revolving versus non-revolving assets will impose artificial limits on which asset classes may use the master trust structure, thereby eliminating an investment option that both issuers and investors desire.[1286]

Some commenters noted that the master trust structure is commonly used to securitize mortgages in the United Kingdom and that the proposed rule would result in those mortgage master trusts no longer being eligible for shelf registration.[1287] One commenter noted that European market participants expressed concern that since the proposed change would reduce the ability of mortgage master trust issuers to place their bonds in the U.S. market, it would effectively reduce the efficiency of issuances for existing master trusts, which would adversely impact the overall efficiency of the asset-backed market.[1288]

2. The Revolving Period Exception

Although an investor commenter supported the proposal relating to reducing the revolving period for non-revolving assets (e.g., auto loans and equipment loans), the commenter acknowledged that concerns about lack of information about new collateral additions to the pool would be mitigated if the issuer would be required to file loan-level information at issuance and each month that new assets are added to the collateral pool.[1289] This commenter also noted that this transparency will allow investors to evaluate the changing nature of the risk layering introduced by the new assets.

Several commenters opposed the proposal.[1290] One commenter noted that investors have a significant interest in purchasing ABS supported by non-revolving assets with longer maturities than are possible without the use of revolving periods and reducing the revolving period to one year would effectively eliminate the ability of issuers to satisfy such investor demand.[1291] One commenter stated that the primary effect of not being able to register these offerings on Form SF–3 would be to increase the timing and cost burdens placed on issuers.[1292] Another commenter stated that the proposed one-year period for revolving periods should not apply to certain loans that are homogenous in nature.[1293] It explained, for example, that since all loans issued under a federal student loan program such as the Federal Family Education Loan Program (''FFELP'')[1294] have the same credit risk, investors need not be concerned that the addition of future FFELP loans would adversely impact the credit quality of the asset pool.[1295]

3. The Prefunding Exception

Certain investor members of one commenter were supportive of the proposal to decrease the prefunding limitation.[1296] Several commenters did not support the proposal to decrease the prefunding limitation and believed that the prefunding amount should remain at 50% of the offering proceeds.[1297] One commenter noted that by utilizing securitizations rather than more expensive warehouse credit facilities or other financing alternatives, it is able to pass along cost savings to consumers via

[1278] *See* the 2010 ABS Proposing Release at 23389.

[1279] *Id.*

[1280] *See* letter from ELFA I.

[1281] *See* letter from FSR.

[1282] *See* letter from Prudential I.

[1283] *See* letter from Prudential I.

[1284] *See* letters from AFME/ESF, ASF I, BoA I, and IPFS I.

[1285] *See* letter from IPFS I.

[1286] *See* letter from ASF I.

[1287] *See* letters from AFME/ESF (noting that it would still be possible for such transactions to be registered in the U.S. using a new registration statement for each offering) and BoA I (noting that while the domestic RMBS market does not currently utilize a master trust structure, given the current mortgage finance market, we should allow for the possibility that a master trust structure could develop).

[1288] *See* letter from AFME/ESF.

[1289] *See* letter from Prudential I.

[1290] *See* letters from ASF I, Sallie Mae I, and VABSS I.

[1291] *See* letter from ASF I (also noting that the current three-year limitation on the use of revolving periods for non-revolving assets already limits the ability to issue publicly-registered ABS matching investor preferences).

[1292] *See* letter from VABSS I.

[1293] *See* letter from Sallie Mae I (also proposing, in the alternative, a three-year revolving period limitation for homogenous assets, such as FFELP loans, and a one-year revolving period limitation for other assets).

[1294] *See* letter from Sallie Mae I (noting that FFELP loans are generally based on need, instead of credit quality of the underlying obligor).

[1295] *See* letter from Sallie Mae I (also noting that revolving periods allow issuers to efficiently manage their funding needs without having to issue additional bonds).

[1296] *See* letter from ASF I.

[1297] *See* letters from AmeriCredit, IPFS I, and VABSS I.

low interest rates and that reducing the limit to 10% would reduce flexibility and cost efficiencies when executing a securitization.[1298]

Issuer members of one commenter noted that the greater the limits on prefunding, the more expensive the carrying costs for originators and, potentially, the higher the borrowing rates for consumers and small businesses.[1299] This commenter suggested that the prefunding limit instead be based on the duration of the prefunding period,[1300] or the prefunding limit should decrease from 50% to 25% (but retain a prefunding period of up to one year), which would make the standard consistent with the prefunding standards under the Employee Retirement Income Security Act of 1974 (''ERISA'').[1301] Several other commenters also suggested that a 25% prefunding ceiling would be more appropriate for the same reason.[1302] Another commenter suggested reducing the limit to 20%, while imposing a 10% limit in the case of shelf offerings on Form SF–3 because it would be more consistent with market practice and more restrictive than the limitation on prefunding that is applicable to ABS that are eligible for sale under ERISA.[1303]

Lastly, one student loan issuer believed that the proposed 10% limitation on prefunding should not apply to FFELP loans (or other asset types) that are homogenous in nature.[1304]

C. Final Rule and Economic Analysis of the Final Rule

We are adopting the prefunding limitation in the definition of asset-backed security, as proposed, with some modification. The new rule decreases the prefunding limit from 50% to 25% (instead of 10%, as proposed) of offering proceeds or, in the case of master trusts, the principal balance of the total asset pool. The new rule is based on suggestions from several commenters that 25% would be an appropriate restriction, in part, because it is consistent with prefunding standards under ERISA.

We believe that this reduction will result in the asset pool being more developed at the time of the offering, which will provide investors with more appropriate information about the securities being offered. We recognize, however, that the rule could impose higher carrying costs on originators and, in turn, potentially higher borrowing rates for consumers and small businesses. We believe that our final rule balances the need to provide investors with more appropriate information and these cost concerns by raising the prefunding period limit from the proposed 10% to 25% of the offering proceeds (or principal balance of the total assets for master trusts).

We are not adopting the revision to the master trust exception to exclude securities that are backed by assets that arise in non-revolving accounts because we are persuaded by commenters' concerns that it would eliminate the use of shelf for certain master trusts. The cost of not adopting this revision today is the possibility that more ABS issuers of non-revolving assets will utilize master trust structures, which will result in investors lacking access to information about all pool assets before making an investment decision. This concern is mitigated, to some extent, by the adoption of initial and ongoing asset-level disclosure requirements for some asset classes.

We are also not adopting the proposal to revise the revolving period exception that would reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year due to comments received. An investor commenter noted, for example, that receiving updated asset-level information about the pool's assets on an ongoing basis would mitigate concerns regarding the duration of the revolving period.[1305] We also recognize, as noted by another commenter, that shortening the revolving period for securities backed by non-revolving assets could preclude certain issuers, such as auto and equipment issuers, from issuing securities with longer maturities than the underlying loans.[1306]

VIII. Exchange Act Reporting

A. Distribution Reports on Form 10–D

1. Delinquency Presentation

(a) Proposed Rule

In the 2004 ABS Adopting Release, we stated that delinquency disclosures required in the Form 10–D under Item 1121(a)(9) were based on materiality[1307] and not on Item 1100(b) of Regulation AB, which requires presentation of delinquency data to be provided in 30- or 31-day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable. However, in registration statements, delinquency disclosures are to be presented pursuant to Item 1100(b). Consistent with our efforts to standardize the disclosure across all ABS, we proposed to add a new instruction to Item 1121(a)(9) to require that pool-level delinquency disclosure in periodic reports be provided in accordance with Item 1100(b) of Regulation AB.

(b) Comments on Proposed Rule

We received several comment letters that provided differing views on the proposal. One commenter stated that it would not object to the proposal because it would ''provide clarity and consistency in reporting.''[1308] This commenter also indicated that disclosure provided in the CREFC's IRP contains delinquency information in this format.[1309] On the other hand, several commenters expressed concern about applying the requirements of Item 1100(b) to ongoing reporting in that it applies a ''one-size-fits-all approach across different asset classes.''[1310] They believed that for various asset classes the presentation of delinquency information would be provided for ''considerably longer periods of time, or in more granular increments, than would be required under general principles of materiality'' and in ways that differ from the current disclosure

[1298] *See* letter from AmeriCredit (also suggesting that disclosures involving prefunding structures be required to include certain representations and warranties that there has been no material variation in the overall composition of the characteristics (such as underwriting, origination, or pool selection criteria) of the initial loans and the pool of loans as whole after giving effect to the transfer of the subsequent loans).

[1299] *See* letter from ASF I.

[1300] *See* letter from ASF I (suggesting, for example, permitting prefunding not in excess of 10% where a prefunding period may last up to one year, prefunding not in excess of 25% where a prefunding period may last up to nine months, and prefunding not in excess of 50% where a prefunding period may last up to six months).

[1301] Pub. L. No. 93–406, 88 Stat. 829 (1974). ERISA is a federal law that sets uniform minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private retirement and welfare plans.

[1302] *See* letters from BoA I and Sallie Mae I.

[1303] *See* letter from SIFMA I (also noting that the Commission staff would have the opportunity to review and comment on the disclosure for an offering on Form SF–1 where the 20% limit would be applicable and reiterating that a 10% limit on prefunding is appropriate in a shelf offering).

[1304] *See* letter from Sallie Mae I.

[1305] *See* letter from Prudential I.

[1306] *See* letter from ASF I.

[1307] *See* footnote 477 of the 2004 ABS Adopting Release.

[1308] *See* letter from MBA I.

[1309] *See* letter from MBA I. For more information about the CREFC IRP, see footnote 104.

[1310] *See* letters from ASF I and VABSS I.

practices across different asset classes.[1311] The commenter believed that issuers and servicers should not be required to incur the additional time and cost to track and present delinquency information in additional prescribed increments as required under Item 1100(b).[1312]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting a revised requirement in light of comments received. The final instruction to Item 1121(a)(9) requires delinquency disclosures included in the Form 10–D to be presented in accordance with Item 1100(b) with respect to presenting delinquencies in 30- or 31-day increments. In response to commenters' concerns that requiring such granular presentation through charge-off is too long a time period, we have modified the proposed instruction to require such presentation through no less than 120 days. We believe that this revised time period helps to address commenters' concerns about the cost and burden of having to track and report this information in a more granular manner for a longer period of time while still providing investors with a more comprehensive picture of delinquencies and losses in a uniform manner across asset classes. We also note that the revised time period is consistent with the new asset-level data requirement for presentation of delinquencies and losses in RMBS.[1313] While investors will not receive as granular a presentation as proposed (through charge-off), investors investing in asset classes required to provide asset-level disclosures will be receiving more detailed information about the payment status of each individual asset, such as the paid through date.[1314] We recognize that to the extent that issuers will now be required to present delinquencies and losses for a longer period of time than previously provided in the distribution reports, such issuers will incur some costs. We believe, however, the benefits gained from standardized and comparable delinquency and loss disclosure justify the costs issuers may incur to provide the information.

2. Identifying Information and Cross-References to Previously Reported Information

In the 2010 ABS Proposing Release, we proposed several revisions to Exchange Act Form 10–D or to the requirements governing the disclosures to be provided with the Form 10–D.[1315] We proposed to revise General Instruction C.3. of Form 10–D to provide that if information required by an item has been previously reported,[1316] the Form 10–D does not need to repeat the information. Because information that is previously reported may relate to a different issuer from the issuer to which the report relates, such information may be difficult to locate. As a result, we also proposed to amend Form 10–D to require disclosure of a reference to the CIK number, file number, and date of the previously reported information. Additionally, we proposed to revise the cover page of the Form 10–D to include the name and phone number of the person to contact in connection with the filing because we believed this would assist the staff in its review of asset-backed filings.[1317] We did not receive any comments regarding these proposed revisions to Form 10–D. We believe the costs of these requirements to be very limited and offset by the benefit to investors and staff in easily and quickly locating the previously reported information. Because of that and since we did not receive any comments opposing these proposed revisions to Form 10–D, we are adopting them as proposed.

3. Changes in Sponsor's Interest in the Securities

(a) Proposed Rule

To assist investors in monitoring the sponsor's interest in the securities, we proposed to add a new item to Form 8–K to require the filing of a Form 8–K for any material change in the sponsor's interest in the securities. Under the proposal, the report on Form 8–K would be required to include disclosure of the amount of change in interest and a description of the sponsor's resulting interest in the transaction.

(b) Comments on Proposed Rule

We received a mixed response to the proposal with some commenters supporting the proposal[1318] and other commenters opposing the disclosure and suggesting that the disclosures were not material.[1319] In support of the proposal, the investor members of a trade association believed that if the sponsor retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets and ongoing monitoring of this exposure helps to align the interests of the sponsor and investors.[1320] They also believed that the sponsor is akin to an ''insider'' and its decision to hold or sell its retained interest may be triggered based upon a negative or positive view of the securitization. Another investor stated that the sponsor and its affiliates should regularly report their current risk retention related holdings by each tranche of a securitization, because any change in risk retention holdings is material.[1321] Another commenter, an issuer of student loan ABS, generally supported the proposal, but requested an instruction be added to clarify that transfers by the sponsor to its affiliates or subsidiaries would not trigger a filing obligation under Item 6.09 because transfers within a corporate family are not material changes that should require a Form 8–K filing.[1322]

[1311] *See* letter from ASF I (noting that standard practice in the mortgage industry has been to present delinquency information in Form 10–D reports and in static pool information in 30- or 31-day increments through the point that loans are 179 or 180 days delinquent, followed by an additional 180-day increment and a final increment of 359 or 360 days or more, and for ABS supported, directly or indirectly, by motor vehicles, equipment and other similar physical assets that have finite lives over which their value depreciates, delinquency information is presented in 30- or 31-day increments through the point that loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more).

[1312] Even though we did not propose any changes to Item 1100(b)(1), ASF I requested we make revisions to Item 1100(b)(1) that they believed would provide for consistent presentation of delinquency information across issuers within the same asset class, while recognizing that ''some variation across asset classes is meaningful and appropriate.'' *See* letter from ASF I (Exhibit L).

[1313] *See* new Item 1(g)(33) of Schedule AL.

[1314] *See* new Item 1(g)(28) of Schedule AL. *See* Section III.A.2.b Asset Specific Disclosure Requirements and Economic Analysis of These Requirements. Due to the transition period for implementing the loan-level requirements, there will be a period of time during which investors will not have access to this more granular data about assets in prior securitized pools. *See* Section IX.B Transition Period for Asset-Level Disclosure Requirements.

[1315] *See* the 2010 ABS Proposing Release at 23390.

[1316] The term ''previously reported'' is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[1317] Issuers are also encouraged to provide the name and phone number of the outside attorney or other contact in accompanying correspondence to their reports on Form 10–D.

[1318] *See* letters from ASF I (expressed views of investors only), Prudential I, and Sallie Mae I.

[1319] *See* letters from ASF I (expressed views of dealer and sponsors only) (stating that the information has not been shown to be material), BoA I, MBA I (questioning the materiality of the disclosure and suggesting that all the disclosure would provide was that the sponsor was at some level above the minimum required level), and SIFMA I.

[1320] *See* letter from ASF I (expressed views of investors only) (suggesting that because our shelf eligibility requirements proposed in 2010 to require disclosure that the sponsor or an affiliate of the sponsor retained a net economic interest in each securitization that this requirement should be extended to affiliates of the sponsor).

[1321] *See* letter from Prudential I.

[1322] *See* letter from Sallie Mae I.

Some commenters who opposed the proposal suggested it was too broad and should be limited to the monitoring of a sponsor's retention of risk that is required as a condition of shelf eligibility, law, or regulation.[1323] Another commenter also opposed the proposal because it did not see a benefit to the disclosure, the compliance costs would be substantial, and the issuer would need information from parties that it does not control.[1324] In addition, the issuer members of a trade association also disagreed with the investor members who suggested, as discussed above, that a sponsor's decision to hold or sell any portion of its interest in the securities may serve as an indicator of the future prospects for the securitization [1325] and that the requirement should extend to changes in the interest of affiliates of the sponsors.[1326] The issuer members also stated that privacy concerns could arise with disclosing this type of information, although no further detail was provided.[1327]

We also received several comments seeking revisions to the proposal. For instance, some commenters suggested that, if we adopt the rule, it should not include the reporting of changes that arise as a result of organic changes in the sponsor's interest in securities, such as pool assets converting into cash in accordance with their terms or, in the case of revolving pool assets, fluctuating account balances based on credit line usage or those arising as a result of payments made on other securities issued by the issuing entity.[1328] One of these commenters also suggested that we make clear that no reporting requirement arises as a result of the ''sponsor's pledge of the securities in the ordinary course of business for on balance sheet funding purposes.'' [1329] Finally, some commenters suggested that the disclosure be provided in the Form 10–D rather than in the Form 8–K.[1330] One of these commenters believed that this approach would permit issuers to avoid constant monitoring of changes in retained interest and repeated filing of Forms 8–K, while keeping investors informed of the sponsor's retained interest amount.[1331]

(c) Final Rule and Economic Analysis of the Final Rule

We are adopting the proposed requirement that disclosure be provided regarding material changes in a sponsor's interest in the ABS transaction with some modification. Instead of providing a description in a Form 8–K as proposed, we are requiring that if there has been a material change in the sponsor's interest during the period covered by the Form 10–D, then a description of the material change must be provided in the Form 10–D for that reporting period. We agree with the commenters that suggested this approach because it would permit issuers to avoid monitoring of changes in retained interest to meet the current reporting requirements of Form 8–K, thus minimizing costs.[1332] At the same time, investors will continue to benefit from being kept informed of the sponsor's retained interest amount. Further, we are also clarifying that disclosure of any material change in the sponsor's retained interest includes any interest held by an affiliate of the sponsor in order to be consistent with the disclosure required in the prospectus and to allow investors to monitor changes in the interest held. The rule requires disclosure of a material change in the sponsor's retained interest in the ABS transaction due to the purchase, sale or other acquisition or disposition of the securities by the sponsor or an affiliate.[1333] While we note that the credit risk retention rules under Section 15G of the Exchange Act have not yet been adopted,[1334] under the rules we are adopting, if there is a material change (such as a transfer) in any interest or assets that are required to be retained in compliance with law, disclosure of such change would be required. In order to clarify the interplay of the disclosure requirement with risk retention requirements, we have included an instruction specifying that the disclosure about the resulting amount and nature of any interest or asset retained in compliance with law must be separately stated. Finally, we understand that the sponsor may not be a party that is controlled by the issuer. We believe, however, that contracts that relate to the transfer of the assets to the trust can include an ongoing duty for the sponsor to provide the information required for this disclosure. Furthermore, we believe that by requiring changes in the sponsor's interest to be disclosed periodically on the Form 10–D, instead of on a Form 8–K, lessens the burden of obtaining this information from parties that the issuer may not control.

B. Annual Report on Form 10–K

1. Servicer's Assessment of Compliance With Servicing Criteria

(a) Proposed Rule

The Form 10–K report of an asset-backed issuer is required to contain, among other things, an assessment of compliance with servicing criteria that is set forth in Item 1122 of Regulation AB by each party participating in the servicing function.[1335] The body of the Form 10–K report must also contain disclosure regarding material instances of noncompliance with servicing criteria. Our rules require an asset-backed issuer to provide an assessment of compliance with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-

[1323] *See* letters from BoA I and SIFMA I.

[1324] *See* letter from MBA I.

[1325] *See* letter from ASF I (expressed views of dealers and sponsors only) (stating in many deals, the sponsor is not an affiliate of the servicer and may not even be an affiliate of the depositor and, in any event, a sponsor's affiliation with an issuer or servicer does not involve the same level of relationship as the relationship of an officer, director, or other control person to a corporation).

[1326] *See* letter from ASF I (expressed views of dealers and sponsors only) (suggesting that this new requirement would entail an extraordinarily difficult monitoring process and that the sponsor may never be able to administer with reliable results).

[1327] *See* letter from ASF I (expressed views of dealers and sponsors only).

[1328] *See* letters from ABA I, ASF I (expressed views of dealers and sponsors only), and Discover.

[1329] *See* letter from ASF I (expressed views of dealers and sponsors only).

[1330] *See* letters from ASF I (expressed views of dealers and sponsors only) (requesting that, in cases where the sponsor is not an affiliate of the ABS issuer, the Commission except Item 6.09 Form 8–K reports from the Exchange Act filing requirements for Form SF–3 eligibility purposes. The dealer and sponsor members stated that unlike other cases where the content or completeness of an Exchange Act report is dependent on the timely receipt of reports or other information from unaffiliated third parties, an ABS issuer would have no way of even knowing whether and when a change in a sponsor's interest in the securities had occurred and, therefore, it would be inappropriate and unfair for a registrant to lose its eligibility to use Form SF–3) and Discover.

[1331] *See* letter from Discover.

[1332] *See* letters from ASF I (expressed views of dealers and sponsors only) and Discover. The obligation to file a report on Form 8–K is triggered by the occurrence of a reportable event described in Form 8–K, which typically must be filed within four business days of the event.

[1333] Activities like pledging would not be required. *See* letter from ASF I (expressed views of issuers only).

[1334] *See* the 2013 Risk Retention Re-Proposing Release.

[1335] Exchange Act Rules 13a–18(b) and 15d–18(b) [17 CFR 240.13a–18(b) and 17 CFR 240.15d–18(b)] and Item 1122 of Regulation AB. Item 1122 of Regulation AB defines ''a party participating in the servicing function'' as any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria set forth in paragraph (d) of Item 1122, unless such entity's activities relate only to 5% or less of the pool assets. *See* Instruction 2 to Item 1122. For purposes of this discussion, we refer to the party that is required to provide a servicer's assessment as the ''servicer.''

backed securities.[1336] In order to provide enhanced information regarding instances of noncompliance with servicing criteria with respect to the offering to which the annual report relates, including information on steps taken to address noncompliance, we proposed to expand the disclosure requirements to require in the body of the annual report disclosure as to whether the instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report.[1337] As part of its assessment of compliance, the asserting party typically conducts a sampling of the transactions for which it is responsible for the Item 1122 criteria in order to determine whether there is a material instance of noncompliance in their servicing. The proposed rule would require that if the examination of the sample found a material instance of noncompliance and that material instance of noncompliance involved the servicing of assets of a particular ABS, then the annual report covering that particular ABS would include disclosure indicating that the material instance of noncompliance involved the servicing of the assets underlying the ABS. We also proposed to require that the body of the annual report discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities made on a platform level.[1338]

(b) Comments on Proposed Rule

One commenter supported the proposed requirement that the body of the annual report indicate whether an instance of noncompliance identified under Item 1122 involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report,[1339] while several commenters opposed the proposal.[1340]

The commenter, who supported the proposed requirement, noted that such information is, in fact, already being reported in annual reports on Form 10–K.[1341] However, the commenter requested that we clarify that the ''lack of such disclosure could not be interpreted as confirmation that the transaction had not been affected.'' On the other hand, a commenter who opposed the requirement stated that it is not possible ''for the servicer (much less an ABS issuer) to identify each transaction impacted by the instance of noncompliance'' and ''it would be 'inappropriate and arbitrary' to require an ABS issuer to identify only those transactions within the test sample that were impacted by the instance of noncompliance.'' [1342] This commenter believed that if an ABS issuer were required to disclose whether a reported instance of noncompliance involved assets backing the ABS covered in a particular 10–K report, then investors may draw the incorrect conclusion that in the absence of such disclosure, the reported instance of noncompliance did not involve the servicing of assets backing its ABS.[1343]

One commenter supported requiring the disclosure of any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for the activities made on a platform level.[1344] This commenter recommended, however, that instead of requiring the disclosure in the body of the annual report that the disclosure be included as part of the servicer's management assessment of compliance. The commenter explained that in certain circumstances the management responsible for the noncompliance (e.g., servicer management) is not the same as management responsible for filing the Form 10–K (e.g., issuer). The commenter also requested that we clarify that the remediation activity described in the servicer's management assessment is not covered by the auditor's servicing compliance report because the remediation activities are undertaken subsequent to the date of the auditor's report. Another commenter generally requested that we not adopt any of the proposed revisions to Item 1122.[1345]

(c) Final Rule and Economic Analysis of the Final Rule

After considering the comments received, we are adopting a requirement that disclosure be provided in the body of the annual report as to whether the identified material instance of noncompliance pursuant to Item 1122 was determined to have involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report.[1346] If the material instance of noncompliance is identified as relating to a particular transaction, investors with investments in that particular transaction will benefit from receiving this information.[1347] We continue to believe that testing every transaction in the platform is cost prohibitive and that a platform-level assessment for purposes of assessing servicing compliance provides an appropriate level of information to investors while balancing the substantial increase in cost that issuers would incur to assess the compliance with servicing criteria for every transaction in the platform.[1348] The amendments that we adopt today do not require any change in that approach.

We understand that some commenters are concerned that requiring issuers to disclose a reported instance of noncompliance involving assets backing the ABS covered by the 10–K report may impose an indirect cost to investors if investors draw the incorrect conclusion that in the absence of such disclosure, the reported instance of

[1336] Issuers should provide descriptions of each servicing party's role in the transaction, particularly if multiple servicing parties have overlapping responsibilities, by describing in the Form 10–K the responsibilities assigned to each party and the servicing criteria applicable to such party under Item 1122(d) of Regulation AB.

[1337] *See* the 2010 ABS Proposing Release at 23391. While some information about instances of noncompliance may also be required by Item 1123 of Regulation AB, because of the differences in the definition of servicer between Item 1122 and Item 1123, we believed that Item 1123 does not cover the same information that our proposed revision to Item 1122 would cover.

[1338] This proposed disclosure would be required whether or not the instance of noncompliance involved the servicing of assets backing the securities covered in the particular Form 10–K.

[1339] *See* letter from ABA I.

[1340] *See* letters from ASF I, CREFC I, and KPMG (stating the proposed requirement would require an issuer to identify each transaction that involved the instance of noncompliance identified in the Item 1122 assessment and attestation and then report in the annual report of each transaction that had that instance of noncompliance, which may offset the efficiencies gained by allowing management to provide a platform-level assessment).

[1341] *See* letter from ABA I.

[1342] *See* letter from ASF I.

[1343] *See* letters from ASF I (noting ''because the platform level report is based on only a sampling of transactions, a reported instance of noncompliance does not purport to, nor by its nature could it, identify all transactions where noncompliance may have occurred''), CREFC I, and KPMG.

[1344] *See* letter from KPMG.

[1345] *See* letter from CREFC I (without explaining why this particular proposed revision to Item 1122 should not be adopted).

[1346] For example, if the servicer selected 10 transactions as part of their sample for purposes of assessing Item 1122 servicing criteria and it was determined that five of those transactions involved instances of noncompliance that are material to the platform, then, under this requirement, each Form 10–K report for those five transactions must disclose in the body of the 10–K report that: (1) This transaction was part of the sample and (2) it was determined that this particular transaction involved a material instance of noncompliance.

[1347] We observe, however, that the absence of disclosure of instances of noncompliance involving the servicing of assets backing a particular transaction in an annual report is not necessarily an indication that the transaction had not been affected. We also note that, to the extent appropriate, issuers can provide explanatory disclosure in the annual reports of the transactions that were not part of the Item 1122 sample and explain that it is not clear whether their transaction has been affected by the material instance of noncompliance identified in the Item 1122 assessment and attestation.

[1348] *See* Section III.D.7.b.iii of the 2004 ABS Adopting Release.

noncompliance did not involve the servicing of assets backing its ABS.[1349] We believe disclosure can be provided in the Form 10–K or in the servicer's Item 1122 report regarding the scope and structure of the assessment that can adequately addresses this concern.

We are also adopting, as proposed, the requirement to disclose any steps taken to remedy a material instance of noncompliance for activities made on a platform level in the body of the annual report. While we note one commenter's recommendation that such disclosure be provided as part of the servicer's management assessment of compliance rather than in the body of the Form 10–K, we continue to believe that the issuer is ultimately responsible for the disclosure provided in the Form 10–K and therefore should be assessing the information provided by the servicers in their reports, including considering whether the information provided by the servicers in their reports at the platform level applies to the transaction for which the 10–K is filed.[1350] The final rule does not, however, prohibit the servicer from also providing such disclosure in the servicer's assessment of compliance. We are adopting the disclosure requirement in order to provide investors with insight into the potential impact of the instance of noncompliance on their transaction and whether they should reassess their continuing investment decision. Further, we do not believe adding this disclosure is burdensome to the issuers since the information should be readily available to them and is a logical extension of the disclosure of material instances of noncompliance.

Finally, in the 2010 ABS Proposing Release, we noted the staff's belief that the application of Item 1108(b)(2), which requires a detailed discussion in the prospectus of the servicer's experience in, and procedures for, the servicing function it will perform in the current transaction for assets of the type included in the current transaction, has not been consistent among issuers.[1351] While we are not adopting any changes to Item 1108(b)(2) at this time, we continue to believe that Item 1108(b)(2) requires disclosure in the prospectus of any material instances of noncompliance noted in the assessment or attestation reports required by Item 1122 or the servicer compliance statement that is required by Item 1123. In addition, the prospectus should provide disclosure of any steps taken to remedy the noncompliance disclosed and the current status of those steps. With respect to requiring disclosure in the prospectus of a material instance of noncompliance noted in Item 1123 servicer compliance statements, we believe such disclosure is appropriate because investors should have access to information related to the performance of servicers.

2. Codification of Prior Staff Interpretations Relating to the Servicer's Assessment of Compliance With Servicing Criteria

We also proposed to codify certain staff positions issued by the Division of Corporation Finance relating to the servicer's assessment requirement, with some modification. The first staff interpretation that we proposed to codify related to aggregation and conveyance of information between a servicer and another party (who may also be a servicer for purposes of the servicer's assessment requirement).[1352] This new criterion, as proposed, would, if information obtained in the course of performing the servicer's duties is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, require an assessment that the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.[1353]

We also proposed to codify in an instruction to Item 1122 staff interpretations relating to the scope of the Item 1122 servicer's assessment. In a publicly available telephone interpretation the staff explained, among other things, that the platform for reporting purposes should not be artificially designed, but rather, it should mirror the actual servicer practices of the servicer.[1354] The servicer may, however, take into account in determining the platform for reporting purposes divisions in its servicing function by geographic locations or among separate computer systems. Although, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, the proposed instruction would provide that a description of the scope of the platform should be included in the servicer's assessment.

We received general support for the proposed codifications from several commenters[1355] and one commenter generally requested that we not adopt any of the proposed changes to Item 1122.[1356] We are adopting these codifications, as proposed, because we continue to believe that adopting these positions makes them more transparent and readily available to the public. We do not anticipate that these codifications will cause a hardship for servicers as they are consistent with current servicer practices to the extent they were executed under existing staff interpretations.

C. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

In the 2010 ABS Proposing Release, we noted that ABS offerings with a particular file number may be associated with a registration statement with a different file number and that Forms 8–K for ABS offerings may be filed under the depositor file number, making it difficult to track material for the related offering with only the information provided in the Form 8–K. To make it easier for interested parties to locate the depositor's registration statement and periodic reports associated with a particular offering and information related to the sponsor of the offering, we

[1349] *See* letters from ASF I, CREFC I, and KPMG.

[1350] *See* letter from KPMG.

[1351] *See* the 2010 ABS Proposing Release at 23383. Item 1108 also requires a general discussion of the servicer's experience in servicing the assets of any type.

[1352] The staff had taken the position that, while the conveyance of information to another party is not explicitly contained in any of the criterion in Item 1122(d), the accurate conveyance of the information was part of the same servicing criterion under which the activity that generated the information was assessed. *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 11.03. We proposed to codify this position, but instead of requiring it be included with an existing criterion, the proposed rule would make it a new servicing criterion in Item 1122. *See* proposed Item 1122(d)(1)(v).

[1353] For example, if Servicer A is responsible for administering the assets of the pool and passing along the aggregated information about the assets in the pool to Servicer B, and Servicer B is responsible for calculating the waterfall or preparing and filing the Exchange Act reports with that information, Servicer A's activity with respect to administering the assets would be required to be assessed under Item 1122(d)(4). In addition to assessing Servicer A's pool asset administration, Servicer A would be required under proposed Item 1122(d)(1)(v) to separately assess whether its aggregation of the information is mathematically accurate and the information conveyed to Servicer B accurately reflects the information. If instead of aggregating the individual asset information, Servicer A conveys it un-aggregated, then Servicer B would be required to include its own aggregation of the individual asset data in Servicer B's assessment of calculating the waterfall or preparing and filing Exchange Act reports. Servicer A would still need to assess under proposed Item 1122(d)(1)(v) that the un-aggregated information conveyed to Servicer B accurately reflects the information.

[1354] *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.03.

[1355] *See* letters from E&Y, KPMG, and Prudential I.

[1356] *See* letter from CREFC I (opposing without providing an explanation why this particular proposed revision to Item 1122 should not be adopted).

proposed amendments to require that the cover pages of registration statements on Form SF–1 and Form SF–3 include the CIK number [1357] of the depositor, and if applicable, the CIK number of the sponsor. We also proposed to require that the cover pages of the Form 10–D, Form 10–K, and Form 8–K for ABS issuers include the CIK number of the depositor, the issuing entity, and, if applicable, the sponsor.

Several commenters expressed general support for these proposals; no commenters opposed.[1358] These commenters agreed that adding the CIK numbers of the depositor and the issuing entity to the cover pages of filings will enhance the accessibility of information to investors.[1359]

We are adopting these amendments, as proposed, given the benefits that they will provide as recognized by commenters. Furthermore, we do not believe that requiring this information on certain cover pages for ABS filings will be burdensome to issuers, nor did we receive any comments stating any cost concern.

IX. Transition Period

In the 2010 ABS Proposing Release, we noted our belief that compliance dates should not extend past a year after adoption of the new rules, but we sought comment about feasible dates for implementation of the proposed amendments. We also acknowledged that the asset-level disclosure requirements may initially impose significant burdens on sponsors and originators as they adjust to the new requirements, including changes to how information relating to the pool assets is collected and disseminated to various parties along the chain of the securitization.[1360] We also requested comment on whether we should provide a transition period for compliance with the asset-level disclosure requirements that would allow the filing of test submissions.[1361] We describe below the comments received and the overall transition period for revisions to Regulation AB and the additional transition period for asset-level disclosure requirements.

A. General Transition Period

With respect to implementation of the overall proposals to revise Regulation AB, a majority of commenters expressed a need for a longer transition period. The commenters were generally concerned that the proposed rules would impose new substantial obligations on various industry parties, such as originators, sponsors, and other transaction parties that will require changes to operational procedures and infrastructures in order to meet the new disclosure requirements.[1362] These commenters suggested that we consider various factors when determining the implementation timeframe, including: The existence of other rulemaking processes and regulatory developments,[1363] how the final regulations relate to and work with other new and revised regulations,[1364] and the ability of issuers to implement the various rules' changes simultaneously.[1365]

As noted above, several commenters suggested compliance timeframes that would extend past the proposed one-year transition period. One trade association suggested an implementation period of at least eighteen months [1366] and another suggested two years.[1367] Another commenter suggested that implementation of the proposed rules should be staggered in one and two year increments with those changes that can be implemented in the near-term implemented in a one-year timeframe and the ''more elaborate implementation measures'' implemented within two years.[1368] Another trade association did not specifically suggest a longer compliance period, but suggested that for the disclosure aspects of the proposal that the effective date should be no earlier than one year following the date of publication of the related final rules in the **Federal Register**.[1369]

We understand that some of the requirements that we are adopting, including the asset-level disclosure requirements, will take time and resources in order to satisfy the new requirements. We also understand that issuers and market participants are working to implement many different regulations that have recently been adopted or may be adopted in the near future. We are therefore adopting a tiered approach. All new rules, except for asset-level disclosures require compliance within one year from the effective date of the rules. We believe that this time period provides a sufficient transition period for compliance. We believe that 12 months will allow the transaction parties to better manage the changes necessary to their systems and processes. Therefore, any registered offering of asset-backed securities commencing with an initial bona fide offer one year after the effective date of the rules and the asset-backed securities that are the subject of that offering must comply with the new rules and forms, except for asset-level disclosures. Consequently, after the one year transition period, ABS issuers seeking to conduct a shelf ABS offering must conduct such offering off of an effective Form SF–3 registration statement.

In addition, any Form 10–D or Form 10–K that is filed after one year after the effective date of the rules must include the information required by the new rules, except for asset-level disclosures.

B. Transition Period for Asset-Level Disclosure Requirements

We received substantial feedback with respect to the appropriate compliance dates for our requirements related to the asset-level disclosure requirements.

[1357] The CIK is a number that we assign to each entity (company or individual) that submits filings to the Commission. Use of the CIK allows the Commission to differentiate between filing entities with similar names. A CIK is used to identify all filers, both EDGAR and non-EDGAR.

[1358] *See* letters from BoA I and MBA I.

[1359] *See* letter from MBA I (noting that sponsors' CIK numbers should be required only if the sponsor has a CIK number). *See also* letter from BoA I (stating our proposal to require CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of the proposed Forms SF–l and SF–3 will also help investors locate materials related to an ABS offering or ABS issuer).

[1360] *See* Section VIII of the 2010 ABS Proposing Release.

[1361] EDGAR currently provides the ability to file a test submission which allows the filer to test the ability to create a filing in an EDGAR-acceptable format. For a test submission, fees will not be deducted, the filing will not be disseminated, and the filing will not count towards any filing requirements.

[1362] *See* letters from ASF I, ABA I, BoA I, CREFC I, and MBA I (requesting an 18-month implementation period because the new obligations will require the implementation of new operational procedures and infrastructures, and originators and servicers will need sufficient time to evaluate and update their origination and servicing platforms).

[1363] *See, e.g.,* letters from ABA I, CREFC I, and MBA I.

[1364] *See* letters from CREFC I (stating we should take into consideration how the final rules' new and revised regulations relate to and work with other new or proposed regulations, such as those described in Section 941(b) of the Dodd-Frank Act, which provides for a two-year transition period for securitizers and originators of all classes of asset-backed securities other than RMBS to comply with risk retention requirements) and MBA.

[1365] *See* letter from MBA I.

[1366] *See* letter from MBA I (with respect to RMBS).

[1367] *See* letter from CREFC I. *See also* letter from BoA I (suggesting, in general, a longer transition period should be provided).

[1368] *See* letter from MBA III (with respect to CMBS) (reiterating its suggested implementation timeframes in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release).

[1369] *See* letter from ASF I (suggesting that if a prospectus is included in a new registration statement filed on or after the effective date that the new disclosure rules should apply to that prospectus and that we should also allow for a period to convert to the proposed new Form SF–3 so that a prospectus included in the registration statement may be made compliant). The ASF reiterated this position in its Oct. 4, 2011 letter submitted in response to the 2011 ABS Re-Proposing Release. *See* letter from ASF III.

Issuers, market participants, and trade associations representing issuers generally believed that a significant number of the proposed data points required data that is currently not captured by originators or servicers.[1370] They also argued that there will be substantial costs in time and resources to develop systems that will capture the data in the required format and, therefore, believed an extended implementation timeframe is appropriate.

Commenters suggested varying timeframes for implementation. For instance, investor members of one group suggested that the transition period should not exceed one year from the date the final rules are published.[1371] In contrast, other commenters suggested longer timeframes, including: A transition period of no earlier than 12 months from the publication of the final rules in the **Federal Register**,[1372] 18 months,[1373] and 24 months.[1374] We also received a number of comments suggesting that the asset-level disclosures may not be available for assets originated before the effective date of the asset-level disclosure requirements or for assets underlying asset-backed securities originated before the effective date of the requirements.[1375] These commenters suggested a range of possible solutions, including a full exemption,[1376] a multi-year phase-in,[1377] and an exemption to the extent that information called for under those rules with respect to legacy loans is unknown and not available to the issuer without unreasonable effort or expense.[1378] However, investor members of one trade association suggested that any grandfathering period for assets originated prior to the compliance date should be limited to an additional one year after the compliance date.[1379]

Some commenters also recommended allowing exemptions or ''deferrals'' from the reporting requirements for data that they were unable to start collecting within the implementation timeframe.[1380] One commenter also stated that it was important that the Commission provide the public with the ''the detailed file layout that is necessary with XML'' when the final rule is adopted so that market participants can begin programming their systems and that any delay in receiving this information will greatly affect the industry's ability to comply in a timely manner.[1381]

As we noted earlier, we believe that, in order for investors to have access to robust information concerning the pool assets, asset-level disclosure needs to be provided. We understand that some of the disclosures that we are requiring are not currently captured by originators or servicers and that it will take time and resources to reprogram systems and processes to capture the data and then report it in XML. We also understand that issuers and market participants are working to implement many different regulations that have recently been adopted. Therefore, we have decided to delay the compliance date for the asset-level disclosure requirements so that market participants will have ample time to prepare and satisfy the new requirements. In this regard, issuers will be required to provide asset-level information no later than two years after the effective date of the rules, which we believe is a reasonable implementation timeframe. We believe the extended timeframe will ultimately benefit investors because it will give issuers and market participants the time to plan for and implement appropriate reporting processes and more meaningful and relevant disclosure documents. In addition, as discussed in Section III.A.2.b.5 Resecuritizations, we are adopting an exemption for resecuritizations of ABS issued prior to two years after the effective date of the rules, the compliance date for the asset-level disclosure requirements.

We also understand that certain changes to issuers' and market participants' systems may not be able to occur until the final technical requirements are published in the EDGAR Filer Manual and EDGAR Technical Specification documents. In order to provide issuers and other filers time to make adjustments to their systems, we anticipate making a draft of the EDGAR Technical Specification documents[1382] available soon.

We also note that at least one commenter requested a test period. We believe that submissions may assist both the Commission and issuers with addressing unknown and unforeseeable issues that may arise with the submission of the asset-level disclosures.[1383] We will permit issuers to file test submissions during the transition period.

We are not adopting a commenter's suggestion that we adopt a hardship exemption from the reporting requirements for those issuers that may be unable to start collecting by the implementation timeframe. We believe that our timeframe provides ample time for the necessary reprogramming of systems and processes to capture the information, including for smaller originators.

[1370] *See, e.g.,* letters from ABA I, ASF I, BoA I, CREFC I, J.P. Morgan I, PricewaterhouseCoopers dated July 30, 2010 submitted in response to the 2010 ABS Proposing Release (''PwC''), MBA I, SIFMA I (expressed views of dealers and sponsors only), and Wells Fargo I. None of these commenters provided a specific cost estimate for compliance.

[1371] *See* letter from SIFMA I (expressed views of investors only). The dealer and sponsor members of this commenter suggested that a one-year transition period would be the minimum needed and recommending 18 months for asset-level disclosure because many securitizers are unprepared for these requirements and this timeframe would also allow smaller originators and servicers to examine the feasibility of converting their platforms to comply with the disclosure requirements.

[1372] *See* letter from ASF I.

[1373] *See* letters from J.P. Morgan I (suggesting an 18-month implementation period following the effective date of the rule without specifying whether the recommended timeframe should apply to all of the rules or just the new asset-level requirements), MBA I (with respect to RMBS) (suggesting 18 months will ensure more compliance and smoother transition), SIFMA I, and Wells Fargo I (suggesting a 12-month implementation period followed by a six-month test period).

[1374] *See* letters from CREFC I, MBA I (with respect to CMBS), and PwC.

[1375] *See, e.g.,* letters from ABA I, ASF I, BoA I, J.P. Morgan I, MBA I, and SIFMA I. *See also* letters from J.P. Morgan II and SIFMA III-dealers and sponsors.

[1376] *See* letters from ABA I and Citi (also suggesting we create an explicit safe harbor for earlier-originated assets that may not be able to satisfy all of the disclosure requirements based on a Rule 409 type standard).

[1377] *See* letter from ABA I (without describing the multi-year phase-in approach).

[1378] *See* letters from ASF I (suggesting that resecuritizations supported by legacy underlying securities be grandfathered and not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy assets is unknown and not available to the issuer without unreasonable effort or expense), Citi, and J.P. Morgan I (suggesting that we provide a bright-line test for compliance based on the origination date of the related asset, or allow as an acceptable response to the data points an indication that certain data fields for such asset are unavailable, accompanied by an explanation of why the data is not available and whether it will be available in the future). *See also* letters from ASF II and J.P. Morgan II.

[1379] *See* letter from SIFMA I (expressed views of investors only).

[1380] *See* letters from ASF I (suggesting that some cases will exist where compliance cannot be accomplished within the implementation timeframe and in those cases, issuers should be able to apply for a hardship exemption and be granted additional time to comply as needed on a case-by-case basis, or on a ''class of transactions'' basis, where the class might be defined by any number of common characteristics (e.g., common depositor, sponsor or other transaction party, asset type or transaction structure)) and BoA I (suggesting we allow issuers to report exceptions or deferrals in cases where responses to non-crucial data points cannot be provided in the exact manner contemplated by the proposed rule to ease transition concerns and indicating that this is consistent with Regulation AB, which permits concessions when data requests require significant cost or effort).

[1381] *See* letter from MBA I.

[1382] The draft EDGAR Technical Specification documents will include preliminary tagging requirements for asset-level data points.

[1383] *See* letter from Wells Fargo I (suggesting a six-month test period).

C. Compliance Dates

As discussed above, we are adopting different compliance periods for the new rules. Registrants must comply with new rules, forms, and disclosures other than the asset-level disclosure requirements no later than November 23, 2015. Offerings of asset-backed securities backed by RMBS, CMBS, Auto ABS, and debt securities (including resecuritizations) must comply with the asset-level disclosure requirements no later than November 23, 2016. Any Form 10–D or Form 10–K filed after November 23, 2015, must comply with the new rules and disclosures, except asset-level disclosures. If any provision of these 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.

X. Paperwork Reduction Act

A. Background

Certain provisions of the new rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1384] We published a notice requesting comment on the collection of information requirements in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[1385]

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 control number. The titles for the collections of information are:

(1) ''Form S–1'' (OMB Control No. 3235–0065);

(2) ''Form S–3'' (OMB Control No. 3235–0073);

(3) ''Form 10–K'' (OMB Control No. 3235–0063);

(4) ''Form 10–D'' (OMB Control No. 3235–0604);

(5) ''Form 8–K'' (OMB Control No. 3235–0060);

(6) ''Regulation S–K'' (OMB Control No. 3235–0071);

(7) ''Regulation S–T'' (OMB Control No. 3235–0424);

(8) ''Form SF–1'' (OMB Control No. 3235–0707);

(9) ''Form SF–3'' (OMB Control No. 3235–0690); and

(10) ''Form ABS–EE'' (OMB Control No. 3235–0706).

The forms listed in Nos. 1 through 7 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors. Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. Regulation S–T specifies the requirements that govern the submission of electronic documents.

The regulations and forms listed in Nos. 8 through 10 are new collections of information under the Securities Act and the Exchange Act. Form SF–1 and Form SF–3 represent the new registration forms for offerings of asset-backed securities, as defined in Item 1101(c) of Regulation AB. Form SF–3 represents the registration form for asset-backed offerings that meet certain shelf eligibility conditions and can be offered off a shelf under Rule 415. Form SF–1 represents the registration form for other asset-backed offerings. Form ABS–EE[1386] is a new form for the filing of certain asset-level information required in connection with registration statements and periodic reports for asset-backed issuers. Under the requirements, an asset-backed issuer is required to submit to the Commission specified, tagged information on assets in the pool underlying the securities.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. Compliance with the rule amendments is mandatory. Responses to the information collection will not be kept confidential, and there is no mandatory retention period for the information disclosed.

B. Summary of Comment Letters on the PRA Analysis

In the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we requested comment on the PRA analysis. While many commenters provided qualitative comments on the possible costs of the proposed rules and amendments, we received limited quantitative comments on our PRA analysis. The only quantitative comment we received on asset-level disclosure came from a commenter representing a group of Auto ABS sponsors. This commenter estimated that, if we adopted each of the Auto ABS data points originally proposed, the average costs and employee hours per sponsor necessary to comply with the asset-level requirements would be approximately $2 million and 12,000 hours, respectively.[1387] This commenter also noted that if we adopted the reduced number of data points proposed in their comment letter, the burden would decrease to $750,000 and 3,500 hours.

We received only one comment letter with quantitative comments on the additional burden to complete Form SF–3.[1388] This commenter believed that our 100 burden hour estimate for asset-backed issuers to complete the disclosure requirements for Form SF–3, prepare the information, and file it with the Commission is ''inadequate'' and ''not realistic.'' This commenter stated that at least 100 burden hours should be separately allocated to certain of the shelf transaction requirements, including the certification provision, the asset review provision, and the dispute resolution provision. The commenter noted that there would be an increased burden of at least 100 hours for the certification requirement because the certifying officer would likely need to rely on an independent evaluator or hire an additional executive officer with the expertise necessary in order to provide the certification. The commenter also noted that there will be additional burden in retaining a reviewer and its counsel to comply with the asset review provision. Finally, the commenter stated that the dispute resolution provision alone could exceed our 100 burden hour estimate without providing any quantitative analysis.

Qualitative comments that we received generally noted that the new data collection requirements will impose additional burdens on issuers and sponsors. For example, we received several qualitative comments noting that the proposal would likely impose burdens on sponsors by requiring them

[1384] 44 U.S.C. 3501 *et seq.*

[1385] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[1386] We proposed this new collection of information in the 2010 ABS Proposing Release under the title ''Asset Level Data.'' We have revised the title of this collection of information to reflect the location of the asset-level data requirements under the final rule.

[1387] *See* letter from VABSS IV. As the commenter noted, the sponsors ''estimated the costs and employee hours necessary to reprogram systems and business procedures to capture, track and report all of the items for auto loans currently set forth in the [2010 ABS Proposing Release].'' We assume that these costs and burden hours include the costs and burden hours associated with providing information at the time the ABS is issued as well as on an ongoing basis, as was contemplated in the 2010 ABS Proposing Release.

[1388] *See* letter from Kutak.

to collect, capture, maintain, evaluate and report data in new or different ways.[1389]

C. Revisions to Proposals

We considered all of the comments we received, as we considered how to quantify and possibly mitigate the burdens that could potentially be imposed by the new requirements. In order to address commenters' concerns about the asset-level requirements for Auto ABS, we have significantly reduced the scope of the asset-level data required from the proposal.

For the new shelf eligibility criteria, we have made several changes to address cost concerns—for example, we revised the certification to indicate that the certification is not a guarantee about the future performance of the assets and have clarified that the certifying officer has any and all defenses available under the securities laws. We also note, in response to one commenter's concern discussed above,[1390] that we do not believe that an additional executive officer or independent evaluator will need to be hired as a result of the new rules to actually structure the transaction because the certifying officer may rely on senior officers under his or her supervision that may be more familiar with the structuring of the transaction. We do expect, however, that the certifying officer will provide appropriate oversight over the transaction, including supervision of the structuring, so that he or she is able to make the certification. Finally, we believe that providing the certification should not impose any additional significant burden in terms of preparing additional disclosure, as such burden is already accounted for in the preparation of prospectus disclosure that is part of the Form SF–3 registration statement.

We acknowledge that the asset review provision will impose an upfront cost on the transaction since we are requiring that the reviewer be named in the prospectus. We believe, however, that most of the costs will be incurred in connection with reviews, which will occur during the life of the securitization only if the triggering events have been met. Consequently, if the reviewer does not perform any reviews, then the costs will be limited to the retainer fee. Recognizing that the bulk of the cost will be incurred with the actual reviews, we have attempted to reduce the burden of ongoing compliance with this shelf transaction requirement by requiring that a delinquency threshold must first be reached or exceeded before investors will be able to vote for a review. Disclosure is required in a Form 10–D only if a review is triggered.

We do not agree with a commenter that the dispute resolution provision could exceed the 100 burden hour estimate to collect the information. Under the final rules, a dispute resolution provision is required in the pooling and servicing agreement and disclosure of that provision is required in the prospectus. We acknowledge that additional costs may be incurred as a result of the number of hours that will be expended by certain personnel, including counsel, to come to a resolution if a dispute occurs. Because we are not requiring additional disclosures about the dispute resolution provision, we are not increasing our burden estimates. Accordingly, while we recognize that the new shelf conditions will impose additional costs on issuers, these costs are not primarily disclosure or record keeping burdens. Thus, we do not believe that we need to increase the 100 burden hour estimate to complete and file Form SF–3.

We have also made a number of changes in response to more general qualitative comments in an effort to avoid potential unintended consequences and reduce potential additional costs or burdens identified by commenters. For example, for the asset-level requirements, we have attempted to reduce burden and cost concerns by aligning the requirements with industry standards where feasible. We have also revised how we are calculating the burden hours and costs for data collection to more accurately reflect how data will be captured and organized in the industry, as described by commenters. Further, we are providing for an extended implementation timeframe, which we also believe will reduce the burden of implementing the requirements.

D. PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for each of the existing collections of information, except for Form 10–D, are based on an average of the time and cost incurred by all types of public companies, not just asset-backed issuers, to prepare a particular collection of information. Form 10–D is a form that is prepared and filed only by asset-backed issuers. In 2004, we codified requirements for asset-backed issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the new rules and rule amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used for asset-backed securities, as well as information from outside data sources.[1391] When possible, we base our estimates on an average of the data that we have available for years 2004 through 2013.[1392] In some cases, our estimates for the number of asset-backed issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings from 2006 through 2013.[1393]

1. Form ABS–EE

The asset-level reporting requirement that we are adopting for issuances of certain ABS is a new collection of information.[1394] As proposed, under the new rules the asset-level information will be provided at the time the ABS is issued and on an ongoing basis. The rules also require the information be filed as an exhibit to new Form ABS–EE.

Our estimates in the 2010 ABS Proposing Release were based on the costs to provide the required data at the time of securitization and on an ongoing basis. We estimated that each unique

[1389] *See, e.g.,* letters from ABA I, J.P. Morgan II, MBA II, and Wells Fargo I.

[1390] *See* letter from Kutak.

[1391] In the 2010 ABS Proposing Release, we relied on the AB Alert database for the initial terms of offerings and supplemented that data with information from the Securities Data Corporation (SDC). In this release, outside databases referenced in this section include the AB Alert and CM Alert databases for the initial terms of offerings.

[1392] We selected this time period in order to account for the market disruption caused by the financial crisis by using data that captures both pre-crisis and post-crisis filings.

[1393] Form 10–D was not implemented until 2006. Before implementation of Form 10–D, asset-backed issuers often filed their distribution reports under cover of Form 8–K.

[1394] We proposed this new collection of information in the 2010 ABS Proposing Release under the title ''Asset Level Data.'' We are revising the title to reflect that the asset-level information will be filed as an exhibit to new Form ABS–EE. Also, the proposed requirements would have required asset-level data across all asset types, except for credit card receivables ABS and stranded costs ABS. We proposed that credit card ABS issuers would be required to provide grouped account data, both at the time of securitization and on an ongoing basis. The rules we are adopting at this time, however, only require asset-level data for ABS where the underlying assets consist of residential mortgages, commercial mortgages, auto loans or auto leases, resecuritizations of ABS, or of debt securities. Also, we are not adopting at this time the proposed requirement that credit card ABS issuers provide grouped account data. Because of the number of data points involved, our estimates for the asset-level requirements in the proposal were based on data for RMBS, CMBS and credit card ABS issuers. In line with the requirements we are adopting, we have revised our burden hour estimate to base the estimate on the hours that sponsors of RMBS, CMBS, Auto ABS, debt security ABS or resecuritizations may incur to provide the required data.

sponsor[1395] would incur a one-time setup cost for the initial filing of asset-level data.[1396] Software costs and costs associated with adjusting existing systems in order to provide the data are included in the one-time setup costs. The burden estimate also included costs associated with tagging the data and filing it with the Commission. After the first filing of asset-level information, we estimated that sponsors would incur costs to provide the required data with subsequent offerings of ABS and with each Form 10–D.

Some comments on the asset-level proposal suggested that sponsors would incur substantial costs to capture the required data and to provide it in the format requested.[1397] We continue to assume that asset-backed issuers currently required by Regulation AB to file pool-level information on the assets in the underlying pool have access to a substantial portion of the required asset-level information, although we acknowledge that sponsors may incur additional costs to provide the data currently collected in the format required by the rules we are adopting. We recognize that some of the required data is not currently collected by sponsors and that sponsors will incur costs to capture and provide some of the required data in the format requested.

To address concerns about the costs to provide the data, we revised our calculation of the estimated number of burden hours a sponsor may incur to acknowledge that a sponsor may need to revise its existing systems or procedures for each required data point. The burden estimate in the proposal assumed that approximately two percent of the proposed asset-level data points would require a sponsor to adjust its existing systems and procedures for capturing and reporting data. For each data point that required the sponsor to adjust its existing systems and procedures, a sponsor would expend at least 18 minutes per adjustment for each asset in the pool. We have revised our estimate to assume that before the first filing of asset-level information a sponsor will need to adjust its existing systems and procedures in some way for each required data point in order to provide the response to the data point based on our definitions and that each adjustment will require ten hours.[1398]

The burden estimate in the proposal for the initial filing of asset-level data included ten hours to tag and file the data with the Commission.[1399] We continue to believe that a sponsor will incur approximately ten hours to tag, review and file the required data the first time the sponsor files the asset-level data to comply with our rules. Based on comments received raising concerns about the burden to provide the asset-level data in XML, we are also estimating that each sponsor will also expend approximately 10 hours per data point in order to adjust its systems to be able to provide the data in XML with the first filing of asset-level data.[1400] Based on the asset-level requirements applicable to each asset class and our estimates for the XML conversion costs and filing costs, we estimate that each RMBS sponsor will incur 5,410 hours, each CMBS sponsor will incur 3,050 hours, each Auto ABS sponsor will incur 2,770 hours and each debt security ABS sponsor or resecuritization sponsor will incur 1,210 hours[1401] in one-time setup costs and to provide the asset-level data for the first time.[1402] Based on the average number of unique sponsors in each asset class, we estimate that the total burden estimate for the initial filing of asset-level data, including the one-time setup cost to be 259,711 hours.[1403] We allocate 25% of

[1395] In the proposal, we estimated that the number of unique ABS sponsors from 2004 to 2009 was 343, for an average of 57 unique sponsors per year. We have updated our estimate of the total number of unique sponsors among the relevant assets classes. Based on our updated estimate, we estimate 60 as the average number of unique sponsors of registered ABS subject to the rules we are adopting per year (23 RMBS sponsors, 25 CMBS sponsors, 20 Auto ABS sponsors, two debt security ABS sponsors, and one resecuritization sponsor (the total of these numbers for all asset classes is greater than the 60 unique sponsors estimate due to the fact that a single sponsor often sponsors ABS from different asset classes). For purposes of our updated estimate, the average annual number of unique sponsors for RMBS, CMBS and Auto ABS is based on data from outside databases for the period of 2004 through 2013. *See* footnote 1391. We believe the time period selected provides a conservative estimate of the average annual number of unique sponsors for these asset classes as the 2004 through 2013 timeframe captures both the time period prior to the financial crisis when there was a larger number of unique ABS sponsors per year and the more recent time period when the number of unique sponsors per year has been substantially lower. For debt security ABS and resecuritizations, we were unable to obtain from outside databases the average annual number of unique debt security ABS or resecuritization sponsors. Based on data available through EDGAR for the period of 2010 to 2013, we estimate that for each year there will be two unique debt security ABS sponsors. There have been no registered resecuritization offerings over the past several years. We assume for this estimate, however, that for each year there will be at least one unique resecuritization sponsor.

[1396] Under the proposal, the asset-level information outlined in proposed Schedule L would be required at the time of issuance. On an ongoing basis, the asset-level information outlined in proposed Schedule L–D would be required. Under the final rules, we are condensing these schedules into one schedule titled Schedule AL. *See* Section III.B.2 The Scope of New Schedule AL. The burden estimate in the proposal provided an estimate for the one-time burden cost for issuers to provide the asset-level disclosures required at issuance and a separate estimate for the one-time burden cost for issuers to provide the ongoing disclosures. For purposes of our updated estimate and in line with the condensed schedule format we are adopting, we combined the estimates for one-time setup costs into one calculation. This change resulted in a substantially lower estimate of average annual burden hours for filing asset-level data on an ongoing basis, but a higher amount of professional costs associated with the first filing of asset-level data at issuance.

[1397] *See, e.g.,* letters from ABA I, ABAASA I, SIFMA I (expressed views of dealer and sponsors only), and VABSS I.

[1398] For instance, the requirements for RMBS include 270 data points, and we estimate that for each of these 270 data points a sponsor will need to adjust its systems and procedures in some way and that each adjustment will require ten hours. In the proposal, our calculation considered the number of assets in each pool. Since we continue to assume that a sponsor will need to make a one-time change to its existing systems and procedures before the first filing of asset-level information, the number of assets in the pool is less relevant because the revisions to a sponsor's existing systems and procedures will be completed before it provides asset-level data for any ABS. The revised estimate focuses on the changes each required data point will cause to a sponsor's existing systems and procedures before it must provide asset-level information.

[1399] *See* the 2010 ABS Proposing Release at 23404.

[1400] The estimated per hour cost to convert the required data into an XML format is based on the estimate of the cost to provide the required asset-level data in XML provided in Section III.B.3. *See* footnote 748. For purposes of that estimate, we assumed that a sponsor would work with all asset types and would need to convert the data for all asset classes into an XML format and that conversion would require 6,283 hours. With a combined 680 unique data points (RMBS = 270, CMBS = 152, Auto ABS = 138, debt security ABS = 60 and resecuritizations = 60), we estimate that responding to each data point in XML for the first time will require approximately 10 hours per data point.

[1401] For each resecuritization, the asset pool is comprised of one or more ABS. The final rules require disclosures about the ABS in the pool, and if the ABS in the asset pool is an RMBS, CMBS or Auto ABS, issuers are also required to provide asset-level disclosures about the assets underlying the ABS. For purposes of this estimate, the one-time setup costs for resecuritizations is based on the number of data points each resecuritization sponsor must respond to for each ABS in the pool. Our estimate for the one-time setup cost for providing asset-level data for resecuritizations does not include the cost to provide asset-level data if the ABS in the pool is an RMBS, CMBS or Auto ABS since these one-time setup costs are already included in the one-time setup estimates for RMBS, CMBS and Auto ABS and sponsors of resecuritizations may be able to reference asset-level information about the assets underlying the securities in the pool.

[1402] In the 2010 ABS Proposal, we estimated that an RMBS sponsor would incur a total of 7,005 hours (3,194 hours for the data required at securitization and 3,811 hours for the data required on an ongoing basis), and a CMBS sponsor would incur a total of 178 hours (86 hours for the data required at securitization and 92 hours for the data required on an ongoing basis). *See* the 2010 ABS Proposing Release at 23404.

[1403] The burden estimate in the proposal estimated the total annual burden hours for preparing, tagging and filing asset-level disclosure at the time of securitization for all ABS issuers to

Continued

those hours (64,928) to internal burden hours and 75% of the hours (194,783) to out-of-pocket expenses for software consulting and filing agent costs at a rate of $250 per hour for a total cost of $48,695,625.

After a sponsor has made an initial filing of asset-level data, we estimate that each subsequent filing of asset-level data will take approximately 10 hours to prepare, review, tag and file the information. Based on the number of offerings after the first filing of asset-level data [1404] and the number of Form 10–D filings per year,[1405] we estimate the average annual hours to prepare and file asset-level disclosure after the first filing of asset-level data will be 140,215 hours.[1406] We allocate 75% of those hours (105,161) to internal burden hours and 25% of the hours (35,054) to out-of-pocket expenses for software consulting and filing agent costs at a rate of $250 per hour totaling $8,763,438. Thus, we estimate the total annual burden hours for the asset-level disclosure requirements at 170,089 hours [1407] and the total amount of out-of-pocket expenses for software and filing agent costs at $57,459,063.[1408]

2. Form S–3 and Form SF–3

Our current PRA burden estimate for Form S–3 is 136,392 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because an Exchange Act reporting history is not a condition for Form S–3 eligibility for ABS, asset-backed issuers using Form S–3 often must present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference. Thus, our current burden estimate for asset-backed issuers using Form S–3 under existing requirements is similar to our current burden estimate for asset-backed issuers using Form S–1. During 2004 through 2013, we received an average of 71 Form S–3 filings annually related to asset-backed securities.

Under the rules that we are adopting, we are moving the requirements for asset-backed issuers into new forms that will be used solely to register offerings of asset-backed securities. New Form SF–3 is the ABS equivalent of existing Form S–3. For purposes of our calculations, we estimate that the provisions relating to shelf eligibility will cause a 5% movement in the number of filers (i.e., a decrease of four registration statements) out of the shelf system due to the new requirements, which include the certification, the asset review provision, the dispute resolution provision, the investor communications provision, and the annual evaluations of compliance with timely Exchange Act reporting and timely filing of the transaction agreements and the related certifications.[1409] On the other hand, we estimate the number of shelf registration statements for asset-backed issuers will increase by four as a result of the amendments eliminating the practice of providing a base prospectus and a prospectus supplement for ABS offerings.[1410] Thus, we estimate that the annual number of shelf registration statements concerning ABS offerings will remain the same. Accordingly, since the rule amendments will shift all shelf-eligible ABS filings from Form S–3 to Form SF–3, we estimate that the amendments will cause a decrease of 71 ABS filings on Form S–3 and a corresponding increase of 71 ABS filings on Form SF–3 filed annually.[1411]

In 2004, we estimated that an asset-backed issuer, under the 2004 amendments to Form S–3, would take an average of 1,250 hours to prepare a Form S–3 to register ABS.[1412] Additionally, in the January 2011 ABS Issuer Review Release, we estimated that the requirements described in that release would increase the annual incremental burden to asset-backed issuers by 30 hours per form.[1413] For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.

We are also adopting additional disclosure requirements that will impose some additional costs to asset-backed issuers with respect to registration statements, which we have included as part of our burden estimate for Form SF–3. We do not believe, however, that the shelf eligibility requirements that we are adopting will substantially increase the burden hours

be 151,368 with 25% of those hours allocated to internal burden costs and 75% of those hours allocated to external burden hours. For a description of the factors that contributed to differences between the proposed and final estimates see footnotes 1396 and 1407.

[1404] The burden estimate in the proposal estimated the average number of offerings for all asset classes to be 958 per year. For purposes of comparison, we have adjusted the average number of offerings from 958 to 629 to account for the fact that we are adopting asset-level requirements for fewer asset classes than we had proposed. For purposes of this burden estimate because we are adopting requirements only for certain asset classes, we estimate there will be an average of 431 registered ABS offerings per year (RMBS = 343, CMBS = 33, Auto ABS = 51, debt security ABS and resecuritizations = 4). For purposes of this estimate, the average annual number of registered RMBS, CMBS and Auto ABS offerings is based on data from outside databases for the period of 2004 through 2013. We believe the time period selected provides a conservative estimate of the average annual number of registered offerings for these asset classes as the 2004–2013 timeframe captures both the time prior to the financial crisis when there was a larger number of registered ABS offerings per year and the more recent time period when the number of registered ABS offerings per year has been substantially lower. For debt security ABS and resecuritizations, we are unable to obtain from outside databases the average annual number of registered offerings of debt security ABS or resecuritizations between 2004 and 2013. Based on data available through EDGAR for the period of 2010 to 2013, we estimate there will be three registered debt security ABS offerings per year. There have been no registered resecuritization offerings over the past several years. We assume for this estimate, however, that each year there will be at least one registered resecuritization offering.

[1405] For purposes of estimating the number of expected Form 10–D filings, we are using the actual average annual number of Form 10–D filings, which was 13,014. We apportioned the burden of Form 10–D filings across each asset class based on the average number of offerings per year for each asset class. We believe this results in a conservative estimate because the rules we are adopting do not require that all asset classes provide asset-level disclosure and therefore not every Form 10–D filed will include asset-level data.

[1406] We estimated in the 2010 ABS Proposing Release that the average annual burden hours to provide the asset-level data with Form 10–D on an ongoing basis would be 207,009 hours for all ABS issuers with 75% of those hours allocated to internal burden hours and 25% allocated to external burden hours. The final estimate reflects the cost of ongoing maintenance for XML, which we estimated to be 5% of the initial XML conversion costs. For a description of the factors that contributed to differences between the proposed and final estimate and the proposed estimate see footnotes 1396 and 1407.

[1407] 170,089 = 64,928 + 105,161. The proposal estimated that the total average annual burden hours to provide the asset-level data or grouped asset data would be 193,099 hours and the total amount of out-of-pocket expenses for software and filing agent costs would be $41,319,571. The drop in total average annual burden hours can be attributed to changes in the average annual number of unique RMBS sponsors and the expected annual number of registered ABS offerings. Also, other changes to our calculation to address comments received (e.g., XML conversion cost, system changes) and differences between the proposed requirements and the final requirements (e.g., combining the initial and ongoing disclosure schedules into one schedule) also impacted our estimate.

[1408] $57,459,063 = $48,695,625 + 8,763,438.

[1409] We calculated the decrease of four Form SF–3s by multiplying the average number of Form S–3s filed (71) by 5%.

[1410] Based on staff reviews, we believe that it is unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt-A mortgages in ABS registration statements.

[1411] This is based on the number of registration statements for asset-backed issuers currently filed on Form S–3 and the new shelf eligibility requirements.

[1412] *See* the 2004 ABS Adopting Release.

[1413] *See* the 2011 ABS Issuer Review Adopting Release.

of filing a Form SF–3 since they generally do not impose significant new disclosure or record-keeping obligations.[1414] We note that we have added a disclosure component to the asset review provision to require information about the reasonableness of the delinquency trigger selected by the transaction parties. We did not increase the total burden hours for this additional disclosure because the additional burden to provide this information should be minimal since issuers already have the required information.

We estimate that the incremental burden for asset-backed issuers to complete the additional disclosure requirements for Form SF–3, prepare the information, and file it with the Commission will be 100 burden hours per response on Form SF–3. As a result, we estimate that each Form SF–3 will take approximately 1,380 hours to complete and file.[1415] We estimate the total internal burden for Form SF–3 to be 24,495 hours and the total related professional costs to be $29,394,000.[1416] This would result in a corresponding decrease in Form S–3 burden hours of 22,720 and $27,264,000 in professional costs.[1417]

3. Form S–1 and Form SF–1

New Form SF–1 is the ABS equivalent of existing Form S–1. As noted above, for purposes of our calculation, we estimate that the new requirements for shelf eligibility and new shelf procedures will cause some movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate four asset-backed issuers will move from the shelf system to the non-shelf system of Form SF–1.[1418] From 2004 through 2013, an average of two Forms S–1 were filed annually by asset-backed issuers. Correspondingly, we estimate that the number of filings on Form SF–1 will be six, which is the sum of the two average filings per year and the estimated incremental four filings from shelf to Form SF–1.

For ABS filings on Form S–1, we have used the same estimate of burden per response that we used for Form S–3, because the disclosures in both filings are similar.[1419] Even under the new requirements, the disclosures will continue to be similar for shelf registration statements and non-shelf registration statements. The burden for the new requirements for the Asset Data File to be filed as an exhibit to Forms SF–1 and SF–3 is included in the new Form ABS–EE collection of information discussed above. Thus, we estimate that an ABS Form SF–1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF–3. We estimate the total number of hours to prepare and file each Form SF–1 to be 1,380, the total annual burden to be 2,070 hours and added costs for professional expenses to be $2,484,000.[1420] This will result in a corresponding decrease in Form S–1 burden hours of 640 and $768,000 in professional costs.[1421]

4. Form 10–K

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a specified set of Form 10–K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10–K. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10–K for an asset-backed issuer. We believe that our revisions related to the disclosure requirements for material instances of noncompliance will cause an increase in the number of hours incurred to prepare, review, and file Form 10–K by five hours. We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average rate of $400 per hour. We also estimate that 1,046 Form 10–K filings for asset-backed issuers are filed per year, based on the average number of Forms 10–K filed over the period 2004–2013. Therefore, we estimate for PRA purposes that the increase in total annual number of hours to prepare, review, and file Form 10–K for asset-backed issuers will be 5,230 hours.[1422] We allocate 75% of those hours (3,923) to internal burden and the remaining 25% to external costs totaling $523,000 using a rate of $400 per hour.

5. Form 10–D

In 2004, we adopted Form 10–D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information.

In 2004, we estimated that it would take 30 hours to complete and file Form 10–D.[1423] We also estimate that 13,014 Form 10–D filings are filed per year based on current annual responses.[1424]

[1414] In connection with the new shelf eligibility requirements, we are adopting a number of ongoing disclosure requirements that will be triggered at the time a particular provision (e.g., the asset review or investor communications provision) is invoked. As discussed below, the burden of these additional disclosure requirements is reflected in the revised burden estimate for Form 10–D.

[1415] The total burden hours to file Form SF–3 are calculated by adding the existing burden hours of 1,280 that we estimate for Form S–3 and the incremental burden of 100 hours imposed by our new requirements for a total of 1,380 total burden hours.

[1416] To calculate these values, we first multiply the total burden hours per Form SF–3 (1,380) by the number of Forms SF–3 expected under the new requirements (71), resulting in 97,980 total burden hours. Then, we allocate 25% of those hours to internal burden, resulting in 24,495 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $29,394,000.

[1417] To calculate these values, we first multiply the total burden hours per Form S–3 (1,280) by the average number of Forms S–3 over the period 2004–2013 (71), resulting in 90,880 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 22,720 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $27,264,000.

[1418] We estimate in the section above that the requirements relating to shelf eligibility and new shelf procedures will cause a 5% movement in the number of ABS filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF–1 will utilize unregistered offerings or offshore offerings for offerings of ABS.

[1419] *See* Section IV.B.2 of the 2004 ABS Proposing Release.

[1420] The total burden hours to file Form SF–1 are calculated by adding the existing burden hours of 1,280 and the incremental burden of 100 hours imposed by the new requirements for total of 1,380 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF–1 (1,380) by the number of Forms SF–1 expected under the new requirements (six), resulting in 8,280 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 2,070 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $2,484,000.

[1421] To calculate these values, we first multiply the total burden hours per Form S–1 (1,280) by the average number of Form S–1s filed during 2004–2013 (two), resulting in 2,560 total burden hours. Then, we allocate 25% of these hours to internal burden, resulting in 640 hours. We allocate the remaining 75% of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $768,000.

[1422] To calculate the annual internal and external costs, we first multiply the incremental burden of five hours imposed by the new requirements by the number of Forms 10–K (1,046), resulting in an increase of 5,230 burden hours.

[1423] *See* the 2004 ABS Adopting Release.

[1424] To calculate current annual responses, we used the average number of respondents that filed

Continued

As discussed above, we are adopting asset-level disclosure requirements that relate to ongoing performance of the assets to be filed at the same time as Form 10–D; the burden of this requirement is included in our estimate of the asset-level disclosure collection of information requirements. We estimate that the new Regulation AB disclosure requirements that will be included in Form 10–D related to the asset review (Item 1121(d)), investor communications (Item 1121(e)), and material changes to the sponsor's interest in the transaction (Item 1124) will result in an additional burden of five hours for Items 1121(d) & (e), plus two hours for Item 1124 per filing to prepare. Therefore, we estimate that the new requirements will increase the number of hours to prepare, review, and file a Form 10–D to 37 hours, thereby increasing the total burden hours for all Form 10–Ds filed annually to 481,518 hours. We allocate 75% of those hours (361,139) to internal burden and the remaining 25% to external costs totaling $48,151,800 using a rating of $400 per hour.

6. Form 8–K

Our current PRA estimate for Form 8–K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities. In the 2010 ABS Proposing Release, we noted three portions of the proposal which would cause an increase in the number of reports on Form 8–K for ABS issuers; however, we are not adopting any of those proposed requirements.[1425] We are amending Form 8–K to include a specific item number under which static pool information that is filed on Form 8–K must be reported. This amendment will assist investors in locating static pool information that is incorporated by reference into the prospectus. Because the static pool requirement is included in the existing burden estimate for Form S–3, which we are transferring to the new Form SF–3, we are not assigning any additional burden hours to the Form 8–K for this new requirement.

7. Regulation S–K and Regulation S–T

Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. As noted above, Regulation S–T contains the requirements that govern the electronic submission of documents.

The new rules and rule amendments that we are adopting will result in revisions to Regulation S–K and Regulation S–T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to asset-backed issuers. The rules in Regulation S–K and Regulation S–T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour each to Regulation S–T and Regulation S–K for administrative convenience.

E. Summary of Changes to Annual Burden of Compliance in Collection of Information

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the new registration statements and forms for asset-backed issuers. Bracketed numbers indicate a decrease in the estimate.

Form	Current annual responses [1426]	Final annual responses	Current burden hours	Decrease or increase in burden hours	Final burden hours	Current professional costs	Decrease or increase in professional costs	Final professional costs
S–3	1,153	1,082	136,192	[22,720]	113,472	163,435,444	[27,264,000]	136,171,444
S–1	903	901	219,501	[640]	218,861	263,401,488	[768,000]	262,633,488
SF–3		71		24,495	24,495		29,394,000	29,394,000
SF–1		6		2,070	2,070		2,484,000	2,484,000
10–K	8,137	8,137	12,198,094	3,923	12,202,017	1,626,412,494	523,000	1,626,935,494
10–D	13,014	13,014	292,815	68,324	361,139	39,042,000	9,109,800	48,151,800
Form ABS–EE		13,374		170,089	170,089		57,459,063	57,459,063

XI. Regulatory Flexibility Act Certification

In Part XIV of the 2010 ABS Proposing Release and Part IX of the 2011 ABS Re-Proposing Release, we certified pursuant to 5 U.S.C. 605(b) that the new rules contained in this release would not have a significant economic impact on a substantial number of small entities. One commenter provided comments in response to the Commission's request for written comments regarding this certification.[1427] This commenter faulted the Commission for reaching its conclusion by ''focusing exclusively on the size of the sponsors that would be required to comply.'' [1428] The commenter suggested that the analysis should extend beyond the impact on small entities as sponsors of securitization transactions.[1429] This commenter did not suggest that there would be a significant impact on entities directly subject to any of the rules we had proposed.[1430] Further, the commenter did not describe the nature of any impact on small entities or provide empirical data to support the extent of the impact. The Regulatory Flexibility Act analysis only applies to those entities ''which will be subject to the requirement[s]'' of the rule.[1431]

Form 10–Ds between 2011 and 2013, which was 2,169. We then multiplied the average number of respondents (2,169) by the average number of times that a respondent would file a Form 10–D per year (6) for a total of 13,014 Form 10–Ds per year. Different types of asset-backed securities have different distribution periods, and the Form 10–D is filed for each distribution period. We derived the multiplier of six by comparing the number of Forms 10–D that have been filed since 2006 with the number of Forms 10–K (which are only required to be filed once a year) that have been filed.

[1425] *See* Section X.B.5. of the 2010 ABS Proposing Release.

[1426] The current annual responses reflects the average number of filings that the Commission has received from 2011 to 2013.

[1427] *See* letter from ABA II.

[1428] *Id.*

[1429] In justifying a thorough regulatory analysis, the ABA contended, ''[g]iven securitization's pervasive role in our economy and the importance of securitization to the availability of credit to small businesses, it is difficult to fathom how the 2010 ABS Proposals, as revised by the Re-Proposing Release, if adopted, would not have a significant impact on a substantial number of small entities.''

[1430] *See* letter from ABA II.

[1431] *See* 5 U.S.C. 604(a)(5). *See also Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327, 343 (D.C. Cir.

Accordingly, based on the analysis set forth in the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release, we continue to believe that the rules being adopted would not have a significant economic impact on a substantial number of small entities.

XII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the new rules, forms and amendments contained in this document under the authority set forth in Sections 5, 6, 7, 8, 10, 19(a) and 28 of the Securities Act, Sections 12, 13, 15, 23(a), 35A and 36 of the Exchange Act, and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 229, 232, 239, 240, 243 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3,78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

■ 2. Amend § 229.512 by:

■ a. In paragraph (a)(1)(iii)(B) adding the phrase ‘‘, Form SF–3 (§ 239.45 of this chapter)’’ immediately after the phrase, ‘‘Form S–3 (§ 239.13 of this chapter)’’;

■ b. In paragraph (a)(1)(iii)(C) removing the phrase ‘‘on Form S–1 (§ 239.11 of this chapter) or Form S–3 (§ 239.13 of this chapter)’’ and adding in its place ‘‘on Form SF–1 (§ 239.44 of this chapter) or Form SF–3 (§ 239.45 of this chapter)’’;

■ c. Adding paragraphs (a)(5)(iii) and (a)(7); and

■ d. Removing paragraph (l).

The additions read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(5) * * *

(iii) If the registrant is relying on § 230.430D of this chapter:

(A) Each prospectus filed by the registrant pursuant to § 230.424(b)(3) and (h) of this chapter shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to § 230.424(b)(2), (b)(5), or (b)(7) of this chapter as part of a registration statement in reliance on § 230.430D of this chapter relating to an offering made pursuant to § 230.415(a)(1)(vii) or (a)(1)(xii) of this chapter for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in § 230.430D of this chapter, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

* * * * *

(7) If the registrant is relying on § 230.430D of this chapter, with respect to any offering of securities registered on Form SF–3 (§ 239.45 of this chapter), to file the information previously omitted from the prospectus filed as part of an effective registration statement in accordance with § 230.424(h) and § 230.430D of this chapter.

* * * * *

■ 3. Amend § 229.601 by:

■ a. Revising the exhibit table in paragraph (a); and

■ b. Adding paragraphs (b)(36) and (b)(102) through (b)(106).

The additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

* * * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K	ABS–EE
(1) Underwriting agreement	X	X	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	.....	X	X	X	X	X	X	.....	X	X	.....
(3) (i) Articles of incorporation	X	.....	X	X	X	.....	X	X	.....	X	X	X	X	X	X	.....
(ii) Bylaws	X	.....	X	X	X	.....	X	X	.....	X	X	X	X	X	X	.....
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	.....
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

1985) (reasoning that because ‘‘Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy’’), *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 869 (D.C. Cir. 2001) (reasoning that ‘‘to require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected’’).

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review												X				
(8) Opinion re tax matters	X	X	X	X	X		X	X	X	X						
(9) Voting trust agreement	X				X		X	X		X	X				X	
(10) Material contracts	X		X	X	X		X	X		X	X		X	X	X	
(11) Statement re computation of per share earnings	X				X		X	X		X	X			X	X	
(12) Statements re computation of ratios	X	X			X		X	X		X	X				X	
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[3]					X										X	
(14) Code of Ethics												X			X	
(15) Letter re unaudited interim financial information	X	X			X	X	X	X	X	X				X		
(16) Letter re change in certifying accountant[4]	X				X		X				X	X			X	
(17) Correspondence on departure of director												X				
(18) Letter re change in accounting principles														X	X	
(19) Report furnished to security holders														X		
(20) Other documents or statements to security holders												X				
(21) Subsidiaries of the registrant	X		X	X	X		X	X		X	X				X	
(22) Published report regarding matters submitted to vote of security holders													X	X	X	
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X		[5]X	[5]X	[5]X	[5]X	
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X		X	X	
(25) Statement of eligibility of trustee	X	X	X	X	X			X	X	X						
(26) Invitation for competitive bids	X	X	X	X	X			X	X	X						
(27) through (30) [Reserved]																
(31) (i) Rule 13a–14(a)/15d–14(a) Certifications															X	
(ii) Rule 13a–14/15d–14 Certifications															X	
(32) Section 1350 Certifications[6]														X	X	
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers															X	
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities															X	
(35) Servicer compliance statement															X	
(36) Depositor Certification for shelf offerings of asset-backed securities				X												
(37) through (94) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(95) Mine Safety Disclosure Exhibit														X	X	
(96) through (98) [Reserved]																
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
(100) XBRL-Related Documents											X	X		X	X	
(101) Interactive Data File	X	X			X		X	X	X	X		X		X	X	
(102) Asset Data File			X	X									X			X
(103) Asset Related Documents			X	X									X			X
(104) [Reserved]																
(105) [Reserved]																
(106) Static Pool PDF			X	X								X				

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[4] If required pursuant to Item 304 of Regulation S–K.

[5] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

* * * * *

(b) * * *

(36) *Certification for shelf offerings of asset-backed securities.* Provide the certification required by General Instruction I.B.1.(a) of Form SF–3 (§ 239.45 of this chapter) exactly as set forth below:

Certification

I [identify the certifying individual] certify as of [the date of the final prospectus under § 230.424 of this chapter] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the ''securities'') and am familiar with, in all material respects, the following: The characteristics of the securitized assets underlying the offering (the ''securitized assets''), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to

state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

4. Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

5. The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

Date: _____

_____

_____

[Signature]

_____

[Title]

The certification must be signed by the chief executive officer of the depositor, as required by General Instruction I.B.1.(a) of Form SF–3.

* * * * *

(102) *Asset Data File.* An Asset Data File (as defined in § 232.11 of this chapter) filed pursuant to Item 1111(h)(3) of Regulation AB (§ 229.1111(h)(3)).

(103) *Asset Related Document.* Additional asset-level information or explanatory language pursuant to Item 1111(h)(4) and (5) of Regulation AB (§ 229.1111(h)(4) and (h)(5)).

(104) [Reserved].

(105) [Reserved]

(106) *Static pool.* If not included in the prospectus filed in accordance with § 230.424(b)(2) or (5) and (h) of this chapter, static pool disclosure as required by § 229.1105.

* * * * *

■ 4. Amend § 229.1100 by:

■ a. Revising the heading and introductory text of paragraph (c); and

■ b. Revising paragraph (f).

The revisions read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(c) *Presentation of certain third party information.* If information of a third party is required in a filing by Item 1112(b) of this Regulation AB (Information regarding significant obligors) (§ 229.1112(b)), Items 1114(b)(2) or 1115(b) of this Regulation AB (Information regarding significant provider of enhancement or other support) (§ 229.1114(b)(2) or (§ 229.1115(b)), or Item 1125 of this Regulation AB (Asset-level information) (§ 229.1125) such information, in lieu of including such information, may be provided as follows:

* * * * *

(f) *Filing of required exhibits.* Where agreements or other documents in this Regulation AB (§§ 229.1100 through 229.1124) are specified to be filed as exhibits to a Securities Act registration statement, such agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8–K (§ 249.308 of this chapter) in the case of offerings registered on Form SF–3 (§ 239.45 of this chapter). Final agreements must be filed and made part of the registration statement no later than the date the final prospectus is required to be filed under § 230.424 of this chapter.

■ 5. Amend § 229.1101 by:

■ a. In paragraphs (c)(3)(ii)(A) and (B) removing the references to ''50%'' and adding in their place ''25%''; and

■ b. Adding paragraph (m).

The addition reads as follows:

§ 229.1101 (Item 1101) Definitions.

* * * * *

(m) *Asset representations reviewer* means any person appointed to review the underlying assets for compliance with the representations and warranties on the underlying pool assets and is not affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates. The asset representations reviewer shall not be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. The asset representations reviewer also shall not be the same party or an affiliate of any party hired by the sponsor or underwriter to perform pre-closing due diligence work on the pool assets.

■ 6. Amend § 229.1102 by adding a second sentence to paragraph (a) to read as follows:

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

* * * * *

(a) * * * Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

* * * * *

■ 7. Amend § 229.1103 by adding an instruction after paragraph (a)(2) to read as follows:

§ 229.1103 (Item 1103) Transaction summary and risk factors.

(a) * * *

(2) * * *

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination. Include a cross-reference in the prospectus summary to the more detailed statistical information found in the prospectus.

* * * * *

■ 8. Amend § 229.1104 by:

■ a. In paragraph (e)(1) removing the phrase ''Section 3(a)(77) of the Securities Exchange Act of 1934)'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''; and

■ b. Adding paragraphs (f) and (g).

The additions read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the sponsor's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool

performance or performance of the asset-backed securities.

(g) Describe any interest that the sponsor, or any affiliate of the sponsor, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the sponsor or, if known, by an affiliate of the sponsor to offset the risk position held.

Instruction to Item 1104(g). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirements.

■ 9. Amend § 229.1105 by:

■ a. Adding introductory text;

■ b. Revising paragraph (a)(3)(ii);

■ c. Adding an instruction to paragraph (a)(3)(ii);

■ d. Adding paragraph (a)(3)(iv); and

■ e. Revising paragraph (c).

The additions and revisions read as follows:

§ 229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered, such as the extent to which the pool underlying the securities being offered was originated with the same or differing underwriting criteria, loan terms, and risk tolerances than the static pools presented. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) * * *

(3) * * *

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

* * * * *

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraph (a)(1), (a)(2) or (b) of this section, as applicable.

* * * * *

■ 10. Amend § 229.1108 by:

■ a. In paragraph (a)(3) removing the phrase ''(c) and (d)'' and adding in its place ''(c), (d), and (e)'';

■ b. Removing paragraph (c)(6);

■ c. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(6) and (c)(7); and

■ d. Adding paragraph (e).

The addition reads as follows:

§ 229.1108 (Item 1108) Servicers.

* * * * *

(e) Describe any interest that the servicer, or any affiliate of the servicer, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the servicer or, if known, by an affiliate of the servicer to offset the risk position held.

Instruction to Item 1108(e). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the servicer in order to satisfy such requirements.

■ 11. Amend § 229.1109 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (a)(1), (2), (3), (4), (5), and (6), respectively;

■ c. Redesignating the introductory text as paragraph (a) introductory text and adding the paragraph heading ''*Trustees.*'' to newly redesignated paragraph (a) introductory text; and

■ d. Adding new paragraph (b).

The revision and addition read as follows:

§ 229.1109 (Item 1109) Trustees and other transaction parties.

(a) *Trustees.* * * *

* * * * *

(b) *Asset representations reviewer.* Provide the following for each asset representations reviewer:

(1) State the asset representations reviewer's name and describe its form of organization.

(2) Describe to what extent the asset representations reviewer has had prior experience serving as an asset representations reviewer for asset-backed securities transactions involving similar pool assets.

(3) Describe the asset representations reviewer's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required of the asset representations reviewer, including whether notices are required to investors, rating agencies or other third parties, and any required percentage of a class or classes of asset-backed securities that is needed to require the asset representations reviewer to take action.

(4) Disclose the manner and amount in which the asset representations reviewer is compensated.

(5) Describe any limitations on the asset representations reviewer's liability under the transaction agreements regarding the asset-backed securities transaction.

(6) Describe any indemnification provisions that entitle the asset representations reviewer to be indemnified from the cash flow that otherwise would be used to pay holders of the asset-backed securities.

(7) Describe any contractual provisions or understandings regarding the asset representations reviewer's removal, replacement or resignation, as well as how the expenses associated with changing from one asset representations reviewer to another asset representations reviewer will be paid.

■ 12. Amend § 229.1110 by:

■ a. Adding a second sentence to paragraph (a); and

■ b. Adding paragraphs (b)(3) and (c).

The additions read as follows:

§ 229.1110 (Item 1110) Originators.

(a) * * * Also identify any originator(s) originating less than 10% of the pool assets if the cumulative amount originated by parties other than the sponsor or its affiliates is more than 10% of the pool assets.

(b) * * *

(3) Describe any interest that the originator, or any affiliate of the originator, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the originator or, if known, by an affiliate of the originator to offset the risk position held.

Instruction to Item 1110(b)(3). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the originator in order to satisfy such requirements.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the originator's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

■ 13. Amend § 229.1111 by:

■ a. Revising paragraph (e); and

■ b. Adding paragraph (h).

The revision and addition read as follows:

§ 229.1111 (Item 1111) Pool assets.

* * * * *

(e) *Representations and warranties and modification provisions relating to the pool assets.* Provide the following information:

(1) *Representations and warranties.* Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(2) *Modification provisions.* Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how such modification may affect the cash flows from the assets or to the securities.

* * * * *

(h) *Asset-level information.* (1) If the asset pool includes residential mortgages, commercial mortgages, automobile loans, automobile leases, debt securities or resecuritizations of asset-backed securities, provide asset-level information for each asset or security in the pool in the manner specified in Schedule AL (§ 229.1125).

(2) File the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. See § 232.301 of this chapter.

(3) File the Asset Data File as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(102) of Regulation S–K (§ 229.601(b)(102)).

(4) A registrant may provide additional explanatory disclosure related to an Asset Data File by filing an asset related document as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S–K (§ 229.601(b)(103)).

(5) A registrant may provide other asset-level information in addition to the information required by Schedule AL (§ 229.1125) by filing an asset related document as an exhibit to Form ABS–EE (§ 249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S–K (§ 229.601(b)(103)). The asset related document(s) must contain the definitions and formulas for each additional data point and the related tagged data and may contain explanatory disclosure about each additional data point.

Instruction to Item 1111(h). All of the information required by this Item must be provided at the time of every filing for each asset that was in the asset pool during the reporting period, including assets removed prior to the end of the reporting period.

§ 229.1112 [Amended]

■ 14. Amend § 229.1112 by:

■ a. Removing Instruction 2 to Item 1112(b); and

■ b. Redesignating Instructions 1, 3 and 4 to Item 1112(b) as Instructions 1, 2, and 3, respectively.

■ 15. Amend § 229.1113 by:

■ a. Adding paragraph (a)(7)(i); and

■ b. Adding and reserving paragraph (a)(7)(ii).

The addition reads as follows:

§ 229.1113 (Item 1113) Structure of the transaction.

(a) * * *

(7) * * *

(i) Describe how the delinquency threshold that triggers a review by the asset representations reviewer was determined to be appropriate. In describing the appropriateness of such delinquency threshold, compare such delinquency threshold against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type in accordance with Item 1105 of Regulation AB (§ 229.1105).

(ii) [Reserved]

* * * * *

§ 229.1114 [Amended]

■ 16. Amend § 229.1114 by:

■ a. Removing the heading ''Instructions to Item 1114:'' ;

■ b. Removing Instruction 3 to Item 1114(b); and

■ c. Redesignating Instructions 1, 2, 4 and 5 to Item 1114 as ''Instruction 1 to Item 1114(b)'', ''Instruction 2 to Item 1114(b)'', ''Instruction 3 to Item 1114(b)'' and ''Instruction 4 to Item 1114(b)'', respectively.

■ 17. Amend § 229.1119 by adding paragraph (a)(7) to read as follows:

§ 229.1119 (Item 1119) Affiliations and certain relationships and related transactions.

(a) * * *

(7) Asset representations reviewer.

* * * * *

■ 18. Amend § 229.1121 by:

■ a. Revising the second sentence of paragraph (a)(9); and

■ b. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

(a) * * *

(9) * * * Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§ 229.1100(b)) through no less than 120 days.

* * * * *

(d) *Asset review.* (1) If during the distribution period a review of the underlying assets for compliance with the representations and warranties on the underlying assets is required, provide the following information, as applicable:

(i) A description of the event(s) that triggered the review during the distribution period; and

(ii) If the asset representations reviewer provided to the trustee during the distribution period a report of the findings and conclusions of the review, a summary of the report.

(2) *Change in asset representations reviewer.* If during the distribution

period an asset representations reviewer has resigned or has been removed, replaced or substituted, or if a new asset representations reviewer has been appointed, state the date the event occurred and the circumstances surrounding the change. If a new asset representations reviewer has been appointed, provide the disclosure required by Item 1109(b) (§ 229.1109(b)), as applicable, regarding such asset representations reviewer.

(e) *Investor communication.* Disclose any request received from an investor to communicate with other investors during the reporting period received by the party responsible for making the Form 10–D filings on or before the end date of a distribution period. The disclosure regarding the request to communicate is required to include the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D (§ 249.312 of this chapter) has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.

Instruction to Item 1121(e). The party responsible for filing the Form 10–D (§ 249.312 of this chapter) is required to disclose an investor's interest to communicate only where the communication relates to an investor exercising its rights under the terms of the transaction agreement.

■ 19. Amend § 229.1122 by:
■ a. Revising paragraph (c)(1);
■ b. Redesignating paragraph (c)(2) as paragraph (c)(3);
■ c. Adding new paragraph (c)(2);
■ d. Adding paragraph (d)(1)(v);
■ e. Removing the heading ''Instructions to Item 1122:'';
■ f. Redesignating Instructions 1, 2 and 3 to Item 1122 as, ''Instruction 2 to Item 1122.'', ''Instruction 3 to Item 1122.'', and ''Instruction 4 to Item 1122.'', respectively; and
■ g. Adding a new instruction 1 to Item 1122.

The revision and additions read as follows:

§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.

* * * * *

(c) * * * (1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10–K (§ 249.310 of this chapter). Also disclose whether the identified instance was determined to have involved the servicing of the assets backing the asset-backed securities covered in this Form 10–K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

* * * * *

(d) * * *

(1) * * *

(v) Aggregation of information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.

* * * * *

Instruction 1 to Item 1122: The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

* * * * *

■ 20. Add § 229.1124 to read as follows:

§ 229.1124 (Item 1124) Sponsor interest in the securities.

Provide information about any material change in the sponsor's, or an affiliate's, interest in the securities resulting from the purchase, sale or other acquisition or disposition of the securities by the sponsor, or an affiliate, during the period covered by the report. Describe the change, including the amount of change and the sponsor's, or the affiliate's, resulting interest in the transaction after the change.

Instruction to Item 1124. The disclosure required under this item shall separately state the resulting amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirement.

■ 21A. Add § 229.1125 to read as follows:

§ 229.1125 (Item 1125) Schedule AL—Asset-level information.

(a) The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

(b) As required by Item 1111(h) (§ 229.1111(h)), provide asset-level information for each asset or security in the pool in the manner specified in Appendix to § 229.1125.

■ 21B. Add an appendix to § 229.1125 to read as follows:

Appendix to § 229.1125—Schedule AL

Item 1. Residential mortgages. If the asset pool includes residential mortgages, provide the following data and the data under Item 1 for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the residential mortgage.* (1) Original loan purpose. Specify the code which describes the purpose of the loan at the time the loan was originated.

(2) Originator. Identify the name of the entity that originated the loan.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made at the time the loan was originated.

(5) Original amortization term. Indicate the number of months that would have been required to retire the mortgage loan through regular payments, as determined at the origination date of the loan. In the case of an interest-only loan, the original amortization term is the original term to maturity (other than in the case of a balloon loan). In the case of a balloon loan, the original amortization term is the number of months used to calculate the principal and interest payment due each month (other than the balloon payment).

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Accrual type. Provide the code that describes the method used to calculate interest on the loan.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(9) Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(11) Original lien position. Indicate the code that describes the priority of the lien against the subject property at the time the loan was originated.

(12) Information related to junior liens. If the loan is a first mortgage with subordinate liens, provide the following additional information for each non-first mortgage if obtained or available:

(i) Most recent junior loan balance. Provide the most recent combined balance of any subordinate liens.

(ii) Date of most recent junior loan balance. Provide the date of the most recent junior loan balance.

(13) Information related to non-first mortgages. For non-first mortgages, provide the following information if obtained or available:

(i) Most recent senior loan amount. Provide the total amount of the balances of all associated senior loans.

(ii) Date of most recent senior loan amount. Provide the date(s) of the most recent senior loan amount.

(iii) Loan type of most senior lien. Indicate the code that describes the loan type of the first mortgage.

(iv) Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(v) Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(vi) Origination date of most senior lien. Provide the origination date of the associated first mortgage.

(14) Prepayment penalty indicator. Indicate yes or no as to whether the loan includes a penalty charged to the obligor in the event of a prepayment.

(15) Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.

(16) Modification indicator. Indicate yes or no as to whether the loan has been modified from its original terms.

(17) Number of modifications. Provide the number of times that the loan has been modified.

(18) Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.

(19) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum to fully pay off the loan.

(20) Covered/High cost loan indicator. Indicate yes, no or unknown as to whether as of the end of the reporting period the loan is categorized as ''high cost,'' ''higher priced'' or ''covered'' according to applicable federal, state or local statutes, ordinances or regulations.

(21) Servicer-placed hazard insurance. Indicate yes, no or unknown as to whether as of the end of the reporting period the hazard insurance on the property is servicer-placed.

(22) Refinance cash-out amount. For any refinance loan that is a cash-out refinance provide the amount the obligor received after all other loans to be paid by the mortgage proceeds have been satisfied. For any refinance loan that is a no-cash-out refinance provide the result of the following calculation: [NEW LOAN AMOUNT] – [PAID OFF FIRST MORTGAGE LOAN AMOUNT] – [PAID OFF SECOND MORTGAGE LOAN AMOUNT] – [CLOSING COSTS].

(23) Total origination and discount points. Provide the amount paid to the lender to increase the lender's effective yield and, in the case of discount points, to reduce the interest rate paid by the obligor.

(24) Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(25) Channel. Specify the code that describes the source from which the issuer obtained the loan.

(26) NMLS company number. Specify the National Mortgage License System (NMLS) registration number of the company that originated the loan.

(27) Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(28) Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(29) Information related to ARMs. If the loan is an ARM, provide the following additional information:

(i) Original ARM Index. Specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment.

(ii) ARM Margin. Indicate the number of percentage points that is added to the index value to establish the new interest rate at each interest rate adjustment date.

(iii) Fully indexed interest rate. Indicate the fully indexed interest rate to which the obligor was underwritten.

(iv) Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the loan and the first interest rate adjustment date.

(v) Initial interest rate decrease. Indicate the maximum percentage by which the interest rate may decrease at the first interest rate adjustment date.

(vi) Initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date.

(vii) Index look-back. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.

(ix) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) Subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xii) Subsequent interest rate increase. Provide the maximum number of percentage points by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiii) Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xiv) ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xv) ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvi) Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.

(xvii) Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xviii) Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.

(xix) Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xx) HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).

(xxi) HELOC draw period. Indicate the original maximum number of months from the month the loan was originated during

which the obligor may draw funds against the HELOC account.

(30) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information:

(i) Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) Prepayment penalty type. Specify the code that describes the type of prepayment penalty.

(iii) Prepayment penalty total term. Provide the total number of months after the origination of the loan that the prepayment penalty may be in effect.

(iv) Prepayment penalty hard term. For hybrid prepayment penalties, provide the number of months after the origination of the loan during which a ''hard'' prepayment penalty applies.

(31) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information:

(i) Negative amortization limit. Specify the maximum amount of negative amortization that is allowed before recalculating a fully amortizing payment based on the new loan balance.

(ii) Initial negative amortization recast period. Indicate the number of months after the origination of the loan that negative amortization is allowed.

(iii) Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first amortization recast period.

(iv) Negative amortization balance amount. Provide the amount of the negative amortization balance accumulated as of the end of the reporting period.

(v) Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) Initial periodic payment cap. Indicate the maximum percentage by which a payment can increase in the first amortization recast period.

(vii) Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can increase in one amortization recast period after the initial cap.

(viii) Initial minimum payment reset period. Provide the maximum number of months after the origination of the loan that an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) Subsequent minimum payment reset period. Provide the maximum number of months after the initial period an obligor can pay the minimum payment before a new minimum payment is determined.

(x) Minimum payment. Provide the amount of the minimum payment due during the reporting period.

(d) *Information related to the property.* (1) Geographic location. Specify the location of the property by providing the two-digit zip code.

(2) Occupancy status. Specify the code that describes the property occupancy status at the time the loan was originated.

(3) Most recent occupancy status. If a property inspection has been performed after the loan is originated, provide the code that describes the manner in which the property is occupied.

(4) Property type. Specify the code that describes the type of property that secures the loan.

(5) Most recent property value. If an additional property valuation was obtained by any transaction party or its affiliates after the original appraised property value, provide the most recent property value obtained.

(6) Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.

(7) Most recent property valuation date. Specify the date on which the most recent property value was reported.

(8) Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(9) Most recent AVM confidence score. If an additional AVM was obtained by any transaction party or its affiliates after the original valuation, provide the confidence score presented on the most recent AVM report.

(10) Original combined loan-to-value. Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(11) Original loan-to-value. Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(e) *Information related to the obligor.* (1) Original number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note at the time the loan was originated.

(2) Original obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Original obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(4) Most recent obligor credit score. If an additional credit score was obtained by any transaction party or its affiliates after the original credit score, provide the most recently obtained standardized credit score of the obligor.

(5) Most recent obligor credit score type. Specify the type of the most recently obtained standardized credit score of the obligor.

(6) Date of most recent obligor credit score. Provide the date of the most recently obtained standardized credit score of the obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(8) 4506—T Indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506–T) was obtained and considered.

(9) Originator front-end debt-to-income (DTI). Provide the front-end DTI ratio used by the originator to qualify the loan.

(10) Originator back-end DTI. Provide the back-end DTI ratio used by the originator to qualify the loan.

(11) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(12) Length of employment—obligor. Indicate whether the obligor was employed by its current employer for greater than 24 months at the time the loan was originated.

(13) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan was verified during the loan origination process.

(14) Original pledged assets. If the obligor(s) pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(15) Qualification method. Specify the code that describes the type of mortgage payment used to qualify the obligor for the loan.

(f) *Information related to mortgage insurance.* If mortgage insurance is required on the mortgage, provide the following additional information:

(1) Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.

(2) Mortgage insurance coverage. Indicate the total percentage of the original loan balance that is covered by mortgage insurance.

(3) Pool insurance company. Provide the name of the pool insurance provider.

(4) Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(5) Mortgage insurance coverage plan type. Specify the code that describes the coverage category of the mortgage insurance applicable to the loan.

(g) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added to the pool during the reporting period.

Instruction to paragraph (g)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicate yes or no whether the asset was modified during the reporting period.

(4) Next payment due date. For loans that have not been paid off, indicate the next payment due date.

(5) Advancing method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for

which the servicer ceased advancing principal or interest.

(8) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(9) Reporting period beginning scheduled loan balance. Indicate the scheduled principal balance of the loan as of the beginning of the reporting period.

(10) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(11) Reporting period interest rate. Indicate the interest rate in effect during the reporting period.

(12) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(13) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(14) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(15) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(16) Other loan-level servicing fee(s) retained by the servicer. Provide the amount of all other fees earned by loan administrators during the reporting period that reduced the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(17) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(18) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(19) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(20) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(21) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(22) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the loan as of the end of the reporting period.

(23) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees and escrows).

(24) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(25) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(26) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(27) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(28) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(29) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(30) Paid-in-full amount. Provide the scheduled loan ''paid-in-full'' amount (principal) (do not include the current month's scheduled principal). Applies to all liquidations and loan payoffs.

(31) Information related to servicer advances.

(i) Servicer advanced amount—principal. Provide the total amount the servicer advanced for the reporting period for due but unpaid principal on the loan.

(ii) Servicer advanced amounts repaid—principal. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid principal on the loan.

(iii) Servicer advances cumulative—principal. Provide the outstanding cumulative amount of principal advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(iv) Servicer advanced amount—interest. Provide the total amount the servicer advanced for the reporting period for due but unpaid interest on the loan.

(v) Servicer advanced amounts repaid—interest. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid interest on the loan.

(vi) Servicer advances cumulative—interest. Provide the outstanding cumulative amount of interest advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(vii) Servicer advanced amount—taxes and insurance. Provide the total amount the servicer advanced for the reporting period for due but unpaid property tax and insurance payments (escrow amounts).

(viii) Servicer advanced amount repaid—taxes and insurance. Provide the total amount of any payment made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid escrow amounts.

(ix) Servicer advances cumulative—taxes and insurance. Provide the outstanding cumulative amount of escrow advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(x) Servicer advanced amount—corporate. Provide the total amount the servicer advanced for property inspection and preservation expenses for the reporting period.

(xi) Servicer advanced amount repaid—corporate. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding corporate advances.

(xii) Servicer advances cumulative—corporate. Provide the outstanding cumulative amount of corporate advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

Instruction to paragraph (g)(31): For loans modified or liquidated during a reporting period the data provided in response to this paragraph (g)(31) is to be information as of the liquidation date or modification date, as applicable.

(32) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan.

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(33) Most recent 12-month pay history. Provide the string that indicates the payment status per month listed from oldest to most recent.

(34) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(35) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information.

(i) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment, if known.

(ii) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(iii) Next interest rate change date. Provide the next scheduled date on which the interest rate is scheduled to change.

(iv) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change, if known.

(v) Exercised ARM conversion option indicator. Indicate yes or no whether the obligor exercised an option to convert an ARM loan to a fixed interest rate loan during the reporting period.

(h) *Information related to servicers.* (1) Primary servicer. Indicate the name of the entity that serviced the loan during the reporting period.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(3) Master servicer. Provide the name of the entity that served as master servicer during the reporting period, if applicable.

(4) Special servicer. Provide the name of the entity that served as special servicer during the reporting period, if applicable.

(5) Subservicer. Provide the name of the entity that served as a subservicer during the reporting period, if applicable.

(i) *Asset subject to demand.* Indicate yes or no whether during the reporting period the

loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(j) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the total amount of uncollected principal charged off.

(2) Charged-off interest amount. Specify the total amount of uncollected interest charged off.

(k) [Reserved]

(l) *Loss mitigation type indicator.* Indicate the code that describes the type of loss mitigation the servicer is pursuing with the obligor, loan, or property as of the end of the reporting period.

(m) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Most recent loan modification event type. Specify the code that describes the most recent action that has resulted in a change or changes to the loan note terms.

(2) Effective date of the most recent loan modification. Provide the date on which the most recent modification of the loan has gone into effect.

(3) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(4) Post-modification interest rate type. Indicate whether the interest rate type on the loan after the modification is fixed, adjustable, step, or other.

(5) Post-modification amortization type. Indicate the amortization type after modification.

(6) Post-modification interest rate. Provide the interest rate in effect as of the modification effective payment date.

(7) Post-modification first payment date. Indicate the date of the first payment due after the loan modification.

(8) Post-modification loan balance. Provide the loan balance as of the modification effective payment date as reported on the modification documents.

(9) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(10) Total capitalized amount. Provide the amount added to the principal balance of the loan due to the modification.

(11) Income verification indicator (at modification). Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506–T) was obtained and considered during the loan modification process.

(12) Modification front-end DTI. Provide the front-end DTI ratio used to qualify the modification.

(13) Modification back-end DTI. Provide the back-end DTI ratio used to qualify the modification.

(14) Total deferred amount. Provide the deferred amount that is non-interest bearing.

(15) Forgiven principal amount (cumulative). Provide the total amount of all principal balance reductions as a result of loan modifications over the life of the loan.

(16) Forgiven principal amount (reporting period). Provide the total principal balance reduction as a result of a loan modification during the reporting period.

(17) Forgiven interest amount (cumulative). Provide the total amount of all interest forgiven as a result of loan modifications over the life of the loan.

(18) Forgiven interest amount (reporting period). Provide the total gross interest forgiven as a result of a loan modification during the reporting period.

(19) Actual ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the actual ending balance field plus the principal deferred amount. For all other loans, provide the actual ending balance.

(20) Scheduled ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the scheduled ending balance field plus the deferred amount. For all other loans, provide the scheduled ending balance.

(21) Information related to ARM loan modifications. If the loan was an ARM before and after the most recent modification, provide the following additional information:

(i) Post-modification ARM indicator. Indicate whether the loan's existing ARM parameters have changed per the modification agreement.

(ii) Post-modification ARM index. Specify the code that describes the index on which an adjustable interest rate is based as of the modification effective payment date.

(iii) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.

(iv) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(v) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(vi) Post-modification index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate as of the modification effective payment date.

(vii) Post-modification ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor as of the modification effective payment date.

(viii) Post-modification ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded as of the modification effective payment date.

(ix) Post-modification initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make as of the modification effective payment date.

(x) Post-modification next payment adjustment date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(xi) Post-modification ARM payment recast frequency. Provide the payment recast frequency of the loan (in months) per the modification agreement.

(xii) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiii) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiv) Post-modification initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date after the loan modification.

(xv) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date after the loan modification.

(xvi) Post-modification subsequent interest rate increase. Provide the maximum number of percentage points by which the rate may increase at each rate adjustment date after the initial rate adjustment as of the modification effective payment date.

(xvii) Post-modification subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment as of the modification effective payment date.

(xviii) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period as of the modification effective payment date.

(xix) Post-modification payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast as of the modification effective payment date.

(xx) Post-modification ARM interest rate teaser period. Provide the duration in months that the teaser interest rate is in effect as of the modification effective payment date.

(xxi) Post-modification payment teaser period. Provide the duration in months that the teaser payment is in effect as of the modification effective payment date.

(xxii) Post-modification ARM negative amortization indicator. Indicate yes or no whether a negative amortization feature is

part of the loan as of the modification effective payment date.

(xxiii) Post-modification ARM negative amortization cap. Provide the maximum percentage of negative amortization allowed on the loan as of the modification effective payment date.

(22) Information related to loan modifications involving interest-only periods. If the loan terms for the most recent loan modification include an interest only period, provide the following additional information:

(i) Post-modification interest-only term. Provide the number of months of the interest-only period from the modification effective payment date.

(ii) Post-modification interest-only last payment date. Provide the date of the last interest-only payment as of the modification effective payment date.

(23) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of the loan modification, not including deferred amounts.

(24) Information related to step loans. If the loans terms for the most recent loan modification agreement call for the interest rate to step up over time, provide the following additional information:

(i) Post-modification interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(ii) Post-modification step interest rate. Provide the rate(s) that will apply at each change date as stated in the loan modification agreement. All rates must be provided, not just the first change rate, unless there is only a single change date.

(iii) Post-modification step date. Provide the date(s) at which the next rate and/or payment change will occur per the loan modification agreement. All dates must be provided, not just the first change, unless there is only a single change date.

(iv) Post-modification—step principal and interest. Provide the principal and interest payment(s) that will apply at each change date as stated in the loan modification agreement. All payments must be provided, not just the first change payment, unless there is only a single change date.

(v) Post-modification—number of steps. Provide the total number of step rate adjustments under the step agreement.

(vi) Post-modification maximum future rate under step agreement. Provide the maximum interest rate to which the loan will step up.

(vii) Post-modification date of maximum rate under step agreement. Provide the date on which the maximum interest rate will be reached.

(25) Non-interest bearing principal deferred amount (cumulative). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(26) Non-interest bearing principal deferred amount (reporting period). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(27) Recovery of deferred principal (reporting period). Provide the amount of deferred principal collected from the obligor during the reporting period.

(28) Non-interest bearing deferred paid-in-full amount. If the loan had a principal forbearance and was paid in full or liquidated, provide the amount paid towards the amount of the principal forbearance.

(29) Non-interest bearing deferred interest and fees amount (reporting period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the reporting period.

(30) Non-interest bearing deferred interest and fees amount (cumulative). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(31) Recovery of deferred interest and fees (reporting period). Provide the amount of deferred interest and fees collected during the reporting period.

(n) *Information related to forbearance or trial modification.* If the type of loss mitigation is forbearance or a trial modification, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Most recent forbearance plan or trial modification start date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification started.

(2) Most recent forbearance plan or trial modification scheduled end date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification is scheduled to end.

(3) Most recent trial modification violated date. Provide the date on which the obligor ceased complying with the terms of the most recent trial modification.

(o) *Information related to repayment plan.* If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Most recent repayment plan start date. Provide the date on which the most recent repayment plan started.

(2) Most recent repayment plan scheduled end date. Provide the date on which the most recent repayment plan is scheduled to end.

(3) Most recent repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of the most recent repayment plan.

(p) *Information related to short sales.* Short sale refers to the process in which a servicer workers with a delinquent obligor to sell the property prior to the foreclosure sale. If the type of loss mitigation is short sale, provide the following information:

(1) Short sale accepted offer amount. Provide the amount accepted for a pending short sale.

(2) [Reserved]

(q) *Information related to loss mitigation exit.* If the loan has exited loss mitigation efforts during the reporting period, provide the following additional information:

(1) Most recent loss mitigation exit date. Provide the date on which the servicer deemed the most recent loss mitigation effort to have ended.

(2) Most recent loss mitigation exit code. Indicate the code that describes the reason the most recent loss mitigation effort ended.

(r) *Information related to loans in the foreclosure process.* If the loan is in foreclosure, provide the following additional information:

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(3) Foreclosure exit date. If the loan exited foreclosure during the reporting period, provide the date on which the loan exited foreclosure.

(4) Foreclosure exit reason. If the loan exited foreclosure during the reporting period, indicate the code that describes the reason the foreclosure proceeding ended.

(5) NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(s) *Information related to REO.* REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction. If the loan is REO, provide the following additional information:

(1) Most recent accepted REO offer amount. If an REO offer has been accepted, provide the amount accepted for the REO sale.

(2) Most recent accepted REO offer date. If an REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(3) Gross liquidation proceeds. If the REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD–1 settlement statement.

(4) Net sales proceeds. If the REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(5) Reporting period loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the reporting period, including subsequent loss adjustments and any forgiven principal as a result of a modification that was passed through to the issuing entity.

(6) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that was passed through to the issuing entity.

(7) Subsequent recovery amount. Provide the reporting period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(8) Eviction indicator. Indicate whether an eviction process has begun.

(9) REO exit date. If the loan exited REO during the reporting period, provide the date on which the loan exited REO status.

(10) REO exit reason. If the loan exited REO during the reporting period, indicate the code that describes the reason the loan exited REO status.

(t) *Information related to losses.*

(1) Information related to loss claims.

(i) UPB at liquidation. Provide the actual unpaid principal balance (UPB) at the time of liquidation.

(ii) Servicing fees claimed. Provide the amount of accrued servicing fees claimed at time of servicer reimbursement after liquidation.

(iii) Servicer advanced amounts reimbursed—principal. Provide the total amount of unpaid principal advances made by the servicer that were reimbursed to the servicer.

(iv) Servicer advanced amounts reimbursed—interest. Provide the total amount of unpaid interest advances made by the servicer that were reimbursed to the servicer.

(v) Servicer advanced amount reimbursed—taxes and insurance. Provide the total amount of any unpaid escrow amounts advanced by the servicer that were reimbursed to the servicer.

(vi) Servicer advanced amount reimbursed—corporate. Provide the total amount of any outstanding advances of property inspection and preservation expenses made by the servicer that were reimbursed to the servicer.

(vii) REO management fees. If the loan is in REO, provide the total amount of REO management fees (including auction fees) paid over the life of the loan.

(viii) Cash for keys/cash for deed. Provide the total amount paid to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(ix) Performance incentive fees. Provide the total amount paid to the servicer in exchange for carrying out a deed-in-lieu or short sale or similar activities.

(2) [Reserved]

(u) *Information related to mortgage insurance claims.* If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI claim paid date. If the MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If the MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If the MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred date. If the deed for the property has been conveyed to the MI company, provide the date of actual title conveyance to the MI company.

(v) *Information related to delinquent loans.* (1) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(2) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

Item 2. Commercial mortgages. If the asset pool includes commercial mortgages, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Group ID. Indicate the alpha-numeric code assigned to each loan group within a securitization.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the commercial mortgage.* (1) Originator. Identify the name or MERS organization number of the originator entity.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Maturity date. Indicate the date the final scheduled payment is due per the loan documents.

(6) Original amortization term. Indicate the number of months that would have been required to retire the loan through regular payments, as determined at the origination date of the loan.

(7) Original interest rate. Provide the rate of interest at the time the loan was originated.

(8) Interest rate at securitization. Indicate the annual gross interest rate used to calculate interest for the loan as of securitization.

(9) Interest accrual method. Provide the code that indicates the ''number of days'' convention used to calculate interest.

(10) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(11) Original interest-only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan.

(12) First loan payment due date. Provide the date on which the borrower must pay the first full interest and/or principal payment due on the mortgage in accordance with the loan documents.

(13) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(14) Lien position at securitization. Indicate the code that describes the lien position for the loan as of securitization.

(15) Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to the loan within the securitization.

(16) Payment type. Indicate the code that describes the type or method of payment for a loan.

(17) Periodic principal and interest payment at securitization. Provide the total amount of principal and interest due on the loan in effect as of securitization.

(18) Scheduled principal balance at securitization. Indicate the outstanding scheduled principal balance of the loan as of securitization.

(19) Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.

(20) Number of properties at securitization. Provide the number of properties which serve as mortgage collateral for the loan as of securitization.

(21) Number of properties. Provide the number of properties which serve as mortgage collateral for the loan as of the end of the reporting period.

(22) Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(23) Interest only indicator. Indicate yes or no whether this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(24) Balloon indicator. Indicate yes or no whether the loan documents require a lump-sum payment of principal at maturity.

(25) Prepayment premium indicator. Indicate yes or no whether the obligor is subject to prepayment penalties.

(26) Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(27) Modification indicator. Indicate yes or no whether the loan has been modified from its original terms.

(28) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective (subsequent to loan securitization).

(iii) First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after securitization).

(iv) ARM margin. Indicate the spread added to the index of an ARM loan to determine the interest rate at securitization.

(v) Lifetime rate cap. Indicate the maximum interest rate that can be in effect during the life of the loan.

(vi) Lifetime rate floor. Indicate the minimum interest rate that can be in effect during the life of the loan.

(vii) Periodic rate increase limit. Provide the maximum amount the interest rate can increase from any period to the next.

(viii) Periodic rate decrease limit. Provide the maximum amount the interest rate can decrease from any period to the next.

(ix) Periodic pay adjustment maximum amount. Provide the maximum amount the principal and interest constant can increase or decrease on any adjustment date.

(x) Periodic pay adjustment maximum percentage. Provide the maximum percentage amount the payment can increase or decrease from any period to the next.

(xi) Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) Index look back in days. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(29) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.

(ii) Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.

(30) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) Maximum negative amortization allowed. Provide the maximum amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(iii) Negative amortization/deferred interest capitalized amount. Indicate the amount for the reporting period that was capitalized (added to) the principal balance.

(iv) Deferred interest—cumulative. Indicate the cumulative deferred interest for the reporting period and prior reporting cycles net of any deferred interest collected.

(v) Deferred interest collected. Indicate the amount of deferred interest collected during the reporting period.

(d) *Information related to the property.* Provide the following information for each of the properties that collateralizes a loan identified above:

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with ''defeased.''

(2) Property address. Specify the address of the property which serves as mortgage collateral. If multiple properties, then print ''various.'' If the property has been defeased then leave field empty. For substituted properties, populate with the new property information.

(3) Property city. Specify the city name where the property which serves as mortgage collateral is located. If the property has been defeased, then leave field empty.

(4) Property state. Indicate the two character abbreviated code representing the state in which the property which serves as mortgage collateral is located.

(5) Property zip code. Indicate the zip (or postal) code for the property which serves as mortgage collateral.

(6) Property county. Indicate the county in which the property which serves as mortgage collateral is located.

(7) Property type. Indicate the code that describes how the property is being used.

(8) Net rentable square feet. Provide the net rentable square feet area of the property.

(9) Net rentable square feet at securitization. Provide the net rentable square feet area of the property as determined at the time the property is contributed to the pool as collateral.

(10) Number of units/beds/rooms. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property.

(11) Number of units/beds/rooms at securitization. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property at securitization.

(12) Year built. Provide the year that the property was built.

(13) Year last renovated. Provide the year that the last major renovation/new construction was completed on the property.

(14) Valuation amount at securitization. Provide the valuation amount of the property as of the valuation date at securitization.

(15) Valuation source at securitization. Specify the code that identifies the source of the property valuation.

(16) Valuation date at securitization. Provide the date the valuation amount at securitization was determined.

(17) Most recent value. If an additional property valuation was obtained by any transaction party or its affiliates after the valuation obtained at securitization, provide the most recent valuation amount.

(18) Most recent valuation date. Provide the date of the most recent valuation.

(19) Most recent valuation source. Specify the code that identifies the source of the most recent property valuation.

(20) Physical occupancy at securitization. Provide the percentage of rentable space occupied by tenants.

(21) Most recent physical occupancy. Provide the most recent available percentage of rentable space occupied by tenants.

(22) Property status. Provide the code that describes the status of the property.

(23) Defeasance option start date. Provide the date when the defeasance option becomes available.

(24) Defeasance status. Provide the code that indicates if a loan has or is able to be defeased.

(25) Largest tenant.

(i) Largest tenant. Identify the tenant that leases the largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(25)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of largest tenant. Provide total number of square feet leased by the largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(26) Second largest tenant.

(i) Second largest tenant. Identify the tenant that leases the second largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(26)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of second largest tenant. Provide the total number of square feet leased by the second largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(27) Third largest tenant.

(i) Third largest tenant. Identify the tenant that leases the third largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(27)(i): If the tenant is not occupying the space but is still paying rent, print ''Dark'' after tenant name. If tenant has sub-leased the space, print ''Sub-leased/name'' after tenant name.

(ii) Square feet of third largest tenant. Provide the total number square feet leased by the third largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

(28) Financial information related to the property. Provide the following information as of the most recent date available:

(i) Date of financials as of securitization. Provide the date of the operating statement for the property used to underwrite the loan.

(ii) Most recent financial as of start date. Specify the first date of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iii) Most recent financial as of end date. Specify the last day of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iv) Revenue at securitization. Provide the total underwritten revenue amount from all sources for a property as of securitization.

(v) Most recent revenue. Provide the total revenues for the most recent operating statement reported.

(vi) Operating expenses at securitization. Provide the total underwritten operating expenses as of securitization. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(vii) Operating expenses. Provide the total operating expenses for the most recent operating statement. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(viii) Net operating income at securitization. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties as of securitization.

(ix) Most recent net operating income. Provide the total revenues less total operating expenses before capital items and debt service per the most recent operating statement.

(x) Net cash flow at securitization. Provide the total underwritten revenue less total underwritten operating expenses and capital costs as of securitization.

(xi) Most recent net cash flow. Provide the total revenue less the total operating expenses and capital costs but before debt service per the most recent operating statement.

(xii) Net operating income or net cash flow indicator at securitization. Indicate the code that describes the method used to calculate at securitization net operating income or net cash flow.

(xiii) Net operating income or net cash flow indicator. Indicate the code that describes the method used to calculate net operating income or net cash flow.

(xiv) Most recent debt service amount. Provide the amount of total scheduled or actual payments that cover the same number of months as the most recent financial operating statement.

(xv) Debt service coverage ratio (net operating income) at securitization. Provide the ratio of underwritten net operating income to debt service as of securitization.

(xvi) Most recent debt service coverage ratio (net operating income). Provide the ratio of net operating income to debt service during the most recent operating statement reported.

(xvii) Debt service coverage ratio (net cash flow) at securitization. Provide the ratio of underwritten net cash flow to debt service as of securitization.

(xviii) Most recent debt service coverage ratio (net cash flow). Provide the ratio of net cash flow to debt service for the most recent financial operating statement.

(xix) Debt service coverage ratio indicator at securitization. If there are multiple properties underlying the loan, indicate the code that describes how the debt service coverage ratio was calculated.

(xx) Most recent debt service coverage ratio indicator. Indicate the code that describes how the debt service coverage ratio was calculated for the most recent financial operating statement.

(xxi) Date of the most recent annual lease rollover review. Provide the date of the most recent annual lease rollover review.

(e) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (e)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator—reporting period. Indicate yes or no whether the loan was modified during the reporting period.

(3) Reporting period beginning scheduled loan balance. Indicate the scheduled balance as of the beginning of the reporting period.

(4) Total scheduled principal and interest due. Provide the total amount of principal and interest due on the loan in the month corresponding to the current distribution date.

(5) Reporting period interest rate. Indicate the annualized gross interest rate used to calculate the scheduled interest amount due for the reporting period.

(6) Servicer and trustee fee rate. Indicate the sum of annual fee rates payable to the servicers and trustee.

(7) Scheduled interest amount. Provide the amount of gross interest payment that was scheduled to be collected during the reporting period.

(8) Other interest adjustment. Indicate any unscheduled interest adjustments during the reporting period.

(9) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(10) Unscheduled principal collections. Provide the principal prepayments and other unscheduled payments of principal received on the loan during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period, which are not considered unscheduled principal collections and are not scheduled principal amounts.

(12) Reporting period ending actual balance. Indicate the outstanding actual balance of the loan as of the end of the reporting period.

(13) Reporting period ending scheduled balance. Indicate the scheduled or stated principal balance for the loan (as defined in the servicing agreement) as of the end of the reporting period.

(14) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(15) Hyper-amortizing date. Provide the date after which principal and interest may amortize at an accelerated rate, and/or interest expense to the mortgagor increases substantially.

(16) Information related to servicer advances.

(i) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(ii) Non-recoverability determined. Indicate yes or no whether the master servicer/special servicer has ceased advancing principal and interest and/or servicing the loan.

(iii) Total principal and interest advance outstanding. Provide the total outstanding principal and interest advances made (or scheduled to be made by the distribution date) by the servicer(s).

(iv) Total taxes and insurance advances outstanding. Provide the total outstanding tax and insurance advances made by the servicer(s) as of the end of the reporting period.

(v) Other expenses advance outstanding. Provide the total outstanding other or miscellaneous advances made by the servicer(s) as of the end of the reporting period.

(17) Payment status of loan. Provide the code that indicates the payment status of the loan.

(18) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information:

(i) ARM index rate. Provide the index rate used to determine the gross interest for the reporting period.

(ii) Next interest rate. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(iii) Next interest rate change adjustment date. Provide the next date that the interest rate is scheduled to change.

(iv) Next payment adjustment date. Provide the date that the amount of scheduled principal and/or interest is next scheduled to change.

(f) *Information related to servicers.* (1) Primary servicer. Identify the name of the entity that services or will have the right to service the asset.

(2) Most recent special servicer transfer date. Provide the date the transfer letter, email, etc. provided by the master servicer is accepted by the special servicer.

(3) Most recent master servicer return date. Provide the date of the return letter, email, etc. provided by the special servicer which is accepted by the master servicer.

(g) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, indicate the code that describes the status of the repurchase demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase.

(h) *Realized loss to trust.* Indicate the difference between net proceeds (after liquidation expenses) and the scheduled or stated principal of the loan as of the beginning of the reporting period.

(i) *Information related to prepayments.* If a prepayment was received, provide the following additional information for each loan:

(1) Liquidation/Prepayment code. Indicate the code assigned to any unscheduled principal payments or liquidation proceeds received during the reporting period.

(2) Liquidation/Prepayment date. Provide the effective date on which an unscheduled principal payment or liquidation proceeds were received.

(3) Prepayment premium/yield maintenance received. Indicate the amount received from a borrower during the reporting period in exchange for allowing a borrower to pay off a loan prior to the maturity or anticipated repayment date.

(j) *Workout strategy.* Indicate the code that best describes the steps being taken to resolve the loan.

(k) *Information related to modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Date of last modification. Indicate the date of the most recent modification. A modification includes any material change to the loan document, excluding assumptions.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Post-modification interest rate. Indicate the new initial interest rate to which the loan was modified.

(4) Post-modification payment amount. Indicate the new initial principal and interest payment amount to which the loan was modified.

(5) Post-modification maturity date. Indicate the new maturity date of the loan after the modification.

(6) Post-modification amortization period. Indicate the new amortization period in months after the modification.

Item 3. Automobile loans. If the asset pool includes automobile loans, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile loan.* (1) Originator. Identify the name of the entity that originated the loan.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made.

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Interest calculation type. Indicate whether the interest rate calculation method is simple or other.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable or other.

(9) Original interest-only term. Indicate the number of months from origination in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Original first payment date. Provide the date of the first scheduled payment that was due after the loan was originated.

(11) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(12) Grace period. Indicate the number of months during which interest accrues but no payments are due from the obligor.

(13) Payment type. Specify the code indicating how often payments are required or if a balloon payment is due.

(14) Subvented. Indicate yes or no to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(2) Vehicle model. Provide the name of the model of the vehicle.

(3) New or used. Indicate whether the vehicle financed is new or used at the time of origination.

(4) Model year. Indicate the model year of the vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(e) *Information related to the obligor.* (1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(2) Obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(4) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(5) Co-obligor present indicator. Indicate whether the loan has a co-obligor.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the obligor and any other obligor at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of obligor. Specify the location of the obligor by providing the current U.S. state or territory.

(f) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(5) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(6) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(7) Reporting period interest rate. Indicate the current interest rate for the loan in effect during the reporting period.

(8) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(9) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(10) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(11) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(12) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(16) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(17) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(18) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(19) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(20) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(21) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(22) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(23) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(24) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(25) Current delinquency status. Indicate the number of days the obligor is delinquent past the obligor's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary loan servicer. Provide the name of the entity that services or will have the right to service the loan.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the amount of uncollected principal charged off.

(2) Amounts recovered. If the loan was previously charged off, specify any amounts received after charge-off.

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the asset was modified during the reporting period.

(2) Payment extension. Provide the number of months the loan was extended during the reporting period.

(k) *Repossessed.* Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition (net of repossession fees and expenses).

(2) [Reserved]

Item 4. Automobile leases. If the asset pool includes automobile leases, provide the following data for each lease in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile lease.* (1) Originator. Identify the name of the entity that originated the lease.

(2) Origination date. Provide the date the lease was originated.

(3) Acquisition cost. Provide the original acquisition cost of the lease.

(4) Original lease term. Indicate the term of the lease in months at the time the lease was originated.

(5) Scheduled termination date. Indicate the month and year in which the final lease payment is scheduled to be made.

(6) Original first payment date. Provide the date of the first scheduled payment after origination.

(7) Underwriting indicator. Indicate whether the lease met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(8) Grace period. Indicate the number of months during the term of the lease when no payments are due from the lessee.

(9) Payment type. Specify the code indicating the payment frequency of the lease.

(10) Subvented. Indicate yes or no whether a form of subsidy is received on the lease, such as cash incentives or favorable financing for the lessee.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the leased vehicle.

(2) Vehicle model. Provide the name of the model of the leased vehicle.

(3) New or used. Indicate whether the leased vehicle is new or used.

(4) Model year. Indicate the model year of the leased vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(8) Base residual value. Provide the securitized residual value of the leased vehicle.

(9) Source of base residual value. Specify the code that describes the source of the base residual value.

(10) Contractual residual value. Provide the residual value, as stated on the contract, that the lessee would need to pay to purchase the vehicle at the end of the lease term.

(e) *Information related to the lessee.* (1) Lessee credit score type. Specify the type of the standardized credit score used to evaluate the lessee during the lease origination process.

(2) Lessee credit score. Provide the standardized credit score of the lessee used to evaluate the lessee during the lease origination process.

(3) Lessee income verification level. Indicate the code describing the extent to which the lessee's income was verified during the lease origination process.

(4) Lessee employment verification. Indicate the code describing the extent to which the lessee's employment was verified during the lease origination process.

(5) Co-lessee present indicator. Indicate whether the lease has a co-lessee.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the lessee and any other co-lessee at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of lessee. Specify the location of the lessee by providing the current U.S. state or territory.

(f) *Information related to activity on the lease.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the lease maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent leases.

(5) Reporting period securitization value. Provide the sum of the present values, as of the beginning of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(6) Securitization value discount rate. Provide the discount rate of the lease for the securitization transaction.

(7) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(8) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(9) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(10) Other lease-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by lease administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(11) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the lessee.

(12) Reporting period ending actual balance. Indicate the actual balance of the lease as of the end of the reporting period.

(13) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(14) Total actual amount paid. Indicate the total lease payment received during the reporting period.

(15) Actual other amounts collected. Indicate the total of any amounts, other than the scheduled lease payment, collected during the reporting period, whether or not from the lessee.

(16) Reporting period ending actual securitization value. Provide the sum of the present values, as of the end of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(17) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(18) Paid through date. Provide the date through which scheduled payments have been made with the payment received during the reporting period, which is the effective date from which amounts due will be calculated for the application of the next payment.

(19) Zero balance leases. If the lease balance was reduced to zero during the reporting period, provide the following additional information about the lease:

(i) Zero balance effective date. Provide the date on which the lease balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the lease's balance was reduced to zero.

(20) Current delinquency status. Indicate the number of days the lessee is delinquent past the lessee's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary lease servicer. Provide the name of the entity that services or will have the right to service the lease.

(2) Most recent servicing transfer received date. If a lease's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the lease was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the lease is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the lease from the pool.

(3) Demand resolution date. Indicate the date the lease repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charge-off amounts. Provide the amount charged off on the lease.

(2) [Reserved]

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the lease was modified during the reporting period.

(2) Lease extension. Provide the number of months the lease was extended during the reporting period.

(k) *Information related to lease terminations.* If the lease was terminated, provide the following additional information:

(1) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(2) Excess fees. Specify the amount of excess fees received upon return of the vehicle, such as excess wear and tear or excess mileage.

(3) Liquidation proceeds. Provide the liquidation proceeds net of repossession fees, auction fees and other expenses in accordance with standard industry practice.

Item 5. Debt securities. If the asset pool includes debt securities, provide the following data for each security in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the standard industry identifier assigned to the asset. If a standard industry identifier is not assigned to the asset, provide a unique ID number for the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the underlying security.* (1) Issuer. Provide the name of the issuer.

(2) Original issuance date. Provide the date the underlying security was issued. For revolving asset master trusts, provide the issuance date of the receivable that will be added to the asset pool.

(3) Original security amount. Indicate the amount of the underlying security at the time the underlying security was issued.

(4) Original security term. Indicate the initial number of months between the month the underlying security was issued and the security's maturity date.

(5) Security maturity date. Indicate the month and year in which the final payment on the underlying security is scheduled to be made.

(6) Original amortization term. Indicate the number of months in which the underlying security would be retired if the amortizing principal and interest payment were to be paid each month.

(7) Original interest rate. Provide the rate of interest at the time the underlying security was issued.

(8) Accrual type. Provide the code that describes the method used to calculate interest on the underlying security.

(9) Interest rate type. Indicate the code that indicates whether the interest rate on the underlying security is fixed, adjustable, step or other.

(10) Original interest-only term. Indicate the number of months from the date the

underlying security was issued in which the obligor is permitted to pay only interest on the underlying security.

(11) First payment date from issuance. Provide the date of the first scheduled payment.

(12) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(13) Title of underlying security. Specify the title of the underlying security.

(14) Denomination. Give the minimum denomination of the underlying security.

(15) Currency. Specify the currency of the underlying security.

(16) Trustee. Specify the name of the trustee.

(17) Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(18) Underlying CIK number. Specify the CIK number of the issuer of the underlying security.

(19) Callable. Indicate whether the security is callable.

(20) Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.

(21) Zero coupon indicator. Indicate yes or no whether an underlying security or agreement is interest bearing.

(d) *Information related to activity on the underlying security.* (1) Asset added indicator. Indicate yes or no whether the underlying security was added to the asset pool during the reporting period.

Instruction to paragraph (d)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under § 230.424 of this chapter is filed.

(2) Modification indicator. Indicates yes or no whether the underlying security was modified from its original terms.

(3) Reporting period beginning asset balance. Indicate the outstanding principal balance of the underlying security as of the beginning of the reporting period.

(4) Reporting period beginning scheduled asset balance. Indicate the scheduled principal balance of the underlying security as of the beginning of the reporting period.

(5) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period.

(6) Reporting period interest rate. Indicate the interest rate in effect on the underlying security.

(7) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(8) Actual interest collected. Indicate the gross amount of interest collected during the reporting period.

(9) Actual principal collected. Indicate the amount of principal collected during the reporting period.

(10) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the underlying security to be decreased or increased during the reporting period.

(12) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Reporting period ending actual balance. Indicate the actual balance of the underlying security as of the end of the reporting period.

(16) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the underlying security as of the end of the reporting period.

(17) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(18) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers as an amount.

(19) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance code. Provide the code that indicates the reason the underlying security's balance was reduced to zero.

(ii) Zero balance effective date. Provide the date on which the underlying security's balance was reduced to zero.

(20) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the maturity date of the underlying security.

(21) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(22) Number of days payment is past due. If the obligor has not made the full scheduled payment, indicate the number of days since the scheduled payment date.

(23) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(24) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(25) Next due date. For assets that have not been paid off, indicate the next payment due date on the underlying security.

(e) *Information related to servicers.* (1) Primary servicer. Indicate the name or MERS organization number of the entity that serviced the underlying security during the reporting period.

(2) Most recent servicing transfer received date. If the servicing of the underlying security has been transferred, provide the effective date of the most recent servicing transfer.

(f) *Asset subject to demand.* Indicate yes or no whether during the reporting period the asset was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the asset is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the underlying security from the pool.

(3) Demand resolution date. Indicate the date the underlying security repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

Item 6. Resecuritizations.

(a) If the asset pool includes asset-backed securities, provide the asset-level information specified in Item 5. Debt Securities in this Schedule AL for each security in the asset pool.

(b) If the asset pool includes asset-backed securities issued November 23, 2016, provide the asset-level information specified in § 229.1111(h) for the assets backing each security in the asset pool.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 22. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. No. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.139a [Amended]

■ 23. Amend § 230.139a by:

■ a. In the introductory text removing the phrase ''General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) (''S–3 ABS'')'' and adding in its place ''Form SF–3 (§ 239.45 of this chapter) (''SF–3 ABS'')''; and

■ b. Removing the phrase ''S–3 ABS'' and adding in its place the phrase ''SF–3 ABS'' wherever it appears.

§ 230.167 [Amended]

■ 24. Amend § 230.167, paragraph (a), by removing the phrase ''meeting the requirements of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) and registered under the Act on Form S–3 pursuant to § 230.415'' and adding in its place ''registered on Form SF–3 (§ 239.45 of this chapter)''.

■ 25. Amend § 230.190 by:

■ a. Revising paragraph (b)(1);

■ b. In paragraph (b)(6) removing ''; and'' and adding a period in its place;
■ c. Removing paragraph (b)(7); and
■ d. Adding paragraph (d).

The revision and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

* * * * *

(b) * * *

(1) If the offering of asset-backed securities is registered on Form SF–3 (§ 239.45 of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form SF–3, Form S–3 (§ 239.13 of this chapter), or F–3 (§ 239.33 of this chapter) as a primary offering of such securities;

* * * * *

(d) Notwithstanding paragraph (c) of this section (that is, although the pool asset described in paragraph (c) of this section is an not an ''underlying security'' for purposes of this section), if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interest, those collateral certificates or special units of beneficial interest must be registered concurrently with the registration of the asset-backed securities. However, pursuant to § 230.457(t) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

§ 230.193 [Amended]

■ 26. Amend § 230.193 by removing the phrase ''Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)),'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)),''.

■ 27. Amend § 230.401 by:
■ a. In paragraph (g)(1) removing the phrase ''and (g)(3)'' and adding in its place '', (g)(3), and (g)(4)''; and
■ b. Adding paragraph (g)(4).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(4) Notwithstanding that the registration statement may have become effective previously, requirements as to proper form under this section will have been violated for any offering of securities where the requirements of General Instruction I.A. of Form SF–3 (§ 239.45 of this chapter) have not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering.

§ 230.405 [Amended]

■ 28. Amend § 230.405 by, in paragraph (1) of the definition of a *Free writing prospectus,* adding the phrase ''Rule 430D (§ 230.430D),'' before ''or Rule 431''.
■ 29. Amend § 230.415 by:
■ a. Revising paragraphs (a)(1)(vii) and (a)(1)(ix); and
■ b. Adding paragraph (a)(1)(xii).

The revisions and addition read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(vii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) registered (or qualified to be registered) on Form SF–3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;

Instruction to paragraph (a)(1)(vii): The requirements of General Instruction I.B.1 of Form SF–3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101(c)) registered in reliance on this paragraph (a)(1)(vii).

* * * * *

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101(c)), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

* * * * *

(xii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) that are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless:

(A) All of the securities being offered are sold at a specified price within a specified time; and

(B) The total amount due to the seller is received by him by a specified date.

* * * * *

■ 30. Amend § 230.424 by:
■ a. Adding in paragraph (b)(2) the phrase ''or, in the case of asset-backed securities, Rule 430D (§ 230.430D)'' after the phrase ''in reliance on Rule 430B (§ 230.430B),'';
■ b. Redesignating the Instruction following the note to paragraph (b)(8) as ''Instruction to paragraph (b):'' and in that newly redesignated instruction removing the phrase ''mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x)'' and adding in its place ''asset-backed securities under § 230.415(a)(1)(vii) or 230.415(a)(1)(xii)''; and
■ c. Adding paragraph (h).

The addition reads as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(h)(1) Three copies of a form of prospectus relating to an offering of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) disclosing information previously omitted from the prospectus filed as part of an effective registration statement in reliance on § 230.430D shall be filed with the Commission at least three business days before the date of the first sale in the offering, or if used earlier, the earlier of:

(i) The applicable number of business days before the date of the first sale; or

(ii) The second business day after first use.

(2) Three copies of a prospectus supplement relating to an offering of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) that reflects any material change from the information contained in a prospectus filed in accordance with § 230.424(h)(1) shall be filed with the Commission at least forty-eight hours before the date and time of the first sale in the offering. The prospectus supplement must clearly delineate what material information has changed and how the information has changed from the prospectus filed in accordance with paragraph (h)(1) of this section.

Instruction to paragraph (h): The filing requirements of this paragraph (h) do not apply if a filing is made solely to add fees pursuant to § 230.457 and for no other purpose.

§ 230.430B [Amended]

■ 31. Amend § 230.430B, paragraph (a), first sentence by removing the phrase ''Rule 415(a)(1)(vii) or (a)(1)(x) (§ 230.415(a)(1)(vii) or (a)(1)(x))'' and adding in its place ''Rule 415(a)(1)(x) (§ 230.415(a)(1)(x))''; and in the second sentence removing the phrase ''(vii) or ''.

§ 230.430C [Amended]

■ 32. Amend § 230.430C, paragraph (a), by adding the phrase ''or Rule 430D (§ 230.430D)'' after the phrase ''in reliance on Rule 430B (§ 230.430B)''.

■ 33. Add § 230.430D to read as follows:

§ 230.430D Prospectus in a registration statement after effective date for asset-backed securities offerings.

(a) A form of prospectus filed as part of a registration statement for primary offerings of asset-backed securities pursuant to § 230.415(a)(1)(vii) or § 230.415(a)(1)(xii) may omit from the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to § 230.409.

(b) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section (other than information with respect to offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price to the extent such information is unknown or not reasonably available to the issuer pursuant to § 230.409) shall be disclosed in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h). Each such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act (15 U.S.C. 77g).

(c) A form of prospectus filed as part of a registration statement that omits information in reliance upon paragraph (a) of this section meets the requirements of section 10 of the Act (15 U.S.C. 77j) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)). This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) (15 U.S.C. 77e(b)(2)) or exception (a) of section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)(a)).

(d)(1) Except as provided in paragraph (b) or (d)(2) of this section, information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section may be included subsequently in the prospectus that is part of a registration statement by:

(i) A post-effective amendment to the registration statement;

(ii) A prospectus filed pursuant to § 230.424(b); or

(iii) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with the applicable requirements, subject to the provisions of paragraph (h) of this section.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section that adds a new structural feature or credit enhancement must be included subsequently in the prospectus that is part of a registration statement by a post-effective amendment to the registration statement.

(e)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is first used after effectiveness.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(h) shall be deemed part of and included in the registration statement the earlier of the date such form of filed prospectus is filed with the Commission pursuant to § 230.424(h) or, if used earlier than the date of filing, the date it is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section, and is contained in a form of prospectus required to be filed with the Commission pursuant to § 230.424(b)(2) or (b)(5), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act (15 U.S.C. 77k) of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to § 230.412. The offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in § 230.436, a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act (15 U.S.C. 77g) because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act (15 U.S.C. 77k), the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter) (such person except for such reports being deemed not to be a person who signed the registration statement within the

meaning of section 11(a) of the Act (15 U.S.C. 77k(a)).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act (15 U.S.C. 77g), unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or § 230.436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act (15 U.S.C. 77g) or § 230.436.

(g) Notwithstanding paragraph (e) or (f) of this section or § 230.412(a), no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to § 230.424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities or the plan of distribution for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to § 230.424(b)(2) or (b)(5).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K (§ 229.512(a) of this chapter).

§ 230.433 [Amended]

■ 34. Amend § 230.433 by:

■ a. In paragraph (b)(1)(i) removing the phrase ''I.B.5, I.C., or I.D. thereof'' and adding in its place ''I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter)'';

■ b. In paragraph (c)(1)(i) removing the phrase ''Rule 430B or Rule 430C (§ 230.430B or § 230.430C)'' and adding in its place ''Rule 430B (§ 230.430B), Rule 430C (§ 230.430C) or Rule 430D (§ 230.430D)''; and

■ c. Removing paragraph (d)(6)(iii).

■ 35. Amend § 230.456 by adding paragraph (c) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(c)(1) Notwithstanding paragraph (a) of this section, an asset-backed issuer that registers asset-backed securities offerings on Form SF–3 (§ 239.45 of this chapter), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(1) of the Act (15 U.S.C. 77f(b)(1)) on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with § 230.457(s) in advance of or in connection with an offering of securities from the registration statement at the time of filing the prospectus pursuant to § 230.424(h) for the offering; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the ''Calculation of Registration Fee'' table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings on the cover page of a prospectus filed pursuant to § 230.424(h).

(2) A registration statement filed relying on the pay-as-you-go registration fee payment provisions of paragraph (c)(1) of this section will be considered filed as to the securities or classes of securities identified in the registration statement for purposes of this section and section 5 of the Act (15 U.S.C. 77e) when it is received by the Commission, if it complies with all other requirements of the Act and the rules with respect to it.

(3) The securities sold pursuant to a registration statement will be considered registered, for purpose of section 6(a) of the Act (15 U.S.C. 77f(a)), if the pay-as-you-go registration fee has been paid and the post-effective amendment or prospectus including the amended ''Calculation of Registration Fee'' table is filed pursuant to paragraph (c)(1) of this section.

■ 36. Amend § 230.457 by adding paragraphs (s) and (t) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(s) Where securities are asset-backed securities being offered pursuant to a registration statement on Form SF–3 (§ 239.45 of this chapter), the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to § 230.456(c), the ''Calculation of Registration Fee'' table in the registration statement must indicate that the issuer is relying on § 230.456(c) but does not need to include the number of units of securities or the maximum aggregate offering price of any securities until the issuer updates the ''Calculation of Registration Fee'' table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with § 230.456(c). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

(t) Where the security to be offered is a collateral certificate or is a special unit of beneficial interest, underlying asset-backed securities (as defined in § 229.1101(c) of this chapter) which are being registered concurrently, no separate fee for the certificate or the special unit of beneficial interest shall be payable.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 37. 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.

* * * * *

■ 38. Amend § 232.11 by adding a definition for ''Asset Data File'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Asset Data File. The term Asset Data File means the machine-readable computer code that presents information in eXtensible Markup Language (XML) electronic format pursuant to § 229.1111(h) of this chapter.

* * * * *

■ 39. Amend § 232.101 by:

■ a. In paragraph (a)(1)(xii) removing ''and'' after the semicolon;

■ b. Adding paragraph (a)(1)(xiv); and

■ c. Redesignating the note following paragraph (a)(3) as ''Note to paragraph (a)(3)'' and in the newly redesignated Note to paragraph (a)(3) removing the phrase ''F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33'' and adding in its place ''SF–3, F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45''.

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Form ABS–EE (§ 249.1401 of this chapter); and

* * * * *

■ 40. Amend § 232.201 by:

■ a. Revising paragraph (a) introductory text;

■ b. In Note 1 to paragraph (b) removing the phrase ''and F–3 (*see §§* 239.12, 239.13, 239.16b, 239.32 and 239.33 of this section'' and adding in its place '', F–3 and SF–3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33 and 239.45 of this chapter''; and

■ c. Adding paragraph (d).

The revision and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an Interactive Data File (§ 232.11), or an Asset Data File (as defined in § 232.11), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

(d) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File (as defined in § 232.11) and any asset related document pursuant to Items 601(b)(102) and 601(b)(103) (§§ 229.601(b)(102) and 229.601(b)(103) of this chapter) the electronic filer still can timely satisfy the requirement to submit the Asset Data File or any asset related document in the following manner by:

(1) Posting on a Web site the Asset Data File and any asset related documents unrestricted as to access and free of charge;

(2) Substituting for the Asset Data File and any asset related documents in the required Form ABS–EE (§ 249.1401 of this chapter), a statement specifying the Web site address and that sets forth the following legend; and

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE ASSET DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS.

(3) Submitting the required Asset Data File and asset related documents no later than six business days after the Asset Data File originally was required to be submitted.

§ 232.202 [Amended]

■ 41. Amend § 232.202, paragraph (a) introductory text, by removing the phrase ''or a Form D (§ 239.500 of this chapter)'' and adding in its place '', a Form D (§ 239.500 of this chapter), or an Asset Data File (§ 232.11)''.

■ 42. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (as defined in § 232.11) or XBRL-Related Documents (as defined in § 232.11).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 43. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78o–7, 78o–7 note, 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, and Pub. L. No. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 44. Revise § 239.11 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

■ 45. Amend Form S–1 (referenced in § 239.11) by revising General Instruction I. to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–1

This Form shall be used for the registration under the Securities Act of 1933 (''Securities Act'') of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 46. Amend § 239.13 by:

■ a. Removing paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6), and (a)(7), respectively;

■ c. Revising paragraph (b)(5); and

■ d. In paragraph (e) introductory text removing the phrase ''(a)(2), (a)(3) and (a)(4)'' and adding in its place ''(a)(2) and (a)(3)''.

The revision reads as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(5) This Form shall not be used to register offerings of asset-backed

securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 47. Amend Form S–3 (referenced in § 239.13) by:

■ a. Removing General Instruction I.A.4;

■ b. Redesignating General Instructions I.A.5, I.A.6, I.A.7, and I.A.8 as General Instructions I.A.4, I.A.5, I.A.6, and I.A.7, respectively;

■ c. Revising General Instruction I.B.5;

■ d. Removing ''I.B.5,'' in General Instruction II.F; and

■ e. Removing General Instruction V.

The revision reads as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM S–3

* * * * *

GENERAL INSTRUCTIONS

I. * * *

B. * * *

5. This Form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

* * * * *

■ 48. Add § 239.44 to read as follows:

§ 239.44 Form SF–1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This Form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

■ 49. Add Form SF–1 (referenced in § 239.44) to read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities

Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–1

This Form shall be used for the registration under the Securities Act of 1933 (''Securities Act'') of asset-backed securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.499) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S–K and Regulation AB (17 CFR part 229) for the requirements applicable to the content of registration statements under the Securities Act.

C. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

III. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number and CIK number of the issuer, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Incorporation of Certain Information by Reference

A. With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

1. The disclosures filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) and 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the prospectus that is part of the registration statement.

2. If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)), except that the third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

3. Incorporation by reference must comply with Item 10 of this Form.

B. Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8–K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement. Incorporation by reference must comply with Item 10 of this Form.

PART I
INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information With Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant obligors of pool assets;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that the following documents filed at or prior to the time of effectiveness shall be deemed incorporated by reference into the prospectus:

(1) Any disclosures pursuant to Item 1111(h) (17 CFR 229.1111(h)) and filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) or 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) or 601(b)(103)); and

(2) all current reports filed pursuant to Item 6.06 of Form 8–K (17 CFR 249.308) pursuant to Sections 13(a), 13(c), or 15(d) of the Exchange Act.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b)(1) You must state:

(i) That you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester;

(iv) the name, address, and telephone number to which the request for this information must be made; and

(v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(b)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b)(2) You must:

(i) Identify the reports and other information that you file with the SEC.

(ii) State that any materials you file with the SEC 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. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20 ____.

_____
(Registrant)
By

_____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and

controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

■ 50. Add § 239.45 to read as follows:

§ 239.45 Form SF–3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This Form may be used for registration under the Securities Act of 1933 (''Securities Act'') of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) of this section may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) of this section provided that the requirements applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of asset-backed securities offered in the transactions specified in paragraph (b) of this section:

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i) through (iv) of this section with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(i) of this section; and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) through (iv) of this section.

(iii) If such depositor or issuing entity fails to meet the requirements of paragraphs(a)(1)(i) and (ii) of this section, such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section; provided however that if the information is filed within 90 days of evaluating compliance with this paragraph (a) such depositor and issuing entity will be deemed to have been in compliance with such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section.

Instruction to paragraph (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1) of this section.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If § 240.12b–25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of ''affiliate'' in § 230.405 of this chapter.

(b) *Transaction Requirements.* If the registrant meets the registrant requirements specified in paragraph (a) of this section, an offering meeting the following conditions may be registered on this Form SF–3:

(1) Asset-backed securities (as defined in § 229.1101(c) of this chapter) to be offered for cash where the following have been satisfied:

(i) *Certification.* The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36) of this chapter) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

(ii) *Asset review provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not:

(*1*) Affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates; or

(*2*) The same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(*1*) A threshold of delinquent assets, as specified in the transaction

agreements, has been reached or exceeded; and

(*2*) An investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than:

(*i*) 5% of the total interest in the pool in order to initiate a vote and

(*ii*) A simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph (b)(1)(ii)(C) of this section are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to paragraph (b)(1)(ii). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that:

1. The delinquency threshold shall be calculated with respect to each sub-pool; and

2. The investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(iii) *Dispute resolution provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(iv) *Investor communication provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10–D (§ 249.312 of this chapter) include in the Form 10–D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to paragraph (b)(1)(iv). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following:

1. If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and

2. If the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(v) *Delinquent assets.* Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) *Residual value for certain securities.* With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) of this section where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of § 230.190(c)(1) through (4) of this chapter.

■ 51. Add Form SF–3 (referenced in § 239.45) to read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form SF–3 are to be offered pursuant to Rule 415 under the Securities Act of 1933, check the following box: [ ]

If this Form SF–3 is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form SF–3 is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered.	Amount to be registered ...	Proposed maximum offering price per unit.	Proposed maximum aggregate offering price.	Amount of registration fee.

Notes to the "Calculation of Registration Fee" Table ("Fee Table"):

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(s) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(c) and Rule 457(s). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(c)(1)(ii) (§ 230.456(c)(1)(ii) of this chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

3. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–3.

This instruction sets forth registrant requirements and transaction requirements for the use of Form SF–3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirements") provided that the requirements applicable to the specified transaction are met. Terms used in this Form have the same meaning as in Item 1101 of Regulation AB.

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form SF–3 for registration under the Securities Act of asset-backed securities offered in the transactions specified in I.B. below:

1. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in General Instructions I.B.1(a), I.B.1(b), I.B.1(c), and I.B.1(d) of this Form with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(a) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by I.B.1(a);

(b) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by I.B.1(b), I.B.1(c), and I.B.1(d); and

(c) If such depositor or issuing entity fails to meet the requirements of I.A.1(a) and I.A.1(b), such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form SF–3 90 days after the date it files the information required by I.A.1(a) and I.A.1(b).

Instruction to General Instruction I.A.1: The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of I.A.1.

2. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form SF–3 subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

B. Transaction Requirements. If the registrant meets the Registrant Requirements specified in I.A. above, an offering meeting the following conditions may be registered on Form SF–3:

1. Asset-backed securities (as defined in 17 CFR 229.1101(c)) to be offered for cash where the following have been satisfied:

(a) Certification. The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36)) signed by the chief executive officer of the depositor with

respect to each offering of securities that is registered on this Form.

(b) Asset Review Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not (i) affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates, or (ii) the same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(1) A threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and

(2) an investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than: (a) 5% of the total interest in the pool in order to initiate a vote and (b) a simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph C are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to I.B.1(b). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that (i) the delinquency threshold shall be calculated with respect to each sub-pool and (ii) the investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(c) Dispute Resolution Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(d) Investor Communication Provision. With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10–D (§ 249.312) include in the Form 10–D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10–D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to I.B.1(d). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following: (1) If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and (2) if the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(e) Delinquent assets. Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(f) Residual value for certain securities. With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

2. Securities relating to an offering of asset-backed securities registered in accordance with General Instruction I.B.1. where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 230.190(c)(1) through (4)).

II. Application of General Rules and Regulations.

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (l7 CFR 230.400 to 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form SF–3 directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate. Notwithstanding Items 501 and 502 of Regulation S–K, no table of contents is required to be included in the prospectus or registration statement prepared on this Form SF–3. In addition to the information expressly required to be included in a registration statement on this Form SF–3, registrants also may provide such other information as they deem appropriate.

C. Where securities are being registered on this Form SF–3, Rule 456(c) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(s) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(c) and Rule 457(s), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(c)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

D. Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§ 230.424(h) or § 230.424(b) of this chapter).

III. Registration of Additional Securities Pursuant to Rule 462(b).

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Registration Statement Requirements.

Include only one form of prospectus for the asset class that may be securitized in a takedown of asset-backed securities under the registration statement. A separate form of prospectus and registration statement must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities. For both separate asset classes and jurisdictions of origin or property, a separate form of prospectus is not required for transactions that principally consist of a particular asset class or jurisdiction which also describe one or more potential additional asset classes or jurisdictions, so long as the pool assets for the additional classes or jurisdictions in the aggregate are below 10% of the pool, as measured by dollar volume, for any particular takedown.

PART I
INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees and other transaction parties;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant obligors of pool assets;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information With Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Instruction: Registrants may elect to file the information required by this item pursuant to Item 6.06 of Form 8–K (17 CFR 249.308). Incorporation by reference must comply with Item 10 of this Form.

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that the following documents filed by the date of the filing of a preliminary prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(b)) or a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) are incorporated by reference into the prospectus that is part of the registration statement:

(1) The disclosures filed as exhibits to Form ABS–EE in accordance with Items 601(b)(102) and Item 601(b)(103) of Regulation S–K (17 CFR 601(b)(102) and 601(b)(103)); and

(2) except that if the pool assets include asset-backed securities of a third-party, then registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)). The third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 229.1101(k)).

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b) Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, pursuant to Item 6.06 of Form 8–K (17 CFR 249.308), provided that the information is incorporated by reference into the prospectus that is part of the registration statement.

(c) If the registrant is structured as a revolving asset master trust, the documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10–K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.

(d) The prospectus shall also provide a statement regarding the incorporation of reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways:

(1) A statement that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus; or

(2) a statement that all current reports on Form 8–K filed by the registrant pursuant to Sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(e)(1) You must state:

(i) That you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester;

(iv) the name, address, and telephone number to which the request for this information must be made; and

(v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated information and other documents may be accessed.

Note to Item 10(d)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

(i) Identify the reports and other information that you file with the SEC.

(ii) State that any materials you file with the SEC 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. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20____.

_____

(Registrant)

By

_____

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, and controller or principal accounting officer and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 52. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 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); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

§ 240.3a68–1a [Amended]

■ 53. Amend § 240.3a68–1a, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(*1*) through (*3*), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to ''3(a)(77) of the Act (15 U.S.C. 78c(a)(77))'' and adding in their place ''3(a)(79) of the Act (15 U.S.C. 78c(a)(79))''.

§ 240.3a68–1b [Amended]

■ 54. Amend § 240.3a68–1b, paragraphs (a)(1)(iv)(D), (a)(1)(iv)(G), (a)(1)(iv)(H)(*1*) through (*3*), (c)(1), (c)(3)(ii), (c)(4), and (c)(5) by removing references to ''3(a)(77) of the Act (15 U.S.C. 78c(a)(77))'' and adding in their place ''3(a)(79) of the Act (15 U.S.C. 78c(a)(79))''.

■ 55. Amend § 240.15c2–8 by:

■ a. In paragraph (b) revising the last sentence; and

■ b. Removing paragraph (j).

The revisions read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(b) * * * Provided, however, this paragraph (b) shall apply to all issuances of asset-backed securities (as defined in § 229.1101(c) of this chapter) regardless of whether the issuer has previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, or exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act (15 U.S.C. 78l).

* * * * *

§ 240.15d–22 [Amended]

■ 56. Amend § 240.15d–22, amend paragraphs (a) introductory text and (b)(1) by removing the reference ''230.415(a)(1)(x)'' and adding in its place ''230.415(a)(1)(xii)''.

* * * * *

§ 240.15Ga–1 [Amended]

■ 57. Amend § 240.15Ga–1, paragraph (a) by removing the reference to ''Section 3(a)(77) of the Securities Exchange Act of 1934)'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''.

§ 240.17g–7 [Amended]

■ 58. Amend § 240.17g–7, introductory text by removing the reference to ''Section 3(a)(77) of the Securities Exchange Act of 1934'' and adding in its place ''Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))''.

PART 243—REGULATION FD

■ 59. The authority citation for Part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

§ 243.103 [Amended]

■ 60. Amend § 243.103, paragraph (a) by removing the phrase ''and S–8 (17 CFR 239.16b)'' and adding in its place '', S–8 (17 CFR 239.16b) and SF–3 (17 CFR 239.45)''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 61. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 62. Amend Form 8–K (referenced in § 249.308) by:

■ a. Adding a checkbox to the end of the cover page;

■ b. Revising General Instruction G.2.; and

■ c. Adding Item 6.06.

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

G. Use of This Form by Asset-Backed Issuers. * * *

2. *Additional Disclosure for the Form 8–K Cover Page.* Immediately after the name of the issuing entity on the cover page of the Form 8–K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 6.06 Static Pool

Regarding an offering of asset-backed securities registered on Form SF–1 (17 CFR 239.44) or Form SF–3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a form of prospectus or prospectus, an issuer may file the required information in this report or as an exhibit to this report. The static pool disclosure must be filed by the time of effectiveness of a registration statement on Form SF–1, by the same date of the

filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)), and by the same date of the filing of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S–K (17 CFR 229.601(b)(106)) regarding the filing of exhibits to this Item 6.06.

2. Refer to Item 10 of Form SF–1 (17 CFR 239.44) or Item 10 of Form SF–3 (17 CFR 239.45) regarding incorporation by reference.

* * * * *

■ 63. Amend Form 10–K (referenced in § 249.310) by:

■ a. Adding a checkbox on the cover page before the paragraph that starts ''Indicate by check mark whether the registrant (1) has filed all reports . . .''; and

■ b. Revising General Instruction J(2)(a).

The revision reads as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(2) * * *

(a) Immediately after the name of the issuing entity on the cover page of the Form 10–K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

FORM 10–K

* * * * *

■ 64. Amend Form 10–D (referenced in § 249.312) by:

■ a. Revising General Instruction C(3);

■ b. Revising the beginning of the cover page above the line that reads ''(State or other jurisdiction of incorporation or organization of the issuing entity)'';

■ c. Adding a checkbox to the cover page before the paragraph that starts ''Indicate by check mark whether the registrant (1) has filed . . .'';

■ d. Revising General Instruction D;

■ e. Revising Item 1 in Part I;

■ f. Adding Item 1A in Part I;

■ g. Adding Item 1B in Part I;

■ h. Redesignating Items 7, 8, and 9 as Items 8, 9, and 10 in Part II; and

■ i. Adding new Item 7 in Part II.

The revisions and additions read as follows:

Note: The text of Form 10–D does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–D

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report. * * *

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. Identify the form or report on which the previously reported information was filed. Identifying information should include a Central Index Key number, file number and date of the previously reported information. The term ''previously reported'' is defined in Rule 12b–2 (17 CFR 240.12b–2).

D. Incorporation by Reference. * * *

(3) With respect to all registrants required to provide asset-level information pursuant to Item 1111(h) of Regulation AB (17 CFR 229.1111(h)):

(a) The disclosures filed as exhibits to Form ABS–EE in accordance with Item 601(b)(102) and Item 601(b)(103) of Regulation S–K (17 CFR 229.601(b)(102) and 601(b)(103)) must be incorporated by reference into the Form 10–D.

(b) If the pool assets include asset-backed securities of a third-party, registrants may reference the third-party's filings of asset-level data pursuant to Item 1100(c)(2) of Regulation AB (17 CFR 232.1100(c)(2)), except that the third-party is not required to meet the definition of significant obligor in Item 1101(k) of Regulation AB (17 CFR 232.1101(k)).

* * * * *

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–D

ASSET-BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

For the [identify distribution frequency (*e.g.,* monthly/quarterly)] distribution period from _____, 20____ to _____, 20____

Commission File Number of issuing entity: _____

Central Index Key Number of issuing entity: _____

_____

(Exact name of issuing entity as specified in its charter)

Commission File Number of depositor:

_____

Central Index Key Number of depositor:

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(Name and telephone number, including area code, of the person to contact in connection with this filing)

* * * * *

PART I—DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information.

Provide the information required by Item 1121(a) and (b) of Regulation AB (17 CFR 229.1121(a) and (b)), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1121(a) and (b) of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached distribution report and the information provided under this Item must contain the information required by Item 1121(a) and (b) of Regulation AB.

Item 1A. Asset-Level Information.

Provide the information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1125 of

Regulation AB (17 CFR 229.1125), Schedule AL—Asset-level information.

Item 1B. Asset Representations Reviewer and Investor Communication.

For any transaction that included the provisions required by General Instructions I.B.1(b) and I.B.1(d) on Form SF–3 (referenced in § 239.45), provide the information required by Item 1121(d) and (e) of Regulation AB (17 CFR 229.1121(d) and (e)), as applicable.

* * * * *

PART II—OTHER INFORMATION

* * * * *

Item 7. Change in Sponsor Interest in the Securities.

Provide the information required by Item 1124 of Regulation AB (17 CFR 229.1124) with respect to the reporting period covered by this report.

* * * * *

■ 65. Revise the heading of Subpart O of Part 249 to read as follows:

Subpart O—Forms for Asset-Backed Securities

■ 66. Add § 249.1401 to Subpart O to read as follows.

§ 249.1401 Form ABS–EE, for submission of the asset-data file exhibits and related documents.

This Form shall be used by an electronic filer for the submission of information required by Item 1111(h) (§ 229.1111(h) of this chapter).

■ 67. Add Form ABS–EE (referenced in § 249.1401) to read as follows:

Note: The text of Form ABS–EE does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM FOR SUBMISSION OF ELECTRONIC EXHIBITS FOR ASSET-BACKED SECURITIES

Commission File Number of the issuing entity: _____

Central Index Key Number of the issuing entity: _____

(Exact name of issuing entity as specified in its charter)

Commission File Number of the depositor: _____

Central Index Key Number of the depositor: _____

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if applicable): _____

(Exact name of sponsor as specified in its charter) _____

_____

(Name and telephone number, including area code, of the person to contact in connection with this filing)

INFORMATION TO BE INCLUDED WITH THIS FORM

Item 1. File an Asset Data File in accordance with Exhibit 601(b)(102) (17 CFR 229.601(b)(102)).

Item 2. File an Asset Related Document in accordance with Exhibit 601(b)(103) (17 CFR 229.601(b)(103)).

SIGNATURES

The depositor has duly caused this Form to be signed on its behalf by the undersigned hereunto duly authorized.

_____

(Depositor)

_____

(Signature)*

Date: _____

[OR]

_____

(Issuing Entity)

By: _____

(Servicer)*

_____

(Signature)*

Date: _____

*Print name and title of the signing officer under his signature.

Instruction. The report on this Form must be signed by the depositor. In the alternative, if the form is being filed to satisfy the disclosure requirements of Form 10–D (17 CFR 249.312) this Form may be signed on behalf of the issuing entity by a duly authorized representative of the servicer.

If multiple servicers are involved in servicing the pool assets, a duly authorized representative of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the report on behalf of the issuing entity.

By the Commission.

Dated: September 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21375 Filed 9–23–14; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

Board of Governors of The Federal Reserve System

Federal Deposit Insurance Corporation

Farm Credit Administration

Federal Housing Finance Agency

12 CFR Parts 45, 237, 349, et al.

Margin and Capital Requirements for Covered Swap Entities; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2011–0008]

RIN 1557–AD43

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1415]

RIN 7100–AD74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AE21

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AC69

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA45

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (''OCC''); Board of Governors of the Federal Reserve System (''Board''); Federal Deposit Insurance Corporation (''FDIC''); Farm Credit Administration (''FCA''); and the Federal Housing Finance Agency (''FHFA'').

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each an ''Agency'' and, collectively, the ''Agencies'') are seeking comment on a proposed joint rule to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This proposed rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities and their counterparties on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

DATES: Comments should be received on or before November 24, 2014.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of comments among the Agencies.

Office of the Comptroller of the Currency. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—''regulations.gov'': Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2011–0008'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- Email: *regs.comments@occ.treas.gov.*
- Mail: 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.
- Hand Delivery/Courier: 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- Fax: (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2011–0008'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. 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.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2011–0008'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. 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 a security screening in order to inspect and photocopy comments.
- Docket: You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R–1415 and RIN 7100 AD74, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- Fax: (202) 452–3819 or (202) 452–3102.
- Mail: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in

paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN 3064–AE21, by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- Email: *Comments@FDIC.gov.* Include RIN 3064–AE21 on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to *https://www.fdic.gov/regulations/laws/federal/index.html,* including any personal information provided.

Federal Housing Finance Agency: You may submit your written comments on the proposed rulemaking, identified by regulatory information number: RIN 2590–AA45, by any of the following methods:

- Agency Web site: *www.fhfa.gov/open-for-comment-or-input.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AA45'' in the subject line of the message.
- Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.
- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW., Washington, DC 20024.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA Web site at *http://www.fhfa.gov.* Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

Farm Credit Administration: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- Email: Send us an email at *reg-comm@fca.gov.*
- FCA Web site: *http://www.fca.gov.* Select ''Law & Regulation,'' then ''FCA Regulations,'' then ''Public Comments,'' then follow the directions for ''Submitting a Comment.''
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Law & Regulation,'' then ''FCA Regulations,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

OCC: Kurt Wilhelm, Director, Financial Markets Group, (202) 649–6437, Carl Kaminski, Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, or Laura Gardy, Counsel, Securities and Corporate Practices, (202) 649–5510, for persons who are deaf or hard of hearing, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Sean D. Campbell, Deputy Associate Director, Division of Research and Statistics, (202) 452–3760, Victoria M. Szybillo, Counsel, (202) 475–6325, or Anna M. Harrington, Senior Attorney, Legal Division, (202) 452–6406, Elizabeth MacDonald, Senior Supervisory Financial Analyst, Banking Supervision and Regulation, (202) 475–6316, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Markets Branch, *bbean@fdic.gov,* John Feid, Senior Policy Analyst, *jfeid@fdic.gov,* Ryan Clougherty, Capital Markets Policy Analyst, *rclougherty@fdic.gov,* Jacob Doyle, Capital Markets Policy Analyst, *jdoyle@fdic.gov,* Division of Risk Management Supervision, (202) 898–6888; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* or Catherine Topping, Counsel, *ctopping@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649–3196, *Robert.Collender@fhfa.gov,* or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649–3060, *Peggy.Balsawer@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

FCA: Timothy T. Nerdahl, Senior Financial Analyst, Jeremy R. Edelstein, Financial Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Act'' or ''Dodd-Frank Act'') was enacted on July 21, 2010.[1] Title VII of the Dodd-

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as ''swaps'' (which are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity-based swaps, and broad-based credit swaps) and ''security-based swaps'' (which are defined in section 761 of the Dodd-Frank Act to include single-name and narrow-based credit swaps and equity-based swaps).[2] For the remainder of this preamble, the term ''swaps'' refers to swaps and security-based swaps unless the context requires otherwise.

As part of this new regulatory framework, sections 731 and 764 of the Dodd-Frank Act add a new section, section 4s, to the Commodity Exchange Act of 1936, as amended (''Commodity Exchange Act'') and a new section, section 15F, to the Securities Exchange Act of 1934, as amended (''Exchange Act''), respectively, which require the registration by the Commodity Futures Trading Commission (the ''CFTC'') and the Securities and Exchange Commission (the ''SEC'') of swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (each a ''swap entity'' and, collectively, ''swap entities'').[3] For swap entities that are prudentially regulated by one of the Agencies,[4] sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (i) capital requirements and (ii) initial and variation margin requirements on all swaps not cleared by a central counterparty (''CCP'').[5] Swap entities that are prudentially regulated by one of the Agencies and therefore subject to the proposed rule are referred to herein as ''covered swap entities.''

Sections 731 and 764 of the Dodd-Frank Act also require the CFTC and SEC separately to adopt rules imposing capital and margin requirements for swap entities for which there is no prudential regulator.[6] The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements.[7]

The capital and margin standards for swap entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from non-cleared swaps.[8] Sections 731 and 764 of the Dodd-Frank Act require that the capital and margin requirements imposed on swap entities must, to offset such risk, (i) help ensure the safety and soundness of the swap entity and (ii) be appropriate for the greater risk associated with non-cleared swaps.[9] In addition, sections 731 and 764 of the Dodd-Frank Act require the Agencies, in establishing capital requirements for entities designated as covered swap entities for a single type or single class or category of swap or

[2] *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the CFTC, which is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. Section 764 of the Dodd-Frank Act requires security-based swap dealers and major security-based swap participants to register with the SEC, which is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the **SUPPLEMENTARY INFORMATION** accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

[4] Section 1a(39) of the Commodity Exchange Act defines the term ''prudential regulator'' for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The Board is the prudential regulator for any swap entity that is (i) a State-chartered bank that is a member of the Federal Reserve System, (ii) a State-chartered branch or agency of a foreign bank, (iii) a foreign bank which does not operate an insured branch, (iv) an organization operating under section 25A of the Federal Reserve Act (an Edge corporation) or having an agreement with the Board under section 25 of the Federal Reserve Act (an Agreement corporation), and (v) a bank holding company, a foreign bank that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, as amended, or a savings and loan holding company (on or after the transfer date established under section 311 of the Dodd-Frank Act), or a subsidiary of such a company or foreign bank (other than a subsidiary for which the OCC or FDIC is the prudential regulator or that is required to be registered with the CFTC or SEC as a swap dealer or major swap participant or a security-based swap dealer or major security-based swap participant, respectively). The OCC is the prudential regulator for any swap entity that is (i) a national bank, (ii) a federally chartered branch or agency of a foreign bank, or (iii) a Federal savings association. The FDIC is the prudential regulator for any swap entity that is (i) a State-chartered bank that is not a member of the Federal Reserve System or (ii) a State savings association. The FCA is the prudential regulator for any swap entity that is an institution chartered under the Farm Credit Act of 1971, as amended (the ''Farm Credit Act''). FHFA is the prudential regulator for any swap entity that is a ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (the ''Federal Housing Enterprises Financial Safety and Soundness Act'') (*i.e.,* the Federal National Mortgage Association (''Fannie Mae'') and its affiliates, the Federal Home Loan Mortgage Corporation (''Freddie Mac'') and its affiliates, and the Federal Home Loan Banks). *See* 7 U.S.C. 1a(39). In addition, OCC regulations provide that an operating subsidiary may engage only in activities that are permissible for its parent to conduct directly and require operating subsidiaries to conduct activities subject to the same authorization, terms, and conditions as apply to the conduct of those activities by the parent bank. FDIC regulations for subsidiaries of state-chartered banks incorporate similar limits to those imposed by the OCC for operating subsidiaries. Thus, if operating subsidiaries of a national bank or subsidiaries of a state-chartered bank engage in swap dealing below the aggregate *de minimis* dealer registration exemption thresholds established by the CFTC and SEC for registration as a swap dealer or security-based swap dealer, those subsidiaries must comply with the banking agencies' swap counterparty credit risk exposure safety and soundness requirements, regardless of whether the parent bank is registered as a swap dealer. If those subsidiaries engage in dealing activities above the CFTC and SEC registration thresholds, the subsidiaries must also comply with the margin requirements of this rule.

[5] *See* 7 U.S.C. 6s(e)(2)(A); 15 U.S.C. 78o–10(e)(2)(A). Section 6s(e)(1)(A) of the Commodity Exchange Act directs registered swap dealers and major swap participants for which there is a prudential regulator to comply with margin and capital rules issued by the prudential regulators, while section 6s(e)(1)(B) directs registered swap dealers and major swap participants for which there is not a prudential regulator to comply with margin and capital rules issued by the CFTC and SEC. Section 78o–10(e)(1) generally parallels section 6s(e)(1), except that section 78o–10(e)(1)(A) refers to registered security-based swap dealers and major security-based swap participants for which ''there is not a prudential regulator.'' The Agencies construe the ''not'' in section 78o–10(e)(1)(A) to have been included by mistake, in conflict with section 78o–10(e)(2)(A), and of no substantive meaning. Otherwise, registered security-based swap dealers and major security-based swap participants for which there is not a prudential regulator could be subject to multiple capital and margin rules, and institutions regulated by the prudential regulators and registered as security-based swap dealers and major security-based swap participants might not be subject to any capital and margin requirements under section 78o–10(e).

[6] *See* 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78o–10(e)(2)(B).

[7] *See* 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78o–10(e)(2)(A), 78o–10(e)(3)(D). Staff of the Agencies have consulted with staff of the CFTC and SEC in developing the proposed rule.

[8] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[9] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A). In addition, section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Director of FHFA, when promulgating regulations relating to the Federal Home Loan Banks, to consider the following differences between the Federal Home Loan Banks and Fannie Mae and Freddie Mac: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* 12 U.S.C. 4513. The Director of FHFA also may consider any other differences that are deemed appropriate. For purposes of this proposed rule, FHFA considered the differences as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

activities, to take into account the risks associated with other types, classes, or categories of swaps engaged in, and the other activities conducted by swap entities that are not otherwise subject to regulation.[10] Sections 731 and 764 become effective not less than 60 days after publication of the final rule or regulation implementing these sections.

In addition to the Dodd-Frank Act authorities mentioned above, the Agencies also have safety and soundness authority over the entities they supervise.[11] The Dodd-Frank Act specified that the provisions of its Title VII shall not be construed as divesting any Agency of its authority to establish or enforce prudential or other standards under other law.[12]

The capital and margin requirements for non-cleared swaps under sections 731 and 764 of the Dodd-Frank Act complement other Dodd-Frank Act provisions that require all sufficiently standardized swaps to be cleared through a derivatives clearing organization or clearing agency.[13] This requirement is consistent with the consensus of the G–20 leaders to clear derivatives through central counterparties where appropriate.[14]

In the derivatives clearing process, CCPs manage credit risk through a range of controls and methods, including a margining regime that imposes both initial margin and variation margin requirements on parties to cleared transactions.[15] Thus, the mandatory clearing requirement established by the Dodd-Frank Act for swaps effectively will require any party to any transaction subject to the clearing mandate to post initial and variation margin in connection with that transaction.

However, if a particular swap is not cleared because it is not subject to the mandatory clearing requirement (or because one of the parties to a particular swap is eligible for, and uses, an exemption from the mandatory clearing requirement), that swap will be a ''non-cleared'' swap and may be subject to the capital and margin requirements for such transactions established under sections 731 and 764 of the Dodd-Frank Act.

The swaps-related provisions of Title VII of the Dodd-Frank Act, including sections 731 and 764, are intended in general to reduce risk, increase transparency, promote market integrity within the financial system, and, in particular, address a number of weaknesses in the regulation and structure of the swaps markets that were revealed during the financial crisis of 2008 and 2009. During the financial crisis, the opacity of swap transactions among dealers and between dealers and their counterparties created uncertainty about whether market participants were significantly exposed to the risk of a default by a swap counterparty. By imposing a regulatory margin requirement on non-cleared swaps, the Dodd-Frank Act reduces the uncertainty around the possible exposures arising from non-cleared swaps.

Further, the most recent financial crisis revealed that a number of significant participants in the swaps markets had taken on excessive risk through the use of swaps without sufficient financial resources to make good on their contracts. By imposing an initial and variation margin requirement on non-cleared swaps, sections 731 and 764 of the Dodd-Frank Act will reduce the ability of firms to take on excessive risks through swaps without sufficient financial resources. Additionally, the minimum margin requirement will reduce the amount by which firms can leverage the underlying risk associated with the swap contract.

The Agencies originally published proposed rules to implement sections 731 and 764 of the Act in May 2011 (the ''2011 proposal'').[16] Over 100 comments were received in response to the 2011 proposal from a variety of commenters, including banks, asset managers, commercial end users, and various trade associations. Like the current proposal, the 2011 proposal was issued pursuant to the Dodd-Frank Act and each Agency's safety and soundness authority.

B. Other Dodd-Frank Act Provisions Affecting the Margin and Capital Rule

The applicability of the prudential regulators' margin requirements rely in part on regulatory action taken by the CFTC, the SEC, and the Secretary of the Treasury. The margin requirements will apply to an entity listed as prudentially regulated by the Agencies under the definition of ''prudential regulator'' in the Commodity Exchange Act[17] if that entity: (1) Is a swap dealer, major swap participant, security-based swap dealer, major security-based swap participant and (2) enters into a non-cleared swap. In addition, as a means of ensuring the safety and soundness of the covered swap entity's non-cleared swap activities under the proposed rule, the requirements would apply to all of a covered swap entity's swap and security-based swap activities without regard to whether the entity has registered as both a swaps entity and a security-based swaps entity. Thus, for example, for an entity that is a swap dealer but not a security-based swap dealer or major security-based swap participant, the proposed rule's requirements would apply to all of that swap dealer's non-cleared swaps and security-based swaps.

On May 23, 2012, the CFTC and SEC adopted a final joint rule defining ''swap dealer,'' ''major swap participant,'' ''security-based swap dealer,'' and ''major security-based swap dealer.'' These definitions include quantitative thresholds in the relevant activity that affect whether an entity subject to the ''prudential regulator'' definition also will be subject to the margin regulations being proposed.[18]

On August 13, 2012, the CFTC and SEC adopted a final joint rule defining ''swap,'' ''security-based swap,'' ''foreign exchange swap,'' and ''foreign

[10] *See* 7 U.S.C. 6s(e)(2)(C); 15 U.S.C. 78o–10(e)(2)(C). In addition, the margin requirements imposed by the Agencies must permit the use of noncash collateral, as the Agencies determine to be consistent with (i) preserving the financial integrity of the markets trading swaps and (ii) preserving the stability of the U.S. financial system. *See* 7 U.S.C. 6s(e)(3)(C); 15 U.S.C. 78o–10(e)(3)(C).

[11] 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.* and 12 U.S.C. 1461 *et seq.* (Board); 12 U.S.C. 2001 *et seq.;* 12 U.S.C. 2241 through 2274; 12 U.S.C. 2279aa–11; 12 U.S.C. 2279bb through bb–7 (FCA); 12 U.S.C. 4513 (FHFA).

[12] *See* Dodd-Frank Act sections 741(c) and 764(b).

[13] *See* 7 U.S.C. 2(h); 15 U.S.C. 78c–3. Certain types of counterparties (*e.g.,* counterparties that are not financial entities and are using swaps to hedge or mitigate commercial risks) are exempt from this mandatory clearing requirement and may elect not to clear a swap that would otherwise be subject to the clearing requirement.

[14] G–20 Leaders, June 2010 Toronto Summit Declaration, Annex II, ¶ 25. The dealer community has also recognized the importance of clearing—beginning in 2009, in an effort led by the Federal Reserve Bank of New York, the dealer community agreed to increase central clearing for certain credit derivatives and interest rate derivatives. *See* Press Release, Federal Reserve Bank of New York, New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives (June 2, 2009), *available at www.newyorkfed.org/newsevents/news/markets/2009/ma090602.html.*

[15] CCPs interpose themselves between counterparties to a swap transaction, becoming the buyer to the seller and the seller to the buyer and, in the process, taking on the credit risk that each party poses to the other. For example, when a swaps contract between two parties that are members of a CCP is executed and submitted for clearing, it is typically replaced by two new contracts—separate contracts between the CCP and each of the two original counterparties. At that point, the original counterparties are no longer counterparties to each other; instead, each faces the CCP as its counterparty, and the CCP assumes the counterparty credit risk of each of the original counterparties.

[16] 76 FR 27564 (May 11, 2011).

[17] *See* Dodd-Frank Act section 721; 7 U.S.C. 1(a)(39).

[18] *See* 77 FR 30596 (May 23, 2012), 77 FR 39626 (July 5, 2012) (correction of footnote in **SUPPLEMENTARY INFORMATION** accompanying the rule) and 77 FR 48207 (August 13, 2012); 17 CFR part 1; 17 CFR parts 230, 240, and 241.

exchange forward.'' [19] On November 16, 2012, the Secretary of the Treasury made a determination pursuant to sections 1a(47)(E) and 1(b) of the Commodity Exchange Act to exempt foreign exchange swaps and foreign exchange forwards from certain swap requirements, including margin requirements, that Title VII of the Dodd-Frank Act added to the Commodity Exchange Act.[20]

The CFTC has adopted a final rule requiring registration by entities meeting the substantive definition of swap dealer or major swap participant and engaging in relevant activities above the applicable quantitative thresholds.[21] As of June 29, 2014, 102 entities have registered as swap dealers, and 2 entities have registered as major swap participants, neither of which are insured depository institutions or otherwise among the entities listed in the prudential regulator definition. The SEC has not yet imposed a registration requirement on entities that meet the definition of ''security-based swap dealer,'' or ''major security-based swap participant.''

The CFTC and SEC have also adopted policies addressing how the Commodity Exchange Act's and Exchange Act's swap requirements will apply to ''cross-border swaps.'' [22]

C. The 2013 International Framework

Following the release of the Agencies' 2011 proposal, the Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') proposed an international framework for margin requirements on non-cleared swaps with the goal of creating an international standard for non-cleared swaps (the ''2012 international framework'').[23] Following the issuance of the 2012 international framework, the Agencies re-opened the comment period on the Agencies' 2011 proposal to allow for additional comment in relation to the 2012 international framework.[24] The 2012 international framework was also subject to extensive public comment before being finalized in September 2013 (the ''2013 international framework'').[25]

The 2013 international framework articulates eight key principles for non-cleared derivatives margin rules, which are described in further detail below. These principles represent the minimum standards approved by BCBS and IOSCO and recommended to the regulatory authorities in member jurisdictions of these organizations. Key principles 1 through 8 are described below.[26]

1. Appropriate Margining Practices Should Be in Place With Respect to All Non-Cleared Derivative Transactions

The 2013 international framework recommends that appropriate margining practices be in place with respect to all derivative transactions that are not cleared by CCPs. The 2013 international framework does not include a margin requirement for physically settled foreign exchange (FX) forwards and swaps.[27] The framework would also not apply initial margin requirements to the fixed physically settled FX component of cross-currency swaps.

2. Financial Firms and Systemically Important Nonfinancial Entities (Covered Entities) Must Exchange Initial and Variation Margin

The 2013 international framework recommends bilateral exchange of initial and variation margin for non-cleared derivatives between covered entities. The precise definition of ''covered entities'' is to be determined by each national regulator, but in general should include financial firms and systemically important nonfinancial entities. Sovereigns, central banks, certain multilateral development banks, the Bank for International Settlements (BIS), and non-systemic, nonfinancial firms are not included as covered entities.

Under the 2013 international framework, all covered entities that engage in non-cleared derivatives should exchange, on a bilateral basis, the full amount of variation margin with a zero threshold on a regular basis (*e.g.,* daily). All covered entities are also expected to exchange, on a bilateral basis, initial margin with a threshold not to exceed €50 million. The threshold applies on a consolidated group, rather than legal entity, basis. In addition, and in light of the permitted initial margin threshold, the 2013 international framework recommends that entities with non-cleared derivative activity of €8 billion notional or more would be subject to initial margin requirements.

3. The Methodologies for Calculating Initial and Variation Margin Should (i) Be Consistent Across Covered Entities, and (ii) Ensure That All Counterparty Risk Exposures Are Covered With a High Degree of Confidence

The 2013 international framework states that the potential future exposure of a non-cleared derivative should reflect an estimate of an increase in the value of the instrument that is consistent with a one-tailed 99% confidence level over a 10-day horizon (or longer, if variation margin is not collected on a daily basis), based on historical data that incorporates a period of significant financial stress.

The 2013 international framework permits the amount of initial margin to be calculated by reference to internal models approved by the relevant national regulator or a standardized margin schedule, but covered entities should not ''cherry pick'' between the two calculation methods. Models may allow for conceptually sound and empirically demonstrable portfolio risk offsets where there is an enforceable netting agreement in effect. However, portfolio risk offsets may only be recognized within, and not across, certain well-defined asset classes: Credit, equity, interest rates and foreign exchange, and commodities. A covered entity using the standardized margin schedule may adjust the gross initial margin amount (notional exposure multiplied by the relevant percentage in the table) by a ''net-to-gross ratio,'' which is also used in the bank counterparty credit risk capital rules to reflect a degree of netting of derivative

[19] *See* 77 FR 48207 (August 13, 2012); 17 CFR part 1; 17 CFR parts 230, 240, and 241.

[20] 77 FR 69694 (November 20, 2013).

[21] 77 FR 2613 (January 1, 2012); 17 CFR 23.21.

[22] 78 FR 45292 (July 26, 2013); 17 CFR part 1; 79 FR 39067 (July 9, 2014); 17 CFR parts 240, 241, and 250.

[23] See BCBS and IOSCO ''Consultative Document—Margin requirements for non-centrally cleared derivatives'' (July 2012), *available at http://www.bis.org/publ/bcbs226.pdf* and ''Second consultative document—Margin requirements for non-centrally cleared derivatives'' (February 2013), *available at http://www.bis.org/publ/bcbs242.pdf.*

[24] 77 FR 60057 (October 2, 2012).

[25] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), *available at https://www.bis.org/publ/bcbs261.pdf.*

[26] The 2013 international framework refers to swaps as ''derivatives.'' For purposes of the discussion in this section, the terms ''swaps'' and ''derivatives'' can be used interchangeably.

[27] The 2013 international framework states that variation margin standards for physically settled FX forwards and swaps should be addressed by national supervisors in a manner consistent with the BCBS supervisory guidance recommendations for these products. *See* BCBS ''Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions,'' (February 2013), *available at: https://www.bis.org/publ/bcbs241.pdf* (BCBS FX supervisory guidance). The Board implemented the BCBS FX supervisory guidance in SR letter 13–24 ''Managing Foreign Exchange Settlement Risks for Physically Settled Transactions'' (December 23, 2013) available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1324.htm.* As discussed elsewhere in this preamble, in 2012, the Secretary of the Treasury made a determination that physically-settled foreign exchange forwards and swaps are not to be considered swaps under the Dodd-Frank Act. 77 FR 69694 (November 20, 2012).

positions that are subject to an enforceable netting agreement.

4. To Ensure That Assets Collected as Collateral Can Be Liquidated in a Reasonable Amount of Time To Generate Proceeds That Could Sufficiently Protect Covered Entities From Losses in the Event of a Counterparty Default, These Assets Should Be Highly Liquid and Should, After Accounting for an Appropriate Haircut, Be Able To Hold Their Value in a Time of Financial Stress

The 2013 international framework recommends that national supervisors develop a definitive list of eligible collateral assets. The 2013 international framework includes examples of permissible collateral types, provides a schedule of standardized haircuts, and indicates that model-based haircuts may be appropriate. In the event that a dispute arises over the value of eligible collateral, the 2013 international framework provides that both parties should make all necessary and appropriate efforts, including timely initiation of dispute resolution protocols, to resolve the dispute and exchange any required margin in a timely fashion.

5. Initial Margin Should Be Exchanged on a Gross Basis and Held in Such a Way as To Ensure That (i) the Margin Collected Is Immediately Available to the Collecting Party in the Event of the Counterparty's Default, and (ii) the Collected Margin Is Subject to Arrangements That Fully Protect the Posting Party

The 2013 international framework provides that collateral collected as initial margin from a ''customer'' (defined as a ''buy-side financial firm'') should be segregated from the initial margin collector's proprietary assets. The initial margin collector also should give the customer the option to individually segregate its initial margin from other customers' margin. In very specific circumstances, the initial margin collector may use margin provided by the customer to hedge the risks associated with the customer's positions with a third party. To the extent that the customer consents to rehypothecation, it should be permitted only where applicable insolvency law gives the customer protection from risk of loss of initial margin in instances where either the initial margin collector or the third party become insolvent, or they both do. Where a customer has consented to rehypothecation and adequate legal safeguards are in place, the margin collector and the third party to whom customer collateral is rehypothecated should comply with additional restrictions detailed in the 2013 international framework, including a prohibition on any further rehypothecation of the customer's collateral by the third party.

6. Requirements for Transactions Between Affiliates Are Left to the National Supervisors

The 2013 international framework recommends that national supervisors establish margin requirements for transactions between affiliates as appropriate in a manner consistent with each jurisdiction's legal and regulatory framework.

7. Requirements for Margining Non-Cleared Derivatives Should Be Consistent and Non-Duplicative Across Jurisdictions

Under the 2013 international framework, home-country supervisors may allow a covered entity to comply with a host-country's margin regime if the host-country margin regime is consistent with the 2013 international framework. A branch may be subject to the margin requirements of either the headquarters' jurisdiction or the host country.

8. Margin Requirements Should Be Phased in Over an Appropriate Period of Time

The 2013 international framework phases in margin requirements between December 2015 and December 2019. Covered entities should begin exchanging variation margin by December 1, 2015. The date on which a covered entity should begin to exchange initial margin with a counterparty depends on the notional amount of non-cleared derivatives (including physically settled FX forwards and swaps) entered into both by its consolidated corporate group and by the counterparty's consolidated corporate group.

Currency denomination. The 2013 international framework generally lays out a broad conceptual framework for margining requirements on non-cleared derivatives. It also recommends specific quantitative levels for several parameters such as the level of notional derivative exposure that results in an entity being subject to the margin requirements (€8 billion), permitted initial margin thresholds (€50 million), and minimum transfer amounts (€500,000). In the 2013 international framework, all such amounts are denominated in Euros. In this proposal all such amounts are denominated in U.S. dollars. The Agencies are aware that, over time, amounts that are denominated in different currencies in different jurisdictions may fluctuate relative to one another due to changes in exchange rates. The Agencies seek comment on whether and how fluctuations resulting from exchange rate movements should be addressed. In particular, should these amounts be expressed in terms of a single currency in all jurisdictions to prevent such fluctuations? Should the amounts be adjusted over time if and when exchange rate movements necessitate realignment? Are there other approaches to deal with fluctuations resulting from significant exchange rate movements? Are there other issues that should be considered in connection to the effects of fluctuating exchange rates?

II. Overview of Proposed Rule

A. Margin Requirements

The Agencies have reviewed the comments received on the 2011 proposal and the 2013 international framework. The Agencies believe that a number of changes to the 2011 proposal are warranted in order to reflect certain comments received, as well as to achieve the 2013 international framework's goal of promoting global consistency and reducing regulatory arbitrage opportunities. In light of the significant differences from the 2011 proposal, the Agencies are seeking comment on a revised proposed rule to implement section 4s of the Commodity Exchange Act and section 15F of the Exchange Act (the ''proposal'' or the ''proposed rule'').

The Agencies are proposing to adopt a risk-based approach that would establish initial and variation margin requirements for covered swap entities. Consistent with the statutory requirement, the proposed rule would help ensure the safety and soundness of the covered swap entity and would be appropriate for the risk to the financial system associated with non-cleared swaps held by covered swap entities. The proposed rule takes into account the risk posed by a covered swap entity's counterparties in establishing the minimum amount of initial and variation margin that the covered swap entity must exchange with its counterparties.

In implementing this risk-based approach, the proposed rule distinguishes among four separate types of swap counterparties: (i) Counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure, and (iv) other

counterparties, including nonfinancial end users, sovereigns, and multilateral development banks.[28] These categories reflect the Agencies' current belief that risk-based distinctions can be made between these types of swap counterparties.

The proposed rule's initial and variation margin requirements generally apply to the posting, as well as the collection, of minimum initial and variation margin amounts by a covered swap entity from and to its counterparties. This proposal represents a refinement to the Agencies' original collection-only approach to margin requirements based on consideration of comments made on the 2011 proposal and the 2013 international framework. While the Agencies believe that imposing requirements with respect to the minimum amount of initial and variation margin to be collected is a critical aspect of offsetting the greater risk to the covered swap entity and the financial system arising from the covered swap entity's non-cleared swap exposure, the Agencies also believe that requiring a covered swap entity to post margin to other financial entities could forestall a build-up of potentially destabilizing exposures in the financial system. The proposed rule's approach therefore is designed to ensure that covered swap entities transacting with other swap entities and with financial end users in non-cleared swaps will be collecting and posting appropriate minimum margin amounts with respect to those transactions.

For initial margin, the proposed rule would require a covered swap entity to calculate its minimum initial margin requirement in one of two ways. The covered swap entity may use a standardized margin schedule, which is set out in Appendix A of the proposed rule. The standardized margin schedule allows for certain types of netting and offsetting of exposures. In the alternative, a covered swap entity may use an internal margin model that satisfies certain criteria outlined within § __.8 of the proposed rule and that has been approved by the relevant prudential regulator.[29]

Where a covered swap entity transacts with another swap entity (regardless of whether the other swap entity meets the definition of a ''covered swap entity'' under the proposed rule), the covered swap entity must collect at least the amount of initial margin required under the proposed rule. Likewise, the swap entity counterparty also will be required, under margin rules that are applicable to that swap entity,[30] to collect a minimum amount of initial margin from the covered swap entity.[31] Accordingly, covered swap entities will both collect and post a minimum amount of initial margin when transacting with another swap entity. A covered swap entity transacting with a financial end user with a material swaps exposure as specified by this proposed rule must collect at least the amount of initial margin required by the proposed rule and must post at least the amount of initial margin that the covered swap entity would be required by the proposal to collect if the covered swap entity were in the place of the counterparty. In addition, a covered swap entity must post or collect initial margin on at least a daily basis as required under the proposed rule in response to changes in the required initial margin amounts stemming from changes in portfolio composition or any other factors that result in a change in the required initial margin amounts.[32]

The proposed rule permits a covered swap entity to adopt a maximum initial margin threshold amount of $65 million, below which it need not collect or post initial margin from or to swap entities and financial end users with material swaps exposures. The threshold would be applied on a consolidated basis, and would apply both to the consolidated covered swap entity as well as to the consolidated counterparty.[33]

With respect to variation margin, the proposed rule generally requires a covered swap entity to collect or post variation margin on swaps with a swap entity or a financial end user (regardless of whether the financial end user has a material swaps exposure) in an amount that is at least equal to the increase or decrease in the value of the swap since the counterparties' previous exchange of variation margin. The proposed rule would not permit a covered swap entity to adopt a threshold amount below which it need not collect or post variation margin on swaps with swap entity and financial end user counterparties. In addition, a covered swap entity must collect or post variation margin with swap entities and financial end user counterparties under the proposed rule on at least a daily basis.[34]

The proposed rule's margin provisions establish only *minimum* requirements with respect to initial and variation margin. Nothing in the proposed rule is intended to prevent or discourage a covered swap entity from collecting or posting margin in amounts greater than is required under the proposed rule.

Under the proposal, a covered swap entity's collection of margin from ''other counterparties'' that are not swap entities or financial end users (e.g., nonfinancial or ''commercial'' end users that generally engage in swaps to hedge commercial risk, sovereigns, and multilateral developments banks), is subject to the judgment of the covered swap entity. That is, under the proposed rule, a covered swap entity is not required to collect initial and variation margin from these ''other counterparties'' as a matter of course. However, a covered swap entity should continue with the current practice of collecting initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines in its overall credit risk management of the swap entity's exposure to the customer.

Although covered swap entities would be required to collect variation margin from all financial end user counterparties under the proposed rule, no minimum initial margin requirement would apply to transactions with those financial end users that are not swap entities and that do not have a material swaps exposure. Thus, for the purpose of the initial margin requirements, financial end users that are not swap entities and that do not have a material swaps exposure would be treated in the same manner as entities characterized as ''other counterparties.''

The Agencies believe that differential treatment of ''other counterparties'' is consistent with the Dodd-Frank Act's

[28] *See* § __.2 of the proposed rule for the various constituent definitions that identify these four types of swap counterparties.

[29] *See* § __.8 and Appendix A of the proposed rule for a complete description of the requirements for initial margin models and standardized minimum initial margin requirements.

[30] All swap entities will be subject to a rule on minimum margin for non-cleared swaps promulgated by one of the Agencies, the SEC or the CFTC.

[31] The counterparty may be a covered swap entity subject to this proposed rule or a swap entity that is subject to the margin rules of the CFTC or SEC. If the counterparty is a covered swap entity, it must collect at least the amount of margin required under this proposal. If the counterparty is a swap entity subject to the margin rules of the CFTC or SEC, it must collect the amount of margin required under the CFTC or SEC margin rules.

[32] Under the proposed rule, when entering into a swap transaction, the first collection and posting of initial margin may be delayed for one day following the day the swap transaction is executed. Thereafter, posting and collecting initial margin must be made on at least a daily basis in response to changes in portfolio composition or any other factors that would change the required initial margin amounts.

[33] *See* §§ __.3 and ___.8 of the proposed rule for a complete description of the initial margin requirements.

[34] *See* § __.4 of the proposed rule for a complete description of the variation margin requirements.

risk-based approach to establishing margin requirements. However, the Agencies recognize that a covered swap entity may find it prudent from a risk management perspective to collect margin from one or more of these ''other counterparties.'' [35]

The proposed rule limits the types of collateral that are eligible to be used to satisfy both the initial and variation margin requirements. Eligible collateral is generally limited to high-quality, liquid assets that are expected to remain liquid and retain their value, after accounting for an appropriate risk-based ''haircut,'' during a severe economic downturn. Eligible collateral for variation margin is limited to cash only. Eligible collateral for initial margin includes cash, debt securities that are issued or guaranteed by the U.S. Department of Treasury or by another U.S. government agency, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, multilateral development banks, certain U.S. Government-sponsored enterprises' (''GSEs'') debt securities, certain foreign government debt securities, certain corporate debt securities, certain listed equities, and gold.[36] When determining the collateral's value for purposes of satisfying the proposed rule's margin requirements, non-cash collateral and cash collateral that is not denominated in U.S. dollars or the currency in which payment obligations under the swap are required to be settled would be subject to an additional ''haircut'' as determined using Appendix B of the proposed rule.[37] The limits on eligible collateral and application of a haircut would not apply to margin collected in excess of what is required by the rule.

Separate from the proposed rule's requirements with respect to the collection and posting of initial and variation margin, the proposed rule also would require a covered swap entity to require that any collateral other than variation margin that it posts to its counterparty (even collateral in excess of any required by the proposed rule) be segregated at one or more custodians that are not affiliates of the covered swap entity or the counterparty (''third-party custodian''). The proposed rule would also require a covered swap entity to place the initial margin it collects (in accordance with the proposed rule) from a swap entity or a financial end user with material swaps exposure at a third-party custodian.[38] In both of the foregoing cases, the proposed rule would require that the third-party custodian be prohibited by agreement from certain actions with respect to any of the funds or other property it holds as initial margin. First, the custodial agreement must prohibit rehypothecating, repledging, reusing or otherwise transferring, any of the funds or other property the third-party custodian holds. Second, with respect to initial margin required to be posted or collected, the custodial agreement must prohibit substituting or reinvesting any funds or other property in any asset that would not qualify as eligible collateral under the proposed rule. Third, the custodial agreement must require that after such substitution or reinvestment, the amount net of applicable discounts described in Appendix B continue to be sufficient to meet the requirements for initial margin under the proposal.[39] Funds or other property held by a third-party custodian but not required to be posted or collected under the rule are not subject to any of these restrictions on collateral substitution or reinvestment.

Given the global nature of swaps markets and swap transactions, margin requirements will be applied to transactions across different jurisdictions. As required by the Dodd-Frank Act, the Agencies are proposing a specific approach to address cross-border non-cleared swap transactions. Under the proposal, foreign swaps of foreign covered swap entities would not be subject to the margin requirements of the proposed rule.[40] In addition, certain covered swap entities that are operating in a foreign jurisdiction and covered swap entities that are organized as U.S. branches of foreign banks may choose to abide by the swap margin requirements of the foreign jurisdiction if the Agencies determine that the foreign regulator's swap margin requirements are comparable to those of the proposed rule.[41]

B. Capital Requirements

Sections 731 and 764 of the Dodd-Frank Act also require each Agency to issue, in addition to margin rules, joint rules on capital for covered swap entities for which it is the prudential regulator.[42] The Board, FDIC, and OCC (each a ''banking agency'' and, collectively, the ''banking agencies'') have had risk-based capital rules in place for banks to address over-the-counter (''OTC'') swaps since 1989 when the banking agencies implemented their risk-based capital adequacy standards (general banking risk-based capital rules) [43] based on the first Basel Accord.[44] The general banking risk-based capital rules have been amended and supplemented over time to take into account developments in the swaps market. These supplements include the addition of the market risk rule which requires banks and bank holding companies meeting certain thresholds to calculate their capital requirements for trading positions through models approved by their primary Federal supervisor.[45] In addition, certain large, complex banks and bank holding companies are subject to the banking agencies' advanced approaches risk-based capital rule (advanced approaches rules), based on the advanced approaches of the Basel II Accord.[46]

[35] *See* § __.3 and § __.4 of the proposed rule for a complete description of the initial and variation margin requirements that apply to ''other counterparties.''

[36] An asset-backed security guaranteed by a U.S. Government-sponsored enterprise is eligible collateral for purposes of initial margin if the GSE is operating with capital support or another form of direct financial assistance from the U.S. government (§ __.6(a)(2)(iii)).

[37] *See* § __.6 and Appendix B of the proposed rule for a complete description of the eligible collateral requirements.

[38] The segregation requirement therefore applies only to the minimum amount of initial margin that a covered swap entity is required to collect by the rule from a swap entity or financial end user with a material swaps exposure, but applies to all collateral (other than variation margin) that the covered swap entity posts to any counterparty.

[39] *See* § __.7 of the proposed rule for a complete description of the segregation requirements.

[40] *See* § __.9 of the proposed rule.

[41] *See* § __.9 of the proposed rule for a complete description of the treatment of cross-border swap transactions.

[42] 7 U.S.C. 6s(e)(2); 15 U.S.C. 78o–10(e)(2).

[43] *See* 54 FR 4186 (January 27, 1989). The general banking risk-based capital rules are at 12 CFR part 3, Appendices A, B, and C (national banks); 12 CFR part 167 (federal savings banks); 12 CFR part 208, Appendices A, B, and E (state member banks); 12 CFR part 225, Appendices A, D, and E (bank holding companies); 12 CFR part 325, Appendices A, B, C, and D (state nonmember banks); 12 CFR part 390, subpart Z (state savings associations). The general risk-based capital rules are supplemented by the market risk capital rules.

[44] The Basel Committee on Banking Supervision developed the first international banking capital framework in 1988, entitled, *International Convergence of Capital Measurement and Capital Standards.*

[45] The banking agencies' market risk capital rules are currently at 12 CFR part 3, Appendix B (OCC); 12 CFR parts 208 and 225, Appendix E (Board); and 12 CFR part 325, Appendix C (FDIC). The rules apply to banks and bank holding companies with trading activity (on a worldwide consolidated basis) that equals 10 percent or more of the institution's total assets, or $1 billion or more.

[46] *See* BCBS, *International Convergence of Capital Measurement and Capital Standards: A Revised Framework* (2006). The banking agencies implemented the advanced approaches of the Basel II Accord in 2007. *See* 72 FR 69288 (December 7, 2010). The advanced approaches rules are codified at 12 CFR part 3, Appendix C (OCC); 12 CFR part

Continued

In July 2013 the Board and the OCC issued a final rule (revised capital framework) implementing regulatory capital reforms reflecting agreements reached by the BCBS in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems.'' [47] The revised capital framework includes the capital requirements for OTC swaps described above. The FDIC adopted an interim final rule that was substantively identical to the revised capital framework in July 2013 and later issued a final rule in April 2014 identical to the Board's and the OCC's final rule.[48]

FHFA's predecessor agencies used a methodology similar to that endorsed by the BCBS prior to the development of its recent revised and enhanced framework to develop the risk-based capital rules applicable to those entities now regulated by FHFA. Those rules still apply to all FHFA-regulated entities.[49] FHFA is in the process of revising and updating these regulations for the Federal Home Loan Banks. The FCA's risk-based capital regulations for Farm Credit System (''FCS'') institutions, except for the Federal Agricultural Mortgage Corporation (''Farmer Mac''), have been in place since 1988 and were last updated in 2005.[50] The FCA's risk-based capital regulations for Farmer Mac have been in place since 2001 and were updated in 2011.[51] On May 8, 2014, the FCA proposed revisions to its capital rules for all FCS institutions, except Farmer Mac, that are comparable to the Basel III framework.[52]

As described below, the proposed rule requires a covered swap entity to comply with regulatory capital rules already made applicable to that covered swap entity as part of its prudential regulatory regime. Given that these existing regulatory capital rules specifically take into account and address the unique risks arising from swap transactions and activities, the Agencies are proposing to rely on these existing rules as appropriate and sufficient to offset the greater risk to the covered swap entity and the financial system arising from the use of swaps that are not cleared and to protect the safety and soundness of the covered swap entity.

C. 2011 FCA and FHFA Special Section

In the 2011 proposal, FHFA and FCA (but not the other Agencies) had proposed an additional provision, § __.11 of FHFA's and FCA's proposed rules. Proposed § __.11 would have required any entity that was regulated by FHFA or FCA, but was not itself a covered swap entity, to collect initial margin and variation margin from its swap entity counterparty when entering into a non-cleared swap.[53] Federal Home Loan Banks, Fannie Mae and its affiliates, Freddie Mac and its affiliates, and all Farm Credit System institutions including Farmer Mac (each a ''regulated entity'' and, collectively, ''regulated entities'') would have been subject to this provision. Regulated entities that were covered swap entities would have been subject to §§ 1 through 9 of the 2011 proposal with respect to margin.

FHFA and FCA proposed § __.11 to account for the fact that the 2011 proposal only required covered swap entities to collect initial and variation margin from, but did not require them to post initial and variation margin to, their counterparties.[54] The approach that FHFA and FCA proposed in § __.11 recognized that a default by a swap counterparty to a regulated entity could adversely affect the safe and sound operations of the regulated entity. FHFA and FCA proposed § __.11 pursuant to each Agency's role as safety and soundness regulator for its respective regulated entities.

FHFA and FCA are not re-proposing as part of this proposal a provision similar to that found in § __.11 of the 2011 proposal. Unlike the 2011 proposal, this proposal generally would require two-way margining in swap transactions between covered swap entities and FHFA- and FCA-regulated entities.[55] This two-way margining regime effectively reduces systemic risk by protecting both the regulated entity and its covered swap entity counterparty from the effects of a counterparty default, thereby eliminating the need for FHFA and FCA to propose a separate provision similar to the earlier proposed § __.11. However, should any changes adopted as part of the final joint rule alter the current proposed two-way margining regime in ways that raise safety and soundness concerns for FHFA or FCA with regard to their respective regulated entities, FHFA or FCA may decide to exercise its authority to adopt a provision similar to § __.11 of the 2011 proposal to address these concerns.[56]

208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325, Appendix D (FDIC).

[47] *See* BCBS, *Basel III: A Global Regulatory Framework For More Resilient Banks and Banking Systems* (2010), *available at www.bis.org/publ.bcbs189.htm.*

[48] 78 FR 62018 (October 11, 2013) (Board and OCC); 78 FR 20754 (April 14, 2014) (FDIC). These rules are codified at 12 CFR part 3 (national banks and federal savings associations), 12 CFR part 217 (state member banks, bank holding companies, and savings and loan holding companies), and 12 CFR part 324 (state nonmember banks and state savings associations).

[49] For the duration of the conservatorships of Fannie Mae and Freddie Mac (together, the ''Enterprises''), FHFA has directed that its existing regulatory capital requirements would not be binding. However, FHFA continues to closely monitor the Enterprises' activities. Such monitoring, coupled with the unique financial support available to the Enterprises from the U.S. Department of the Treasury and the likelihood that FHFA will promulgate new risk-based capital rules in due course to apply to the Enterprises (or their successors) once the conservatorships have ended, lead to FHFA's preliminary view that the reference to existing capital rules is sufficient to address the risks discussed in the text above as to the Enterprises.

[50] *See* 53 FR 40033 (October 13, 1988); 70 FR 35336 (June 17, 2005); 12 CFR part 615, subpart H.

[51] *See* 66 FR 19048 (April 12, 2001); 76 FR 23459 (April 27, 2011); 12 CFR part 652.

[52] The FCA recently proposed revisions to its capital rules for all FCS institutions, except Farmer Mac, that are comparable to the Basel III Framework.

[53] *See* 76 FR 27564, 27582–83 (May 11, 2011). Section __.11 of the 2011 proposal would have required regulated entities to collect initial and variation margin from their swap entity counterparties on parallel terms to the requirements governing collection by covered swap entities under other sections of the 2011 proposal, including with respect to initial margin calculation methods (via the use of a model or a standardized ''lookup'' table), documentation standards and segregation requirements. Section __.11 of the 2011 proposal would not have applied to swaps entered into between regulated entities and end users.

[54] Where a covered swap entity's counterparty was another covered swap entity, the collection requirement would have applied in both directions to make the requirement effectively bilateral.

[55] Two-way margining would not necessarily apply in all circumstances. A regulated entity that is not itself a swap entity would meet the proposed definition of financial end user. As a result, if it engaged in swap activity above the threshold set in the definition of material swaps exposure, then the rule would require two-way margining as to both initial and variation margin, with respect to its transactions with covered swap entities. If a regulated entity does not have material swaps exposure, then a covered swap entity and the regulated entity would be required to exchange variation margin with each other but would only be required to collect or post initial margin in such amounts as the parties determine to be appropriate. In such circumstances, no specific amount of initial margin would be required to be collected or posted pursuant to this proposal.

[56] Any final joint rule issued by the Agencies, once effective, would address these safety and soundness concerns only in circumstances where a regulated entity is transacting with a covered swap entity regulated by a prudential regulator. Where a regulated entity is instead engaged in a non-cleared swap with a swap entity that is not subject to the oversight of one of the prudential regulators, the applicable margin requirements would be those issued by the regulator having jurisdiction over the swap entity, namely the CFTC or the SEC. If one of those agencies were to diverge from the two-way margining regime proposed here (and recommended by the 2013 international framework) in a manner that raises safety and soundness concerns for FHFA or FCA with regard to their respective regulated entities, FHFA or FCA also may exercise its authority to adopt a special section to account for those situations as well, either in the final joint rulemaking, or in a separate rulemaking or guidance at a later date.

Furthermore, FHFA and FCA each reserves the right and authority to address its safety and soundness concerns through the Agencies' final joint rulemaking or through a separate rulemaking or guidance applicable only to its respective regulated entities.

D. The Proposed Rule and Community Banks

The Agencies expect that the proposed rule likely will have minimal impact on community banks. The Agencies anticipate that community banks will not engage in swap activity to the level necessary to meet the definition of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant; and therefore, are unlikely to fall within the proposed definition of a covered swap entity. Because the proposed rule imposes requirements on covered swap entities, no community bank will likely be directly subject to the rule. Thus, a community bank that enters into non-cleared interest rate swaps with its commercial customers would not be required to apply to those swaps the proposed rule's requirements for initial margin or variation margin.

When a community bank enters into a swap with a covered swap entity, the covered swap entity would be required to post and collect initial margin pursuant to the rule only if the community bank had a material swaps exposure.[57] The Agencies believe that the vast majority of community banks do not engage in swaps at or near that level of activity. Thus, for most, if not all community banks, the proposed rule would only require a covered swap entity to collect initial margin that it determines is appropriate to address the credit risk posed by such a community bank. The Agencies believe covered swap entities currently apply this approach as part of their credit risk management practices.

The proposed rule would require a covered swap entity to exchange daily variation margin with a community bank, regardless of whether the community bank had material swaps exposure. However, the covered swap entity would only be required to collect variation margin from a community bank when the amount of both initial margin and variation margin required to be collected daily exceeded $650,000. The Agencies expect that the vast majority of community banks will have a daily margin requirement that is below this amount.

The Agencies seek comment on the potential impact that this proposed rule might have on community banks.

E. The Proposed Rule and Farm Credit System Institutions

Similar to community banks, the proposed rule will have a minimal impact on the Farm Credit System. Currently, no FCS institution, including Farmer Mac, engage in swap activity at the level necessary to meet the definition of a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant. For this reason, no FCS institution, including Farmer Mac, would fall within the proposed definition of a covered swap entity and, therefore, become directly subject to this rule. Furthermore, an overwhelming majority of FCS institutions do not currently engage in non-cleared swaps at or near the level that they would have a material swaps exposure. Therefore, a majority of FCS institutions would not be required by this rule to exchange initial margin with a covered swap entity. For those few FCS institutions that currently have a material swaps exposure, initial margin exchange would be mandated only when non-cleared swap transactions with an individual counterparty and its affiliates exceed the $65 million threshold. All FCS institutions, including Farmer Mac, are financial end users and, therefore, they must exchange variation margin daily once the parties reach the $650,000 minimum transfer amount.

The Agencies also seek specific comments on the potential impact of this proposal on FCS institutions.

III. Section by Section Summary of Proposed Rule

A. Section __.1: Authority, Purpose, Scope, and Compliance Dates

Sections __.1(a)–(c) of the proposal are agency-specific. Section __.1(a) sets out each Agency's specific authority, and § __.1(b) describes the purpose of the rule, including the specific entities covered by each Agency's rule. Section __.1(c) of the proposal specifies the scope of the transactions to which the margin requirements apply. It provides that the margin requirements apply to *all* non-cleared swaps into which a covered swap entity enters. Each prudential regulator is proposing rule text for its Agency-specific version of § ___.1(c) that specifies the entities to which that prudential regulator's rule applies. Section __.1(c) further states that the margin requirements apply only to swap and security-based swap transactions that are entered into on or after the relevant compliance date set forth in § __.1(d). This section also provides that nothing in this proposal is intended to prevent, and nothing in this proposal is intended to require, a covered swap entity from independently collecting margin in amounts greater than are required under this proposed rule.

1. Treatment of Swaps With Commercial End User Counterparties

Following passage of the Dodd-Frank Act, various parties expressed concerns regarding whether sections 731 and 764 of the Dodd-Frank Act authorize or require the CFTC, SEC, and Agencies to establish margin requirements with respect to transactions between a covered swap entity and a ''commercial end user'' (*i.e.,* a nonfinancial counterparty that is neither a swap entity nor a financial end user and engages in swaps to hedge commercial risk).[58] Pursuant to other provisions of the Dodd-Frank Act, nonfinancial end users that engage in swaps to hedge their commercial risks are exempt from the requirement that all swaps designated for clearing by the CFTC or SEC be cleared by a CCP, and, therefore they are exempt from the requirement to post initial margin and variation margin to the CCP. Commenters to the 2011 proposal argued that swaps with commercial end users should also be excluded from the scope of margin requirements imposed for non-cleared swaps under sections 731 and 764, asserting that commercial firms engaged in hedging activities pose a reduced risk to their counterparties and the stability of the U.S. financial system and that including these types of counterparties in the scope of the proposal would undermine the goals of excluding these firms from the clearing requirements.[59]

[57] The proposed rule defines material swaps exposure as an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $3 billion, where such amount is calculated only for business days.

[58] Although the term ''commercial end user'' is not defined in the Dodd-Frank Act, it is generally understood to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps under section 2(h)(7) of the Commodity Exchange Act and section 3C(g) of the Securities Exchange Act, respectively. This exception is generally available to a person that (i) is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps, respectively. *See* 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c–3(g).

[59] Statements in the legislative history of sections 731 and 764 suggest that at least some members of Congress did not intend, in enacting these sections, to impose margin requirements on nonfinancial end users engaged in hedging activities, even in cases where they entered into swaps with swap entities.

Continued

In formulating the proposed rule, the Agencies have carefully considered these concerns and statements. The plain language of sections 731 and 764 provides that the Agencies adopt rules for covered swap entities imposing margin requirements on *all non-cleared swaps.* Those sections do not, by their terms, exclude a swap with a counterparty that is a commercial end user. Importantly, sections 731 and 764 also direct the Agencies to adopt margin requirements that (i) help ensure the safety and soundness of the covered swap entity and (ii) are appropriate for the risk associated with the non-cleared swaps. Thus, the statute requires the Agencies to take a risk-based approach to establishing margin requirements. Further, the Dodd-Frank Act does not contain an express exemption for commercial end users from the margin requirements of sections 731 and 764 of the Dodd-Frank Act. The Agencies note that the application of margin requirements to non-cleared swaps with nonfinancial end users could be viewed as lessening the effectiveness of the clearing requirement exemption for these nonfinancial end users.

The 2011 proposal permitted a covered swap entity to adopt, where appropriate, initial and variation margin thresholds below which the covered swap entity would not be required to collect initial or variation margin from nonfinancial end users. The proposal noted the lesser risk posed by these types of counterparties to covered swap entities and financial stability with respect to exposures below these thresholds. The Agencies received many comments on this aspect of the 2011 proposal. In particular, commenters requested that swap transactions with nonfinancial end users and a number of other counterparties, including sovereigns and multilateral development banks, be explicitly excluded from the margin requirements.

The proposal takes a different approach to nonfinancial end users than the 2011 proposal. Like the 2011 proposal, this proposal follows the statutory framework and proposes a risk-based approach to imposing margin requirements. Unlike the 2011 proposal, this proposal does not require that the covered swap entity determine a specific, numerical threshold for each nonfinancial end user counterparty. Rather, the proposed rule does not require a covered swap entity to collect initial margin and variation margin from nonfinancial end users and certain other counterparties as a matter of course, but instead requires it to collect initial and variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines would appropriately address the credit risk posed by swaps entered into with ''other counterparties.'' [60] The Agencies believe that this approach is consistent with current market practice as well as with well-established internal credit processes and standards of swap entities, based on safety and soundness, that require covered swap entities to use an integrated approach in evaluating the risk of their counterparties in extending credit, including in the form of a swap, and manage the overall credit exposure to the counterparty.

The proposal takes a similar approach to margin requirements for transactions between covered swap entities and sovereign entities; multilateral development banks; the Bank for International Settlements; captive finance companies exempt from clearing pursuant to the Dodd-Frank Act; and Treasury affiliates exempt from clearing pursuant to the Dodd-Frank Act.[61] The Agencies believe that this approach is consistent with the statute, which requires the margin requirements to be risk-based, and is appropriate in light of the lower risks that these types of counterparties generally pose to the safety and soundness of covered swap entities and U.S. financial stability.

2. Compliance Dates

Section __.1(d) of the proposal includes a set of compliance dates by which covered swap entities must comply with the minimum margin requirements for non-cleared swaps. The compliance dates of the proposal are consistent with the 2013 international framework. The proposed rule would be effective with respect to any swap to which a covered swap entity becomes a party on or after the relevant compliance date and would continue to apply regardless of future changes in the measured swaps exposure of the covered swap entity and its affiliates or the counterparty and its affiliates.

For variation margin, the compliance date is December 1, 2015 for all covered swap entities with respect to covered swaps with any counterparty. The Agencies believe that the collection of daily variation margin is currently a best practice and, as such, current swaps business operations for covered swap entities of all sizes will be able to achieve compliance with the proposed rule by December 1, 2015. Therefore, there is no phase-in for the variation margin requirements.

As reflected in the table below, for initial margin, the compliance dates range from December 1, 2015 to December 1, 2019 depending on the average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps (''covered swaps'') of the covered swap entity and its counterparty for June, July and August of that year.[62]

COMPLIANCE DATE SCHEDULE FOR INITIAL MARGIN

Compliance date	Initial margin requirements
December 1, 2015	Initial margin where both the covered swap entity combined with its affiliates and the counterparty combined with its affiliates have an average daily aggregate notional amount of covered swaps for June, July and August of 2015 that exceeds $4 trillion.
December 1, 2016	Initial margin where both the covered swap entity combined with its affiliates and the counterparty combined with its affiliates have an average daily aggregate notional amount of covered swaps for June, July and August of 2016 that exceeds $3 trillion.
December 1, 2017	Initial margin where both the covered swap entity combined with its affiliates and the counterparty combined with its affiliates have an average daily aggregate notional amount of covered swaps for June, July and August of 2017 that exceeds $2 trillion.

See, e.g., 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

[60] In the case of a nonfinancial end user with a strong credit profile, under current market practices, a swap dealer would likely not require margin—in essence, it would extend unsecured credit to the end user with respect to the underlying exposure. For counterparties with a weak credit profile, a swap dealer would likely make a different credit decision and require the counterparty to post margin.

[61] *See* 7 U.S.C. 2(h)(7)(C)(iii), 7 U.S.C. 2(h)(7)(D) and 15 U.S.C. 78c–3(g)(4).

[62] ''Foreign exchange forward and foreign exchange swap'' is defined to mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)).

COMPLIANCE DATE SCHEDULE FOR INITIAL MARGIN—Continued

Compliance date	Initial margin requirements
December 1, 2018	Initial margin where both the covered swap entity combined with its affiliates and the counterparty combined with its affiliates have an average daily aggregate notional amount of covered swaps for June, July and August of 2018 that exceeds $1 trillion.
December 1, 2019	Initial margin for any other covered swap entity with respect to covered swaps with any other counterparty.

The Agencies expect that covered swap entities likely will need to make a number of operational and legal changes to their current swaps business operations in order to achieve compliance with the proposed rule, including potential changes to internal risk management and other systems, trading documentation, collateral arrangements, and operational technology and infrastructure. In addition, the Agencies expect that covered swap entities that wish to calculate initial margin using an initial margin model will need sufficient time to develop such models and obtain regulatory approval for their use. Accordingly, the compliance dates have been structured to ensure that the largest and most sophisticated covered swap entities and counterparties that present the greatest potential risk to the financial system comply with the requirements first. These swap market participants should be able to make the required operational and legal changes more rapidly and easily than smaller entities that engage in swaps less frequently and pose less risk to the financial system.

Section __.1(e) provides that once a covered swap entity and its counterparty must comply with the margin requirements for non-cleared swaps based on the compliance dates in § __.1(d), the covered swap entity and its counterparty shall remain subject to the margin requirements from that point forward. As an example, December 1, 2016 is the relevant compliance date where both the covered swap entity combined with its affiliates and its counterparty combined with its affiliates have an average aggregate daily notional amount of covered swaps that exceeds $3 trillion. If the notional amount of the swap activity for the covered swap entity or the counterparty drops below that threshold amount of covered swaps in subsequent years, their swaps would nonetheless remain subject to the margin requirements. On December 1, 2019, any covered swap entity that did not have an earlier compliance date becomes subject to the margin requirements with respect to non-cleared swaps entered into with any counterparty.

3. Treatment of Swaps Executed Prior to the Applicable Compliance Date under a Netting Agreement

The Agencies note that a covered swap entity may enter into swaps on or after the proposed rule's compliance date pursuant to the same master netting agreement that governs existing swaps entered into with a counterparty prior to the compliance date. As discussed below, the proposed rule permits a covered swap entity to (i) calculate initial margin requirements for swaps under an eligible master netting agreement (''EMNA'') with the counterparty on a portfolio basis in certain circumstances, if it does so using an initial margin model; and (ii) calculate variation margin requirements under the proposed rule on an aggregate, net basis under an EMNA with the counterparty. Applying the proposed rule in such a way would, in some cases, have the effect of applying it retroactively to swaps entered into prior to the compliance date under the EMNA. The Agencies expect that the covered swap entity will comply with the margin requirements with respect to all swaps governed by an EMNA, regardless of the date on which they were entered into, consistent with current industry practice.[63] A covered swap entity would need to enter into a separate master netting agreement for swaps entered into after the proposed rule's compliance date in order to exclude swaps entered into with a counterparty prior to the compliance date.

4. Non-Cleared Swaps Between Covered Swap Entities and Their Affiliates

The proposed rule prescribes margin requirements on all non-cleared swaps between a covered swap entity and its counterparties. In particular, the proposal generally would cover swaps between banks that are covered swap entities and their affiliates that are financial end users, including affiliates that are subsidiaries of a bank, such as operating subsidiaries, Edge Act subsidiaries, agreement corporation subsidiaries, financial subsidiaries, and lower-tier subsidiaries of such subsidiaries. The Agencies note that other applicable laws require transactions between banks and their affiliates to be on an arm's length basis. In particular, section 23B of the Federal Reserve Act provides that many transactions between a bank and its affiliates must be on terms and under circumstances, including credit standards, that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with or involving nonaffiliated companies.[64] The requirements of section 23B generally would mean that a bank engaging in a swap with an affiliate should do so on the same terms (including the posting and collecting of margin) that would prevail in a swap between the bank and a nonaffiliated company. Since the proposed rule will apply to a swap between a bank and a nonaffiliated company, it will also apply to a swap between a bank and an affiliate.

While section 23B applies to transactions between a bank and its financial subsidiary, it does not apply to transactions between a bank and other subsidiaries, such as an operating subsidiary, an Edge Act subsidiary, or an agreement corporation subsidiary. The proposed rule does not exempt a bank's swaps with these affiliates and would therefore impose margin requirements on all swaps between a bank and a subsidiary, including a subsidiary that is not covered by section 23B.

B. Section __.2: Definitions

Section __.2 of the 2011 proposal defined its key terms. In particular, the 2011 proposal defined the four types of swap counterparties that formed the basis of the 2011 proposal's risk-based approach to margin requirements. Section ___.2 also provided other key operative terms needed to calculate the amount of initial and variation margin required under other sections of the 2011 proposal.

[63] *See* proposed rule §§ __.4(d) and __.8(b).

[64] 12 U.S.C. 371c–1(a).

1. Overview of 2011 Proposal and Comments on Swap Counterparty Definitions

The four types of counterparties defined in the 2011 proposal were (in order of highest to lowest risk): (i) Swap entities; (ii) high-risk financial end users; (iii) low-risk financial end users; and (iv) nonfinancial end users. The 2011 proposal defined ''swap entity'' as any entity that is required to register as a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant.[65]

Section __.2 of the 2011 proposal defined a financial end user largely based on the definition of a ''financial entity'' that is ineligible for the exemption from the mandatory clearing requirements of sections 723 and 763 of the Dodd-Frank Act, and also included foreign governments.[66] As noted above, the 2011 proposal also distinguished between margin requirements for high-risk and low-risk financial end users. Section __.2 of the 2011 proposal defined a financial end user counterparty as a low-risk financial end user only if (i) its swaps fall below a specified ''significant swaps exposure'' threshold; (ii) it predominantly uses swaps to hedge or mitigate the risks of its business activities; and (iii) it is subject to capital requirements established by a prudential regulator or state insurance regulator. The 2011 proposal defined a nonfinancial end user as any counterparty that is an end user but is not a financial end user.[67]

The Agencies requested comment on whether the 2011 proposal's categorization of various types of counterparties by risk, and the key definitions used to implement this risk-based approach, were appropriate, or whether alternative approaches or definitions would better reflect the purposes of sections 731 and 764 of the Dodd-Frank Act. As discussed above, many commenters argued that nonfinancial end users should not be subject to the margin requirements and urged that the language and intent of the statute did not require the imposition of margin on nonfinancial end users.

Many commenters also argued that particular types of entities should either be excluded from the term financial end user or be classified as a low-risk financial end user instead of a high-risk financial end user.[68] In particular, commenters argued that the following entities should be excluded from the definition of financial end user: (i) Foreign sovereigns; (ii) states and municipalities; (iii) multilateral development banks; (iv) captive finance companies; (v) Treasury affiliates; (vi) cooperatives exempt from clearing; (vii) pension plans; (viii) payment card networks; and (ix) special purpose vehicles. A few commenters contended that small financial end users should be treated as nonfinancial end users because these entities use swaps mostly to hedge risk.

2. 2014 Proposal for Swap Counterparty Definitions

Section __.2 of the proposal defines key terms used in the proposed rule, including the types of counterparties that form the basis of the proposal's risk-based approach to margin requirements and other key terms needed to calculate the required amount of initial margin and variation margin.[69] As noted above, this proposal distinguishes among four separate types of counterparties: [70] (i) Counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure; and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks. Below is a general description of the significant terms defined in § __.2.[71]

a. Swap Entity

Similar to the 2011 proposal, this proposal defines ''swap entity'' by reference to the Securities Exchange Act and the Commodity Exchange Act to mean a security-based swap dealer, a major security-based swap participant, a swap dealer, or a major swap participant.

b. Financial End User

The proposal's definition of financial end user takes a different approach than the 2011 proposal, which, as noted above, was based on the definition of a ''financial entity'' that is ineligible for the exemption from mandatory clearing requirements of sections 723 and 763 of the Dodd-Frank Act. In order to provide certainty and clarity to counterparties as to whether they would be financial end users for purposes of this proposal, the financial end user definition provides a list of entities that would be financial end users as well as a list of entities excluded from the definition. This approach would mean that covered swap entities would not need to make a determination regarding whether their counterparties are predominantly engaged in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956, as amended (the ''BHC Act'').[72] In contrast to the 2011 proposal, the Agencies now are proposing to rely, to the greatest extent possible, on the counterparty's legal status as a regulated financial entity.

Under the proposal, financial end user includes a counterparty that is not a swap entity but is:

- A bank holding company or an affiliate thereof; a savings and loan holding company; a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank

[65] *See* 2011 proposal § __.2(y) (2011).

[66] *See* 7 U.S.C. 2(h)(7); 15 U.S.C. 78c–3(g).

[67] *See* 2011 proposal § __.2(r) (2011).

[68] As described further below, the proposal does not distinguish between high-risk and low-risk financial end users in this manner.

[69] Initial margin means the collateral as calculated in accordance with § __.8 that is posted or collected in connection with a non-cleared swap. *See* proposed rule § __.2; *see also* proposed rule § __.3 (describing initial margin requirements). Variation margin means a payment by one party to its counterparty to meet performance of its obligations under one or more non-cleared swaps between the parties as a result of a change in value of such obligations since the last time such payment was made. *See* proposed rule § __.2; *see also* proposed rule § __.4 (describing variation margin requirements).

[70] Counterparty is defined to mean, with respect to any non-cleared swap or non-cleared security-based swap to which a covered swap entity is a party, each other party to such non-cleared swap or non-cleared security-based swap. Non-cleared swap means a swap that is not a cleared swap, as that term is defined in section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)) and non-cleared security-based swap means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the SEC. Clearing agency is defined to have the meaning specified in section 3(a)(2) of the Securities Exchange Act (15 U.S.C. 78c(a)(23)) and derivatives clearing organization is defined to have the meaning specified in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1a(15)). *See* proposed rule § __.2.

[71] The term ''nonfinancial end user'' is not used in the proposal. Nonfinancial end users would be treated as ''other counterparties'' in the proposal. *See* proposed rule § __.3(d) & __.4(c).

[72] The financial entity definition in the 2011 proposal includes a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the BHC Act. *See* 7 U.S.C. 2(h)(7); 15 U.S.C. 78c–3(g). The Agencies requested comment on how covered swap entities should make this determination, and whether they should use an approach similar to that developed by the Board for purposes of Title I of the Dodd-Frank Act. *See* 68 FR 20756 (April 5, 2013). Section 4(k) of the BHC Act includes conditions that do not define whether an activity is itself financial but were imposed on bank holding companies to ensure that the activity is conducted by bank holding companies in a safe and sound manner or to comply with another provision of law. Staff of the Agencies recognize that by simply choosing not to comply with the conditions imposed on the manner in which those activities must be conducted by bank holding companies, a firm could avoid being considered to be engaged in activities that are financial in nature.

Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323);

• A depository institution; a foreign bank; a Federal credit union, State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

• An entity that is state-licensed or registered as a credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; but excluding entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

• A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

• A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)) and any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

• Any institution chartered and regulated by the Farm Credit Administration in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 et seq.;

• A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company (15 U.S.C. 80a–53);

• A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 of the Securities and Exchange Commission (17 CFR 270.3a–7);

• A commodity pool, a commodity pool operator, or a commodity trading advisor as defined in, respectively, sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(10), 7 U.S.C. 1a(11), 7 U.S.C. 1a(12)); or a futures commission merchant;

• An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

• An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

• An entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets;

• An entity that would be a financial end user as described above or a swap entity, if it were organized under the laws of the United States or any State thereof; or

• Notwithstanding the specified exclusions described below, any other entity that [Agency] has determined should be treated as a financial end user.

In developing this definition of financial end user, the Agencies sought to provide certainty and clarity to covered swap entities and their counterparties regarding whether particular counterparties would qualify as financial end users and be subject to the margin requirements of the proposed rule. The Agencies tried to strike a balance between the desire to capture all financial counterparties, without being overly broad and capturing commercial firms and sovereigns. Financial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties. Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the covered swap entity. In case the list of financial end users in the proposal does not capture a particular entity, the last part of this definition would allow an Agency to require a covered swap entity to treat a counterparty as a financial end user for margin purposes, where appropriate for safety and soundness purposes or to address systemic risk.

In developing the list of financial entities, the Agencies sought to include entities subject to Federal statutes that impose registration or chartering requirements on entities that engage in specified financial activities, such as deposit taking and lending, securities and swaps dealing, or investment advisory activities; as well as asset management and securitization entities. For example, certain securities investment funds as well as securitization vehicles are covered, to the extent those entities would qualify as private funds defined in section 202(a) of the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). In addition, certain real estate investment companies would be included as financial end users as entities that would be investment companies under section 3 of the Investment Company Act of 1940, as amended (the ''Investment Company Act''), but for section 3(c)(5)(C), and certain other securitization vehicles would be included as entities deemed not to be investment companies pursuant to Rule 3a–7 of the Investment Company Act.

Because Federal law largely looks to the States for the regulation of the business of insurance, the proposed definition broadly includes entities organized as insurance companies or supervised as such by a State insurance regulator. This element of the proposed definition would extend to reinsurance and monoline insurance firms, as well as insurance firms supervised by a foreign insurance regulator.

The Agencies are also proposing to cover, as financial end users, the broad variety and number of nonbank lending and retail payment firms that operate in the market. To this end, the Agencies are proposing to include State-licensed or registered credit or lending entities and money services businesses, under proposed regulatory language incorporating an inclusive list of the types of firms subject to State law.[73] However, the Agencies recognize that the licensing of nonbank lenders in some states extends to commercial firms

[73] The Agencies expect that state-chartered financial cooperatives that provide financial services to their members, such as lending to their members and entering into swaps in connection with those loans, would be treated as financial end users, pursuant to this aspect of the proposed rule's coverage of credit or lending entities.

that provide credit to the firm's customers in the ordinary course of business. Accordingly, the Agencies are proposing to exclude an entity registered or licensed solely on account of financing the entity's direct sales of goods or services to customers. The Agencies request comment on whether this aspect of the proposed rule adequately maintains a distinction between financial end users and commercial end users.

Under the proposed rule, those cooperatives that are financial institutions, such as credit unions, FCS banks and associations, and other financial cooperatives [74] are financial end users because their sole business is lending and providing other financial services to their members, including engaging in swaps in connection with such loans.[75] Cooperatives that are financial end users may qualify for an exemption from clearing,[76] and therefore, they may enter into non-cleared swaps with covered swap entities that are subject to the proposed rule.

The Agencies remain concerned, however, that now or in the future, one or more types of financial entities might escape classification under the specific Federal or State regulatory regimes included in the proposed definition of a financial end user. The Agencies have accordingly included two additional prongs in the definition. First, the Agencies have included language that would cover an entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets. The Agencies request comment on the extent to which there are (or may be in the future) pooled investment vehicles that are not captured by the other prongs of the definition (such as the provisions covering private funds under the Advisers Act or commodity pools under the Commodity Exchange Act). The Agencies also request comment on whether this aspect of the definition of financial end user provides sufficiently clear guidance to covered swap entities and market participants as to its intended scope, and whether it adequately maintains a distinction between financial end users and commercial end users.

Second, as previously explained, the proposed rule would allow an Agency to require a covered swap entity to treat an entity as a financial end user for margin purposes, as appropriate for safety and soundness purposes, or to mitigate systemic risks. In such case, consistent with the Agency's supervisory procedures, the Agency that is the covered swap entity's prudential regulator would notify the covered swap entity in writing of the regulator's intention to require treatment of the counterparty as a financial end user, and the date by which such treatment is to be implemented.[77]

To address the classification of foreign entities as financial end users, the Agencies are proposing to require the covered swap entity to determine whether a foreign counterparty would fall within another prong of the financial end user definition if the foreign entity was organized under the laws of the United States or any State. The Agencies recognize that this approach would impose upon covered swap entities the difficulties associated with analyzing a foreign counterparty's business activities in light of a broad array of U.S. regulatory requirements. The alternative, however, would require covered swap entities to gather a foreign counterparty's financial reporting data and determine the relative amount of enumerated financial activities in which the counterparty is engaged over a rolling period.[78] The Agencies request comment on whether some other method or approach would adequately assure that the rule's objectives with respect to covered swap entity safety and soundness and reductions of systemic risk can be achieved, in a fashion that can be more readily operationalized by covered swap entities.

Unlike the 2011 proposal, the proposal excludes certain types of counterparties from the definition of financial end user. In particular, the proposal states that the term ''financial end user'' does not generally include any counterparty that is:

- A sovereign entity; [79]
- A multilateral development bank; [80]
- The Bank for International Settlements;
- A captive finance company that qualifies for the exemption from clearing under section 2(h)(7)(C)(iii) of the Commodity Exchange Act and implementing regulations; or
- A person that qualifies for the affiliate exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act and implementing regulations.

The Agencies note the exclusion for sovereign entities, multilateral development banks and the Bank for International Settlements is generally consistent with the 2013 international framework which recommended that margin requirements not apply to sovereigns, central banks, multilateral development banks or the Bank for International Settlements. The last two categories that are excluded from the financial end user definition were excluded by Title VII of the Dodd-Frank Act from the definition of financial entity subject to mandatory clearing. The Agencies also believe that this approach is appropriate as these entities generally pose less systemic risk to the financial system in addition to posing less counterparty risk to a swap entity. Thus, the Agencies believe that application of the margin requirements

[74] The National Rural Utility Cooperative Finance Cooperation is an example of another financial cooperative.

[75] Most cooperatives are producer, consumer, or supply cooperatives and, therefore, they are not financial end users. However, many of these cooperatives have financing subsidiaries and affiliates. These financing subsidiaries and affiliates would not be financial end users under this proposal if they qualify for an exemption under sections 2(h)(7)(C)(iii) or 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act of 1934.

[76] Section 2(h)(7)(c)(ii) of the Commodity Exchange Act and section 3C(g)(4) of the Securities Exchange Act of 1934 authorize the CFTC and the SEC, respectively, to exempt small depository institutions, small Farm Credit System institutions, and small credit unions with total assets of $10 billion or less from the mandatory clearing requirements for swaps and security-based swaps. *See* 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c–3(g). Additionally, the CFTC, pursuant to its authority under section 2(h)(1)(A) of the Commodity Exchange Act, enacted 17 CFR part 50, subpart C, section 50.51, which allows cooperative financial entities, including those with total assets in excess of $10 billion, to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans or swaps with their members.

[77] The Agencies' procedures would generally provide an adequate opportunity for the covered swap entity to raise objections to the Agency's proposed action and for the Agency to respond.

[78] *See, e.g.,* 68 FR 20756 (April 5, 2013).

[79] Sovereign entity is defined to mean a central government (including the U.S. government) or an agency, department, or central bank of a central government. *See* proposed rule § __.2. A sovereign entity would include the European Central Bank for purposes of this exclusion.

[80] Multilateral development bank is defined to mean the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk. *See* proposed rule § __.2.

to swaps with these counterparties is not necessary to achieve the objectives of this rule.

The Agencies note that States would not be excluded from the definition of financial end user, as the term ''sovereign entity'' includes only central governments. The categorization of a State or particular part of a State as a financial end user depends on whether that part of the State is otherwise captured by the definition of financial end user. For example, a State entity that is a ''governmental plan'' under the Employment Retirement Income Security Act of 1974, as amended, would meet the definition of financial end user.

The Agencies believe that the proposal addresses many of the commenters' concerns about the definition of ''financial end user'' contained in the 2011 proposal. Entities that are neither financial end users nor swap entities are treated as ''other counterparties'' in this proposal.[81] The Agencies seek comment on all aspects of the financial end user definition including whether the definition has succeeded in capturing all entities that should be treated as financial end users. The Agencies request comment on whether there are additional entities that should be included as financial end users and, if so, how those entities should be defined. Further, the Agencies also request comment on whether there are additional entities that should be excluded from the definition of financial end user and why those particular entities should be excluded. The Agencies also request comment on whether another approach to defining financial end user (*e.g.,* basing the financial end user definition on the financial entity definition as in the 2011 proposal) would provide more appropriate coverage and clarity, and whether covered swap entities could operationalize such an approach as part of their regular procedures for taking on new counterparties.

c. Material Swaps Exposure

The proposal differs from the 2011 proposal by distinguishing between swaps with financial end user counterparties that have a material swaps exposure and swaps with financial end user counterparties that do not have a material swaps exposure. ''Material swaps exposure'' for an entity is defined to mean that the entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July and August of the previous year that exceeds $3 billion, where such amount is calculated only for business days. The Agencies believe that using the average daily aggregate notional amount during June, July, and August of the previous year, instead of a single as-of date, is appropriate to gather a more comprehensive assessment of the financial end user's participation in the swaps market, and address the possibility that a market participant might ''window dress'' its exposure on an as-of date such as year-end, in order to avoid the Agencies' margin requirements. Material swaps exposure would be calculated based on the previous year. For example, on January 1, 2015, an entity would determine whether it had a material swaps exposure in June, July and August of 2014 that exceeded $3 billion.[82]

d. Other Definitions

The proposal also defines a number of other terms that were not defined in the 2011 proposal. The Agencies believe that these definitions will help provide additional clarity regarding the application of the margin requirements contained in the proposed rule.

i. Affiliate

The proposal defines ''affiliate'' to mean any company that controls, is controlled by, or is under common control with another company. This definition of affiliate is the same as that in the BHC Act and consequently should be familiar to market participants.[83] The proposal also defines subsidiary to mean a company that is controlled by another company, which is similar to the definition in the BHC Act and the Board's Regulation Y.[84]

The term affiliate is used in the definition of initial margin threshold amount which means a credit exposure of $65 million that is applicable to non-cleared swaps between a covered swap entity and its affiliates with a counterparty and its affiliates. The inclusion of affiliates in this definition is meant to make clear that the initial margin threshold amount applies to an entity and its affiliates. Similarly, the term ''affiliate'' is also used in the definition of ''material swaps exposure,'' as material swaps exposure takes into account the exposures of an entity and its affiliates.

ii. Control

The definitions of ''affiliate'' and ''subsidiary'' use the term ''control,'' which is also a defined term in the proposal.[85] The proposal provides that control of another company means: (i) Ownership, control, or power to vote 25 percent or more of a class of voting securities of the company, directly or indirectly or acting through one or more other persons; (ii) ownership or control of 25 percent or more of the total equity of the company, directly or indirectly or acting through one or more other persons; or (iii) control in any manner of the election of a majority of the directors or trustees of the company. This definition of control is similar to the definition under the BHC Act and consequently should be familiar to many market participants.[86]

The Agencies seek comment on the definition of control in this proposal. In particular, the Agencies request comment on this definition of control as it relates to advised and sponsored funds and sponsored securitization vehicles. The Agencies believe that advised and sponsored funds and sponsored securitization vehicles would not be affiliates of the investment adviser or sponsor unless the adviser or sponsor meets the definition of control (*e.g.,* owning 25 percent or more of the voting securities or total equity or controlling the election of the majority

[81] As is further discussed below, these entities excluded from the definition of ''financial end users,'' as well as nonfinancial counterparties, are treated as ''other counterparties'' with respect to the proposed variation margin requirements. With respect to the proposed initial margin requirements, the ''other counterparties'' category also includes financial end users that do not have a material swaps exposure.

[82] As a specific example of the calculation for material swaps exposure, consider a financial end user (together with its affiliates) with a portfolio consisting of two non-cleared swaps (e.g., an equity swap, an interest rate swap) and one non-cleared security-based credit swap. Suppose that the notional value of each swap is exactly $10 billion on each business day of June, July, and August of 2015. Furthermore, suppose that a foreign exchange forward is added to the entity's portfolio at the end of the day on July 31, 2015, and that its notional value is $10 billion on every business day of August 2015. On each business day of June and July 2015, the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $30 billion. Beginning on August 1, 2015 the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $40 billion. The daily average aggregate notional value for June, July and August of 2015 is then (22 × $30 billion +23 × $30 billion + 21 × $40 billion)/(22 + 23 + 21) = $33.18 billion, in which case this entity would be considered to have a material swaps exposure for every date in 2016.

[83] *See* section 2(k) of the Bank Holding Company Act, 12 U.S.C. 1841(k).

[84] *See* section 2(d) of the Bank Holding Company Act, 12 U.S.C. 1841(d); 12 CFR 225.2(o).

[85] The term subsidiary is used in § __.9 to describe certain entities that are eligible for substituted compliance.

[86] *See, e.g.,* section 2(a)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2).

of the directors or trustees). The 2013 international framework states that investment funds that are managed by an investment adviser are considered distinct entities that are treated separately when applying the threshold as long as the funds are distinct legal entities that are not collateralized by or otherwise guaranteed or supported by other investment funds or the investment adviser in the event of fund insolvency or bankruptcy. The intent of the Agencies is to follow the approach of the 2013 international framework for investment funds and securitization vehicles, including with respect to guarantees and other collateral support arrangements. The Agencies request comment on whether the proposal's definition of control would allow investment funds and securitization vehicles to be treated separately in the manner described in the 2013 international framework.

iii. Cross-Currency Swap

The proposal defines a cross-currency swap as a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with a reversal of the exchange at a later date that is agreed upon at the inception of the swap. As explained in greater detail below, the proposal provides that the proposed initial margin requirements for cross-currency swaps do not apply to the portion of the swap that is the fixed exchange of principal. This treatment of cross-currency swaps is consistent with the treatment recommended in the 2013 international framework. This treatment of cross-currency swaps also aligns with the determination by the Secretary of the Treasury to exempt foreign exchange swaps from the definition of swap as explained further below. Non-deliverable forwards would not be treated as cross-currency swaps for purposes of the proposal, and thus would be subject to the margin requirements set forth under the proposed rule.

iv. Major Currencies

Major currencies is defined to mean: (i) United States Dollar (USD); (ii) Canadian Dollar (CAD); (iii) Euro (EUR); (iv) United Kingdom Pound (GBP); (v) Japanese Yen (JPY); (vi) Swiss Franc (CHF); (vii) New Zealand Dollar (NZD); (viii) Australian Dollar (AUD); (ix) Swedish Kronor (SEK); (x) Danish Kroner (DKK); (xi) Norwegian Krone (NOK); and (xii) any other currency as determined by the relevant Agency.[87] Major currencies are eligible collateral for initial margin as described further in § __.6.

v. Prudential Regulator

The proposal defines prudential regulator to have the meaning specified in section 1a(39) of the Commodity Exchange Act.[88] Section 1a(39) of the Commodity Exchange Act defines the term ''prudential regulator'' for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The entities for which each of the Agencies is the prudential regulator is set out in § __.1 of each Agency's rule text.

vi. Eligible Master Netting Agreement

Qualifying master netting agreement (''QMNA'') was defined in the 2011 proposal, based on the definition of the term in the Federal banking agencies' risk-based capital rules applicable to derivatives positions held by insured depository institutions and bank holding companies.[89] A few commenters expressed concern with the 2011 proposal's definition of QMNA. These commenters argued that a requirement providing that any exercise of rights under the agreement will not be stayed or avoided under applicable law and would not allow for rights to be stayed as required under certain bankruptcy, receivership or liquidation regimes.

Since the 2011 proposal, the Federal banking agencies have modified the definition of QMNA used in their risk-based capital rules.[90] The proposal contains a revised definition based on the new QMNA definition in the risk-based capital rules. However, the proposal uses the term ''eligible master netting agreement'' (''EMNA'') to avoid confusion with and distinguish from the term used under the capital rules. The Agencies believe that the modifications to the definition address the concerns raised by commenters.

The proposal defines EMNA as any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default (including receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met. These conditions include requirements with respect to the covered swap entity's right to terminate the contract and liquidate collateral and certain standards with respect to legal review of the agreement to ensure it meets the criteria in the definition. The legal review must be sufficient so that the covered swap entity may conclude with a well-founded basis that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition.

The Agencies believe that the revised EMNA definition addresses commenters' concerns regarding certain insolvency regimes where rights can be stayed. In particular, the second criteria has been modified to provide that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than (i) in receivership, conservatorship, or resolution by an Agency exercising its statutory authority, or similar laws in foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions, or (ii) in a contractual agreement subject by its terms to any of the foregoing laws.[91]

The Agencies request comment on whether the proposed definition of EMNA provides sufficient clarity regarding the laws of foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions or whether additional specificity should be provided regarding additional factors required in order for a foreign law to qualify under the EMNA definition. For example, should the definition include a limitation of the duration of the limited stay? If so, what should such limitation be (*e.g.,* one or two-business days)? The Agencies also seek comment regarding whether the provision for a contractual agreement made subject by its terms to limited stays under resolution regimes adequately encompasses potential contractual agreements of this nature or whether this provision needs to be broadened, limited, clarified or modified in some manner.

vii. State

State is defined in the proposal to mean any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana

[87] *See* the CFTC's regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries for this list of major currencies, 75 FR 55410 at 55412 (September 10, 2010).

[88] *See* 7 U.S.C. 1a(39).

[89] *See* 76 FR 27564 at 27576 (May 11, 2011).

[90] *See* 12 CFR part 3.2, 12 CFR part 217.2, and 12 CFR part 324.2.

[91] *See* proposed rule § __.2.

Islands, American Samoa, Guam, or the United States Virgin Islands. The purpose of this definition is to make clear these regions would be included as States for purposes of § __.9 that addresses the cross-border application of margin requirements.

viii. U.S. Government-Sponsored Enterprises

The 2011 proposal did not specifically define U.S. Government-sponsored enterprises, although it allowed the securities of these entities to be pledged as eligible collateral. Under the 2014 proposal, U.S. Government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by Federal statute, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States. U.S. Government-sponsored enterprises currently include Farm Credit System banks, associations, and service corporations, Farmer Mac, the Federal Home Loan Banks, Fannie Mae, Freddie Mac, the Financing Corporation, and the Resolution Funding Corporation. In the future, Congress may create new U.S Government-sponsored enterprises, or terminate the status of existing U.S. Government-sponsored entities. This term is used in the definition of eligible collateral as described further in § __.6.

ix. Entity Definitions

The Agencies are including a number of other definitions including ''bank holding company,'' ''broker,'' ''dealer,'' ''depository institution,'' ''foreign bank,'' ''futures commission merchant,'' ''savings and loan holding company,'' and ''securities holding company'' that are defined by cross-reference to the relevant statute. Many of these terms are also used in the definition of ''financial end user'' or ''market intermediary,'' which is defined to mean a securities holding company, a broker, a dealer, a futures commission merchant, a swap dealer, or a security-based swap dealer.

C. Section __.3: Initial Margin

1. Overview of 2011 Proposal and Public Comments

Section __.3 of the 2011 proposal set out the initial margin amounts for a covered swap entity to collect from its counterparty for its non-cleared swaps. The 2011 proposal specified, among other things, the manner in which a covered swap entity must calculate the initial margin requirements applicable to its non-cleared swaps. These initial margin requirements applied only to the amount of initial margin that a covered swap entity would be required to *collect* from its counterparties. In general, these requirements did not address whether, or in what amounts, a covered swap entity must *post* initial margin to a counterparty.[92]

The 2011 proposal requested comment on whether the rule should incorporate two-way margining. A number of commenters stated that the Agencies should require covered swap entities to post margin. Commenters raised a number of concerns regarding the lack of any requirement for covered swap entities to post both initial margin and variation margin to their counterparties. For example, one commenter argued that covered swap entities that do not post collateral present a risk to the system in the event that such covered swap entities experience financial distress. Commenters also said that by requiring two-way margining, overall leverage exposure would be reduced to an appropriate level.

Under the 2011 proposal, a covered swap entity would have been permitted to select from two alternatives to calculate its initial margin requirements. A covered swap entity could calculate its initial margin requirements using a standardized ''look-up'' table that specified the minimum initial margin that was required to be collected. Alternatively, a covered swap entity could calculate its minimum initial margin requirements using an internal margin model that met certain criteria and that had been approved by the relevant prudential regulator.

In the 2011 proposal, the Agencies proposed initial margin threshold amounts, which varied based on the relative risk posed by the counterparty; high-risk financial end users were subject to lower threshold amounts than low-risk financial end users; and nonfinancial end users were subject to thresholds that were set according to the covered swap entity's internal credit policies. Commenters expressed varying views on the proposed thresholds. For example, one commenter stated that establishing thresholds by counterparty type was too broad and did not appropriately reflect risk. Another commenter suggested that low-risk financial end users should not be subject to a threshold, while a third commenter stated that dollar threshold amounts were arbitrary and should be eliminated altogether.

Under the 2011 proposal, a covered swap entity was required to collect initial margin on or before the date it entered into a swap. Some commenters indicated that this requirement was operationally infeasible due to timing cutoffs and time differences between time zones, and for this reason, commenters requested that the Agencies permit covered swap entities to collect initial margin one to three days after entering into the transaction.

2. 2014 Proposal

a. Collecting and Posting Initial Margin

Consistent with the 2013 international framework and comments received relating to the 2011 proposal, the Agencies are proposing that swap entities that are transacting in non-cleared swaps with one another or with financial end users with material swaps exposure collect *and* post initial margin with respect to those non-cleared swaps. Assuming all swap entities will be subject to an Agency, CFTC, or SEC margin rule that requires collection of initial margin, the proposed rule will result in a collect-and-post system for all non-cleared swaps between swap entities. Under this proposal, a covered swap entity transacting with a financial end user with material swaps exposure must (i) calculate its initial margin collection amount using an approved internal model or the standardized look-up table, (ii) collect an amount of initial margin that is at least as large as the initial margin collection amount less any permitted initial margin threshold amount (which is discussed in more detail below), and (iii) post at least as much initial margin to the financial end user with material swaps exposure as the covered swap entity would be required to collect if it were in the place of the financial end user with material swaps exposure.

b. Calculation Alternatives

Similar to the 2011 proposal, the proposed rule permits a covered swap entity to select from two methods (the standardized look-up table or the internal margin model) for calculating its initial margin requirements. In all cases, the initial margin amount required under the proposed rule is a minimum requirement; covered swap entities are not precluded from collecting additional initial margin (whether by contract or subsequent agreement with the counterparty) in such forms and amounts as the covered swap entity believes is appropriate. These methods are discussed further below under Appendix A and § __.8,

[92] As previously discussed, § __.11 of the FHFA and FCA versions of the 2011 proposal required all institutions supervised by FHFA and the FCA to collect initial and variation margin from their swap entity counterparties.

respectively. Section __.8 also addresses the use of EMNAs for initial margin.

c. Initial Margin Thresholds

As part of the proposed rule's initial margin requirements and consistent with the 2013 international framework, a covered swap entity using either calculation method may adopt an initial margin threshold amount of up to $65 million, below which the covered swap entity need not collect or post initial margin from and to a swap entity or financial end user with a material swaps exposure.[93] This feature of the proposed threshold serves two purposes. First, covered swap entities would be able to make greater use of their own internal credit assessments when making a threshold determination as to the credit and other risks presented by a specific counterparty. Covered swap entities dealing with counterparties that are judged to be of high credit quality may determine a counterparty-specific threshold (of up to $65 million) so credit extensions made by covered swap entities can be more flexible and better informed by granular, internal credit determinations. Second, allowing the use of initial margin thresholds, to the extent prudently applied by covered swap entities, may reduce the potential liquidity burden of the proposed margin requirements. A number of commenters on the 2011 proposal indicated that the liquidity costs of the proposed requirements were inappropriately high. Unlike the 2011 proposal, the current proposal requires both collection and posting of initial margin. Moreover, the Agencies anticipate that allowing for the use of initial margin thresholds of up to $65 million will provide relief to smaller and less systemically risky counterparties while ensuring that initial margin is collected from those counterparties that pose the greatest systemic risk to the financial system.

The proposed initial margin threshold of $65 million would be applied on a consolidated entity level, and therefore, would apply across all non-cleared swaps between a covered swap entity and its affiliates and the counterparty and its affiliates. For example, suppose that a firm engages in separate swap transactions, executed under separate legally enforceable EMNAs, with three counterparties, all belonging to the same larger consolidated group, such as a bank holding company. Suppose further that the initial margin requirement is $100 million for each of the firm's netting sets with each of the three counterparties. The firm dealing with these three affiliates must collect at least $235 million (235 = $100 + $100 + $100 − $65) from the consolidated group. Exactly how the firm allocates the $65 million threshold among the three netting sets is subject to agreement between the firm and its counterparties. The firm may not extend the $65 million threshold to each netting set so that the total amount of initial margin collected is only $105 million (105 = 100 − 65 + 100 − 65 + 100 − 65). The requirement to apply the threshold on a fully consolidated basis applies to both the counterparty to which the threshold is being extended and the counterparty that is extending the threshold.[94] Applying this threshold on a consolidated entity level precludes the possibility that covered swap entities and their counterparties would create legal entities and netting sets that have no economic basis and are constructed solely for the purpose of applying additional thresholds to evade margin requirements.

The Agencies' preliminary view is that the proposed initial margin threshold of $65 million is appropriate and reflects a risk-based approach to the margin requirements. However, the Agencies seek comment on the use of such a threshold in the margin requirements and the proposed size of $65 million. Importantly, the Agencies recognize that allowing for a significant initial margin threshold subjects covered swap entities and their counterparties to credit risk that may materialize quickly in the event of a significant period of financial stress. Is the proposed use of an initial margin threshold appropriate in light of the risks associated with its use? Does the proposed level of the threshold appropriately balance the need to limit the liquidity impact of the requirements with the need to limit credit exposures in non-cleared swaps markets? Are there other approaches that could be taken in this regard that would be more effective than the proposed initial margin threshold approach?

d. Material Swaps Exposure

Under the proposed rule and consistent with the 2013 international framework, covered swap entities are required to collect and post initial margin only with financial end user counterparties that have a material swaps exposure. The Agencies do not propose to require the exchange of initial margin with financial end users with small exposures, as it is assumed that these entities, in most circumstances, would have an initial margin requirement that is significantly less than the proposed $65 million threshold amount.[95] Requiring covered swap entities to subject financial end users with exposures that would generally result in initial margin requirements substantially below $65 million could create significant operational burdens, as the initial margin collection amounts would need to be calculated on a daily basis even though no initial margin would be expected to be collected given that these amounts would be below the permitted initial margin threshold of $65 million.

Under the proposed rule and consistent with the 2013 international framework, the Agencies have adopted a simple and transparent approach to defining material swaps exposure that depends on a counterparty's gross notional derivative exposure for non-cleared swaps. The Agencies' preliminary view is that this approach is appropriate as gross notional derivative exposure is broadly related to a counterparty's overall size and risk exposure and provides for a simple and transparent measurement of exposure that presents only a modest operational burden. Under the proposed rule, a covered swap entity would not be required to collect or post initial margin to or from a financial end user counterparty without a material swaps exposure, that is, if its average daily aggregate notional amount of covered swaps over a defined period exceeds $3 billion.[96] This amount differs from that set forth in the 2013 international framework, which defines smaller financial end users as those counterparties that have a gross aggregate amount of covered swaps below €8 billion, which, at current exchange rates, is approximately equal to $11 billion.

The Agencies' preliminary view is that defining material swaps exposure

[93] This credit exposure limit is defined in the proposed rule as the initial margin threshold amount. *See* proposed rule §§ __.2, __.3(a). A covered swap entity that has established an initial margin threshold amount for a counterparty need only collect initial margin if the required amount exceeds the initial margin threshold amount, and in such cases is only required to collect the excess amount.

[94] Suppose that in the example set out above, the firm is organized into three subsidiaries (A, B, and C) and each of these subsidiaries engages in non-centrally cleared swaps with the counterparties. In this case, the extension of the $65 million threshold by the firm to the counterparties is considered across the entirety of the firm, including the affiliates A, B and C, so that all affiliates of the firm extend in the aggregate no more than $65 million in an initial margin threshold to all of the counterparties.

[95] To be consistent, both ''initial margin threshold'' and ''material swaps exposure'' are defined to include the counterparty and its affiliates.

[96] The definition of ''material swaps exposure'' can be found in § __.2 of the proposed rule.

as a gross notional exposure of $3 billion, rather than $11 billion, is appropriate because it reduces systemic risk without imposing undue burdens on covered swap entities, and therefore, is consistent with the objectives of the Dodd-Frank Act. This view is based on data and analyses that have been conducted since the publication of the 2013 international framework.

Specifically, the Agencies have reviewed actual initial margin requirements for a sample of cleared swaps. These analyses indicate that there are a significant number of cases in which a financial end user counterparty would have a material swaps exposure level below $11 billion but would have a swap portfolio with an initial margin collection amount that significantly exceeds the proposed permitted initial margin threshold amount of $65 million. The intent of both the Agencies and the 2013 international framework is that the initial margin threshold provide smaller counterparties with relief from the operational burden of measuring and tracking initial margin collection amounts that are expected to be below $65 million. Setting the material swaps exposure threshold at $11 billion appears to be inconsistent with this intent, based on the recent analyses.

The table below summarizes actual initial margin requirements for 4,686 counterparties engaged in cleared interest rate swaps. Each counterparty represents a particular portfolio of cleared interest rate swaps. Each counterparty had a swap portfolio with a total gross notional amount less than $11 billion and each is a customer of a CCP's clearing member (*no customer* is itself a CCP clearing member). Column (1) displays the initial margin amount as a percentage of the gross notional amount. Column (2) reports the initial margin, in millions of dollars that would be required on a portfolio with a gross notional amount of $11 billion.

INITIAL MARGIN AMOUNTS ON 4,686 CLEARED INTEREST RATE SWAP PORTFOLIOS

	Column (1) Initial margin amount as percentage of gross notional amount (%)	Column (2) Initial margin amount on an $11 billion gross notional portfolio ($MM)
Average	2.1	231
25th Percentile	0.6	66
50th Percentile	1.4	154
75th Percentile	2.7	297

As shown in the table above, the average initial margin rate across all 4,686 counterparties, reported in Column (1), is 2.1 percent, which would equate to an initial margin collection amount, reported in Column (2), of $231 million on an interest rate swap portfolio with a gross notional amount of $11 billion. This average initial margin collection amount significantly exceeds the proposed permitted threshold amount of $65 million. Seventy-five percent of the 4,686 cleared interest rate swap portfolios exhibit an initial margin rate in excess of 0.6 percent, which equates to an initial margin amount on a cleared interest rate swap portfolio of $66 million (approximately equal to the proposed permitted threshold amount).

The data above represent actual margin requirements on a sample of interest rate swap portfolios that are cleared by a single CCP. Some CCPs also provide information on the initial margin requirements on specific and representative swaps that they clear. The Chicago Mercantile Exchange (''CME''), for example, provides information on the initial margin requirements for cleared interest rate swaps and credit default swaps that it clears. This information does not represent actual margin requirements on actual swap portfolios that are cleared by the CME but does represent the initial margin that would be required on specific swaps if they were cleared at the CME. The table below presents the initial margin requirements for two swaps that are cleared by the CME.

INITIAL MARGIN AMOUNTS ON CME CLEARED INTEREST RATE AND CREDIT DEFAULT SWAPS

	Column (1) Initial margin amount as percentage of gross notional amount (%)	Column (2) Initial margin amount on an $11 billion gross notional portfolio ($MM)
5 year, receive fixed and pay floating rate interest rate swap	2.0	216
5 year, sold CDS protection on the CDX IG Series 20 Version 22 Index	1.9	213

According to the CME, the initial margin requirement on the interest rate swap and the credit default swap are both roughly two percent of the gross notional amount. This initial margin rate translates to an initial margin amount of roughly $216 million on a swap portfolio with a gross notional amount of $11 billion. Accordingly, this data also indicates that the initial margin collection amount on a swap portfolio with a gross notional size of $11 billion could be significantly larger than the proposed permitted initial margin threshold of $65 million.

In addition to the information provided in the tables above, the Agencies' preliminary view is that additional considerations suggest that the initial margin collection amounts associated with non-cleared swaps could be even greater than those reported in the tables above. The tables above represent initial margin requirements on cleared interest rate and credit default index swaps. Non-cleared swaps in other asset classes, such as single name equity or single name credit default swaps, are likely to be riskier and hence would require even more initial margin. In addition, non-cleared swaps often contain complex features, such as nonlinearities, that

make them even riskier and would hence require more initial margin. Finally, non-cleared swaps are generally expected to be less liquid than cleared swaps and must be margined, under the proposed rule, according to a ten-day close-out period rather than the five-day period required for cleared swaps. The data presented above pertains to cleared swaps that are margined according to a five-day and not a ten-day close-out period. The requirement to use a ten-day close-out period would further increase the initial margin requirements of non-cleared versus cleared swaps.

In light of the data and considerations noted above, the Agencies' preliminary view is that it is appropriate and consistent with the intent of the 2013 international framework to identify a material swaps exposure with a gross notional amount of $3 billion rather than $11 billion (€8 billion) as is suggested by the 2013 international framework. Identifying a material swaps exposure with a gross notional amount of $3 billion is more likely to result in an outcome in which entities with a gross notional exposure below the material swaps exposure amount would be likely to have an initial margin collection amount below the proposed permitted initial margin threshold of $65 million. The Agencies do recognize, however, that even at the lower amount of $3 billion, there are likely to be some cases in which the initial margin collection amount of a portfolio that is below the material swaps exposure amount will exceed the proposed permitted initial margin threshold amount of $65 million. The Agencies' preliminary view is that such instances should be relatively rare and that the operational benefits of using a simple and transparent gross notional measure to define the material swaps exposure amount are substantial.

The Agencies seek comment on the use and definition of material swaps exposure. In particular, is the proposed $3 billion level of the material swaps exposure appropriate? Should the amount be higher or lower and if so, why? Are there alternative measurement methodologies that do not rely on gross notional amounts that should be used? Does the proposed rule's use and definition of the material swaps exposure raise any competitive equity issues that should be considered? Are there any other aspects of the material swaps exposure that should be considered by the Agencies?

d. Timing

The proposed rule establishes the timing under which a covered swap entity must comply with the initial margin requirements set out in §§ __.3(a) and (b). Under the proposed rule, a covered swap entity, with respect to any non-cleared swap to which it is a party, must, on a daily basis, comply with the initial margin requirements for a period beginning on or before the business day following the day it enters into the transaction and ending on the date the non-cleared swap is terminated or expires. This requirement will cause covered swap entities to recalculate their initial margin requirements per their internal margin models or the standardized look-up table each business day. As a result, covered swap entities may need to adjust the amount of initial margin they collect or post on a daily basis.

Under the 2011 proposal, a covered swap entity was required to collect initial margin on or before the date it entered into a non-cleared swap. In the proposed rule, the Agencies have changed the timing provision in § __.3 to require a covered swap entity to comply with the initial margin requirements beginning on or before the business day following the day it enters into the swap. Providing an additional day is intended to address the operational concerns raised by the commenters to the 2011 proposal.

e. Other Counterparties

Under the proposed rule, a covered swap entity is not required as a matter of course to collect initial margin with respect to any non-cleared swap with a counterparty other than a financial end user with material swaps exposure or a swap entity, but shall collect initial margin at such times and in such forms and amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such swaps. Thus, the specific provisions of the Agencies' rules on initial margin requirements, documentation, and eligible collateral would not apply to non-cleared swaps between covered swap entities and these ''other counterparties.'' These ''other counterparties'' would include nonfinancial end users, entities that are excluded from the definition of financial end user, and financial end users without material swaps exposure. The Agencies' preliminary view is that this treatment of ''other counterparties'' is consistent with the Dodd-Frank Act's risk-based approach to establishing margin requirements. In particular, the Agencies intend for the proposed requirements with respect to ''other counterparties'' to be consistent with current market practice and understand that in many cases a covered swap entity would exchange little or no margin with these counterparty types. There may be circumstances, however, in which a covered swap entity finds it prudent to collect initial margin from these counterparty types, for example, if a covered swap entity chose to incorporate margin to mitigate the safety and soundness effects of its credit exposures to these counterparty types.

D. Section __.4: Variation Margin

1. Overview of 2011 Proposal and Public Comments

Section __.4 of the 2011 proposal specified the variation margin requirements applicable to non-cleared swaps. Consistent with the treatment of initial margin in the 2011 proposal, the variation margin requirements applied only to the collection of variation margin by covered swap entities from their counterparties, and not to the posting of variation margin to their counterparties. Under the 2011 proposal, covered swap entities and their counterparties were free to negotiate the extent to which a covered swap entity could have been required to post variation margin to a counterparty (other than a swap entity that is itself subject to margin requirements). In the 2011 proposal, the Agencies requested comment on whether the margin rules should impose a separate, additional requirement that a covered swap entity post variation margin to financial end users and nonfinancial end users. Consistent with the comments received relating to initial margin, many commenters recommended two-way posting of variation margin for transactions between covered swap entities and financial end users. Specifically, commenters argued that the bilateral exchange of variation margin would reduce systemic risk, increase transparency, and facilitate central clearing.

The 2011 proposal also established a minimum amount of variation margin that must be collected, leaving covered swap entities free to collect larger amounts if they elected to do so. Under the 2011 proposal, a covered swap entity would have been permitted to establish, for certain counterparties that are end users, a credit exposure limit that acts as a threshold below which the covered swap entity need not collect variation margin. Specifically, the variation margin threshold amount that a covered swap entity could establish for a low-risk financial end user counterparty could be calculated in the same way as the proposed initial margin threshold amounts for such counterparties. The 2011 proposal

would not have allowed a variation margin threshold amount for swap entity or high-risk financial end user counterparties. The 2011 proposal permitted a covered swap entity to calculate variation margin requirements on an aggregate basis across all non-cleared swaps with a counterparty that were executed under the same QMNA. The Agencies requested comment regarding whether permitting the aggregate calculation of variation margin requirements was appropriate and, if so, whether the 2011 proposal's definition of ''QMNA'' raised practical or implementation difficulties or was inconsistent with market practices. Commenters generally supported netting and argued that netting diversification should be allowed across asset classes.

The 2011 proposal also specified that covered swap entities calculate and collect variation margin from counterparties that were themselves swap entities or financial end users at least once per business day, and from counterparties that are nonfinancial end users at least once per week once the relevant credit threshold was exceeded.

2. 2014 Proposal

a. Collecting and Paying Variation Margin

Consistent with the initial margin requirements of this proposal, the Agencies are proposing that swap entities transacting with one another and with financial end users be required to collect and pay variation margin with respect to non-cleared swaps. As with initial margin, the Agencies believe that requiring covered swap entities both to collect and pay margin with these counterparties effectively reduces systemic risk by protecting both the covered swap entity and its counterparty from the effects of a counterparty default.

In response to the comments received and consistent with the 2013 international framework, the proposed rule would require a covered swap entity to collect variation margin from all swap entities and from financial end users regardless of whether the financial end user has a material swaps exposure. The proposed rule generally requires a covered swap entity to collect and pay variation margin on non-cleared swaps in an amount that is at least equal to the increase or decrease (as applicable) in the value of such swaps since the previous exchange of variation margin. Unlike the 2011 proposal, and the initial margin requirements set out in §§ __.3(a) and (b) of this proposal, a covered swap entity may not adopt a threshold amount below which it need not collect or pay variation margin on swaps with a swap entity or financial end user counterparty (although transfers below a minimum transfer amount would not be required, as discussed in § __.5, below).

The terms ''pay'' and ''paid'' are used when referring to variation margin. This terminology is being proposed based on a preliminary understanding that market participants view the economic substance of variation margin as settling the daily exposure of non-cleared swaps between counterparties. This perception is reinforced by the current market practice among swap participants of requiring that variation margin, where required under the parties' negotiated agreements, be provided in cash. As noted below, § __.6 of the proposed rule would limit eligible collateral for variation margin to cash.

The market perception that variation margin essentially settles the current exposure may not always align with the underlying legal requirement or with contracts that document the parties' rights and obligations with respect to swaps. On the one hand, for cleared swaps, derivatives clearing organizations are required by law to settle the exposure with counterparties at least daily, and thus the legal requirement is aligned with market participants' perceptions about the underlying economic substance of such transfers.[97] On the other hand, for non-cleared swaps, there is currently no statutory requirement that counterparties settle their exposures daily, leaving parties to negotiate such settlement.

It is the Agencies' understanding that standard swap documentation may treat variation margin differently depending on the underlying legal structure. For example, swap agreements under New York law might refer to variation margin as being ''posted'' pursuant to a security interest. Swap documentation referencing English law, however, may be aligned with a title transfer regime under which variation margin is *not* furnished pursuant to a security interest.

By proposing to use ''pay'' and ''paid'' terminology with respect to variation margin, the Agencies do not intend to propose to mandate, as a legal matter, to alter current practices under which variation margin is characterized as being ''posted'' pursuant to an agreement that establishes a security interest. Also, the Agencies, by proposing ''pay'' and ''paid'' terminology, do not intend to alter the characterization of such transfer of variation margin funds for accounting, tax, or other purposes. The Agencies invite comment on the appropriateness of the proposed terminology and whether other terminology may better address the underlying purpose of the legal requirements for the Agencies to establish requirements related variation margin requirements.

b. Frequency

Section __.4(b) of the proposed rule establishes the frequency at which a covered swap entity must comply with the variation margin requirements set out in § __.4(a). Under the proposed rule, a covered swap entity must collect or pay variation margin with swap entities and financial end user counterparties no less frequently than once per business day.

c. Other Counterparties

Like the proposed initial margin requirements set out in § __.3, the proposed rule permits a covered swap entity to collect variation margin from counterparties other than swap entities and financial end users at such times and in such forms and amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps. The specific provisions of the Agencies' rules on variation margin requirements, documentation, eligible collateral, segregation, and rehypothecation would not apply to swaps between covered swap entities and these ''other counterparties.'' As with initial margin, the Agencies intend for the proposed requirements to be consistent with current market practice and understand that, in many cases, a covered swap entity would exchange little or no margin with these counterparty types.

An important difference between the treatment of ''other counterparties'' in the cases of initial margin and of variation margin is that the scope of ''other counterparties'' for variation margin requirements is narrower than for the initial margin requirements. Specifically, under the proposed rule, financial end users without material swaps exposures are treated similarly as ''other counterparties'' in the context of the initial margin requirements but not the variation margin requirements.

[97] Section 5b(c)(2)(E) of the Commodity Exchange Act requires derivatives clearing organizations to ''complete money settlements on a timely basis (but not less frequently than once each business day).'' CFTC regulations define ''settlement'' as, among other things, ''payment and receipt of variation margin for futures, options, and swaps.'' 17 CFR 39.14(a)(1). Further, CFTC regulations require that ''except as otherwise provided by Commission order, derivatives clearing organizations shall effect a settlement with each clearing member at least once each business day.'' 17 CFR 39.14(b).

In other words, all financial end user counterparties are subject to the variation margin requirements, while only financial end user counterparties with material swaps exposure are subject to initial margin requirements. The different composition of ''other counterparties'' between the proposed initial and variation margin requirements reflects the Agencies' view that variation margin is an important risk mitigant that (i) reduces the build-up of risk that may ultimately pose systemic risk; (ii) imposes a lesser liquidity burden than does initial margin; and (iii) reflects current market practice and a risk management best practice by providing for the regular exchange of variation margin between covered swap entities and financial end users.

e. Netting Arrangements

Similar to the 2011 proposal, the proposed rule permits a covered swap entity to calculate variation margin requirements on an aggregate net basis across all non-cleared swap transactions with a counterparty that are executed under a single EMNA. If an EMNA covers non-cleared swaps that were entered into before the applicable compliance date, those swaps must be included in the aggregate for purposes of calculating the required variation margin. As discussed previously, under the proposed rule, the margin requirements would not be applied retroactively, and therefore, no new initial margin or variation margin requirements would be imposed on non-cleared swaps entered into prior to the relevant compliance date until those transactions are rolled-over or renewed. The only requirements that would apply to a pre-compliance date transaction would be the initial margin and variation margin requirements to which the parties to the transaction had previously agreed by contract. However, if non-cleared swaps that were entered into prior to the applicable compliance date were included in the EMNA, those swaps would be subject to the proposed variation margin requirements. A covered swap entity would need to establish a new EMNA to cover only swaps entered into after the compliance date in order to not include pre-compliance date swaps. Like the 2011 proposal, the proposed rule defines an EMNA as a legally enforceable agreement to offset positive and negative mark-to-market values of one or more swaps that meet a number of specific criteria designed to ensure that these offset rights are fully enforceable, documented and monitored by the covered swap entity.[98]

E. Section __.5: Minimum Transfer Amount and Satisfaction of Collecting and Posting Requirements

1. Minimum Transfer Amount

The 2011 proposal included a minimum transfer amount for the collection of initial and variation margin by covered swap entities. Under the 2011 proposal, a covered swap entity was not required to collect margin from any individual counterparty otherwise required under the rule until the required cumulative amount was $100,000 or more.

The proposed rule also provides for a minimum transfer amount for the collection and posting of margin by covered swap entities. Under the proposal, a covered swap entity need not collect or post initial or variation margin from or to any individual counterparty otherwise required unless and until the required cumulative amount of initial and variation margin is greater than $650,000.[99] This minimum transfer amount is consistent with the 2013 international framework and addresses a number of comments received on the 2011 proposal indicating that the $100,000 minimum transfer amount was too low and inconsistent with market practice. The Agencies' preliminary view is that the higher minimum transfer amount is consistent with the mandate to mitigate risk to swap entities and to the financial system.

2. Satisfaction of Collecting and Posting Requirements

The 2011 proposal addressed the situation where a counterparty refused or otherwise failed to make variation margin payments to a covered swap entity. The 2011 proposal provided that the covered swap entity would not be in violation of the rule in this situation so long as it took certain steps to collect the margin or commenced termination of the swap.

This proposal includes similar provisions with respect to both initial and variation margin. Specifically, under § .__5(b), a covered swap entity shall not be deemed to have violated its obligation to collect or post initial or variation margin from or to a counterparty if: (1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and (2) the covered swap entity has (i) made the necessary efforts to collect or post the required margin, or has otherwise demonstrated upon request to the satisfaction of the appropriate Agency that it has made appropriate efforts to collect the required margin, or (ii) commenced termination of the non-cleared swap with the counterparty promptly following the applicable cure period and notification requirements.

F. Section __.6: Eligible Collateral

1. Overview of 2011 Proposal and Public Comments

The 2011 proposal placed strict limits on the collateral that covered swap entities could collect to meet their minimum margin requirements. For minimum variation margin requirements, the Agencies proposed to recognize only immediately available cash (denominated either in U.S. dollars or in the currency in which payment obligations under the swap contract would be settled) and obligations issued by or fully guaranteed by the U.S. government. For minimum initial margin requirements, the Agencies proposed to recognize the aforementioned assets plus senior debt obligations issued by Fannie Mae, Freddie Mac, the Federal Home Loan Banks, or Farmer Mac, and ''insured obligations'' of the Farm Credit Banks.[100]

Most commenters that addressed the eligible collateral section of the 2011 proposal, including industry groups and members of Congress, stated that the Agencies should expand the list of eligible collateral to include a broader range of high-quality, liquid and readily marketable assets. These commenters stated that a more expansive list of eligible collateral would be consistent with market practice, legislative intent, and international standards. Many commenters suggested that the minimum margin requirements included in the 2011 proposal could disrupt financial markets by significantly increasing the demand for certain liquid assets, inadvertently

[98] EMNAs are discussed in more detail in § __.2 of the proposed rule.

[99] *See* proposed rule § __.5(a). The minimum transfer amount only affects the timing of margin collection; it does not change the amount of margin that must be collected once the $650,000 threshold is crossed. For example, if the margin requirement were to increase from $500,000 to $800,000, the covered swap entity would be required to collect the entire $800,000 (subject to application of any applicable initial margin threshold amount).

[100] ''Insured obligations'' of FCS banks are consolidated and System-wide obligations issued by FCS banks. These obligations are insured by the Farm Credit System Insurance Corporation out of funds in the Farm Credit Insurance Fund. Should the Farm Credit Insurance Fund ever be exhausted, Farm Credit System banks are jointly and severally liable for payment on insured obligations. *See* 12 U.S.C. 2277a–3.

restrict liquidity and, in turn, slow economic growth. Additionally, commenters suggested that increased demand for ''eligible'' assets could inappropriately distort the market for those assets relative to other high-quality, liquid, and readily marketable assets.

2. 2014 Proposal

a. Variation Margin Collateral

Under the proposal, the Agencies are proposing to require the collection or payment of immediately available cash funds to satisfy the minimum variation margin requirements. Such payment must be denominated either in U.S. dollars or in the currency in which payment obligations under the swap are required to be settled. When determining the currency in which payment obligations under the swap are required to be settled, a covered swap entity must consider the entirety of the contractual obligation. As an example, in cases where a number of swaps, each potentially denominated in a different currency, are subject to a single master agreement that requires all swap cash flows to be settled in a single currency, such as the Euro, then that currency (Euro) may be considered the currency in which payment obligations are required to be settled. The Agencies request comment on whether there are current market practices that would raise difficulties or concerns about identifying the appropriate settlement currency in applying this aspect of the proposed rule, from a contractual or other operational standpoint.

Limiting variation margin to cash should sharply reduce the potential for disputes over the value of variation margin collateral. Additionally, this proposed change is consistent with regulatory and industry initiatives to improve standardization and efficiency in the OTC swaps market. For example, in June 2013, ISDA published the 2013 Standard Credit Support Annex (SCSA), which provides for the sole use of cash for variation margin. Additionally, the Agencies note that central counterparties generally require variation margin to be paid in cash.

Under this proposed rule, the value of cash paid to satisfy variation margin requirements is not subject to a haircut. Variation margin payments reflect gains and losses on a swap transaction, and payment or receipt of variation margin generally represents a transfer of ownership in the collateral. Therefore, haircuts are not a necessary component of the regulatory requirements for cash variation margin.

The Agencies seek comment on the appropriateness of limiting variation margin to cash, and on any other revisions that commenters believe would be appropriate to better align the variation margin requirements applicable with arrangements that are currently observed in the OTC swap market.

b. Initial Margin Collateral

The Agencies are proposing to expand the list of eligible collateral with respect to the collection and posting of initial margin. The standards for eligible initial margin collateral in the 2014 proposal pertain to collateral collected or posted in connection with the proposed minimum requirements. This proposal in no way restricts the types of collateral that may be collected or posted to satisfy margin terms that are bilaterally negotiated and not required under the proposal. For example, under the proposal a covered swap entity may extend an initial margin threshold of up to $65 million on an aggregate basis to each swap entity or financial end user counterparty and its affiliates. If a covered swap entity extended such an initial margin threshold to a counterparty and the resulting minimum initial margin requirement was zero, but the covered swap entity decided to collect initial margin collateral to protect itself against counterparty credit risk, then the covered swap entity could choose to collect that initial margin in any form of collateral, including forms other than the types of collateral specified in the rule.

Relatedly, under the 2014 proposal, covered swap entities need to collect initial margin for non-cleared swaps with certain entities (''other counterparties'') in such forms and amounts (if any) and at such times that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such transactions. For such a transaction, a covered swap entity is responsible for determining the amount, the form, and the time for the margin to be collected. Accordingly, margin collected by a covered swap entity in connection with a non-cleared swap with an ''other counterparty'' can be in any form of collateral, including in forms other than the types of collateral specified in the rule.

Although the list of eligible collateral in the 2014 proposal for initial margin is more expansive than the 2011 proposal, the Agencies continue to believe that it is necessary to impose limits on the types of assets eligible to satisfy the minimum margin requirements. Therefore, the Agencies are limiting the recognition of collateral to certain assets deemed to be highly liquid, particularly during a period of financial stress as suggested by the 2013 international framework. To support this approach, the Agencies note that to protect a covered swap entity during periods of financial stress, collateral eligible to satisfy the proposed minimum margin requirements should not have excessive exposures to credit, market, or foreign exchange risk.

The Agencies are proposing to permit a broader range of collateral to be pledged to satisfy the minimum initial margin requirements, which includes cash collateral (subject to the same requirements applicable to variation margin) and any of the following:

(1) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(2) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;

(3) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(4) Any major currency, regardless of whether it is the currency in which payment obligations under the swap are required to be settled;

(5) A security that is issued by the European Central Bank or by a sovereign entity that receives no higher than a 20 percent risk weight under subpart D of the Federal banking agencies' risk-based capital rules; [101]

(6) A security that is issued by or unconditionally guaranteed as to the timely payment of principal and interest by the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(7) A publicly traded debt security for which the issuer has adequate capacity to meet financial commitments (as defined by the appropriate Federal

[101] *See* 12 CFR part 3, subpart D, 12 CFR part 217, subpart D, and 12 CFR part 324, subpart D.

agency),[102] including such a security issued by a U.S. Government-sponsored enterprise not covered in (3), above;

(8) A publicly traded common equity security that is included in the Standard and Poor's Composite 1500 Index, an index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for the purposes of including publicly traded common equity as initial margin, or any other index for which the covered swap entity can demonstrate that the equities represented are as liquid and readily marketable as those included in the Standard and Poor's Composite 1500 Index; and

(9) Gold.

Notably, any debt security issued by a U.S. Government-sponsored enterprise that is not operating with capital support or another form of direct financial assistance from the U.S. government would be eligible collateral only if the security met the requirements for debt securities discussed above. The Agencies seek comment on how the likelihood of financial assistance from the United States not authorized under current law (that is, the perceived ''implicit guarantee'') influences the determination that a U.S. Government-sponsored enterprise has ''adequate capacity to meet financial commitments'' when its debt securities are considered for acceptance as collateral for initial margin. The Agencies also request comment on whether the final rule should state that debt securities of a U.S. Government-sponsored enterprise that is not operating with capital support or other financial assistance from the U.S. government are eligible collateral for initial margin only if: (1) The U.S. Government-sponsored enterprise has adequate capacity to meet financial commitments (as defined in each agency's rule) *and* (2) the determination of ''adequate capacity'' is not reliant on financial assistance from the U.S. Government.

In the context of corporate securities, initial margin collateral is further restricted to exclude any corporate securities (equity or debt) issued by the counterparty or any of its affiliates, a bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, or any company that would be one of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of one of the foregoing institutions. These restrictions reflect the Agencies' view that securities issued by the foregoing entities are very likely to come under significant pressure during a period of financial stress when a covered swap entity may be resolving a counterparty's defaulted swap position and present a general source of wrong-way risk. Accordingly, the Agencies believe that it is prudent to restrict initial margin collateral in this manner and that these restrictions will not unduly reduce the scope of collateral that is eligible to satisfy the minimum initial margin requirements.

The Agencies request comment on the securities subject to this restriction, and, in particular, on whether securities issued by other entities, such as non-bank systemically important financial institutions designated by the Financial Stability Oversight Council, also should be excluded from the list of eligible collateral.

For the purpose of the initial margin requirements, the recognized value of assets posted as initial margin collateral, except U.S. dollars and the currency in which the payment obligations of the swap is required, is subject to haircuts. These collateral haircuts reduce the value of the initial margin to an amount that is equal to the market value of the initial margin collateral multiplied by one minus the specific collateral haircut. Collateral haircuts guard against the possibility that the value of initial margin collateral could decline during the period that a defaulted swap position has to be closed out by a covered swap entity. The proposed collateral haircuts, which appear in Appendix B, have been calibrated to be broadly consistent with valuation changes observed during periods of financial stress.

The Agencies request comment on whether the proposed rule's list of eligible collateral for minimum initial and variation margin requirements, and the haircuts applied to initial margin, are appropriate.

The approach taken to initial margin collateral in the proposal, which is consistent with the 2013 international framework, recognizes a broad array of financial collateral ranging from high quality sovereign bonds to corporate securities and commodities. The Agencies believe that broadening the scope of eligible collateral addresses concerns about collateral availability and market impact without exposing covered swap entities to undue risk. In particular, the Agencies believe that this proposal appropriately restricts eligible collateral to liquid and high-quality assets with limited market and credit risk. In addition, initial margin collateral is subject to robust collateral haircuts that will further reduce risk.

Because the value of collateral may change, a covered swap entity must monitor the value and quality of collateral previously collected to satisfy minimum initial margin requirements. If the value of such collateral has decreased, or if the quality of the collateral has deteriorated so that it no longer qualifies as eligible collateral, the covered swap entity must collect additional collateral of sufficient value and quality to ensure that all applicable minimum margin requirements remain satisfied on a daily basis.

The proposal does not allow a covered swap entity to fulfill the minimum margin requirements with any forms of non-cash collateral not included in the list of liquid and readily marketable assets described above. The use of alternative types of collateral to fulfill regulatory margin requirements is complicated by pro-cyclical considerations (for example, the changes in the liquidity, price volatility, or wrong-way risk of collateral during a period of financial stress could exacerbate that stress) and the need to ensure that the collateral is subject to low credit, market, and liquidity risk. Therefore, this proposed rule limits the recognition of collateral to the aforementioned list of assets.

However, counterparties that wish to rely on assets that do not qualify as eligible collateral under the proposed rule still would be able to pledge those assets with a lender in a separate arrangement, using the cash or other eligible collateral received from that separate arrangement to meet the minimum margin requirements.

G. Section __.7: Segregation of Collateral

1. 2011 Proposal and Public Comment

The 2011 proposal established minimum safekeeping standards for collateral posted by covered swap entities to assure that collateral is available to support the swaps and not housed in a jurisdiction where it is not available if defaults occur. The 2011 proposal required the covered swap entity to require a counterparty that is a swap entity to hold funds or other property posted as initial margin at an independent third-party custodian. The 2011 proposal also required that the independent third-party custodian be prohibited by contract from: (i) Rehypothecating or otherwise transferring any initial margin it holds for the covered swap entity; and (ii) reinvesting any initial margin held by the custodian in any asset that would

[102] The FCA is proposing a new definition of ''investment grade'' only for FCS institutions in § __.2 that is identical to 12 CFR 1.2(d).

not qualify as eligible collateral for initial margin under the 2011 proposal. Further, the 2011 proposal required that the custodian be located in a jurisdiction that applies the same insolvency regime to the custodian as would apply to the covered swap entity. These custodian and related requirements applied only to initial margin, not variation margin, and did not apply to transactions with a counterparty that was not a swap entity. Collateral collected from counterparties that were not swap entities could be segregated at the discretion of the counterparties.

The third-party custodian requirement in the 2011 proposal was based on a preliminary view by the Agencies that requiring a covered swap entity's initial margin to be segregated at a third-party custodian was necessary to offset the greater risk to the covered swap entity and the financial system arising from the use of non-cleared swaps, and protect the safety and soundness of the covered swap entity.

Commenters generally supported the protections described in the 2011 proposal as reasonable to protect the pledged or transferred collateral but several commenters noted that these types of protections would be costly and have large liquidity impacts and may increase systemic risk, given that much of the collateral would likely be held by a relatively few large custodians. In addition, concerns were expressed by some commenters with the ability of custodians to meet the requirement that the jurisdiction of insolvency of the custodian be the same as the covered swap entity.

2. 2014 Proposal

The proposal retains and expands on most of the collateral safekeeping requirements of the 2011 proposal and revises requirements related to the custodial agreement.

Section __.7(a) of the proposal addresses requirements for when a covered swap entity posts any collateral other than variation margin. Posting collateral to a counterparty exposes a covered swap entity to risks in recovering such collateral in the event of its counterparty's insolvency. To address this risk and to protect the safety and soundness of the covered swap entity, § __.7(a) requires a covered swap entity that posts any collateral other than variation margin with respect to a non-cleared swap to require that such collateral be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty. This requirement would apply to initial margin posted by a covered swap entity pursuant to § __.3(b), as well as initial margin that is not required by this rule but is posted by a covered swap entity as a result of negotiations with its counterparty, such as initial margin posted to a financial end user that does not have material swaps exposure or initial margin posted to another covered swap entity even though the amount was less than the $65 million initial margin threshold amount.

Section __.7(b) of the proposal addresses requirements for when a covered swap entity collects initial margin required by § __.3(a). Under § __.7(b), the covered swap entity shall require that initial margin collateral collected pursuant to § __.3(a) be held at one or more custodians that are not affiliates of either party. Because the collection of initial margin does not expose the covered swap entity to the same risk of counterparty default as is created when a covered swap entity posts collateral, the scope of the requirements for initial margin that a covered swap entity collects is narrower than the scope for requirements for posting collateral. As a result, § __.7(b) applies only to initial margin that a covered swap entity collects as required by § __.3(a), rather than all collateral collected.

For collateral subject to § __.7(a) or § __.7(b), § __.7(c) requires the custodian to act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions including in the event of bankruptcy, insolvency, or similar proceedings. Such a custodian agreement must prohibit the custodian from rehypothecating, repledging, reusing or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement, or other means) the funds or other property held by the custodian. Section __.7(d) provides that, notwithstanding this prohibition on rehypothecating, repledging, reusing or otherwise transferring the funds or property held by the custodian, the posting party may substitute or direct any reinvestment of collateral, including, under certain conditions, collateral collected pursuant to § __.3(a) or posted pursuant to § __.3(b).

In particular, for initial margin collected pursuant to § __.3(a) or posted pursuant to § __.3(b), the posting party may substitute only funds or other property that meet the requirements for initial margin under § __.6 and where the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § __.3. The posting party also may direct the custodian to reinvest funds only in assets that would qualify as eligible collateral under § __.6 and ensure that the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § __.3. In the cases of both substitution and reinvestment, the proposed rule requires the posting party to ensure that the value of eligible collateral net of haircuts remains equal to or above the minimum requirements contained in § __.3. In addition, the restrictions on the substitution of collateral described above do not apply to cases where a covered swap entity has posted or collected more initial margin than is required under § __.3. In such cases the initial margin that has been posted or collected in satisfaction of § __.3 is subject to the restrictions on collateral substitution but any additional collateral that has been posted is not subject to the restrictions on collateral substitution and, as noted above, any additional collateral that has been collected by the covered swap entity is not subject to any of the requirements of § __.7.

The segregation limits on rehypothecation, repledge, or reuse contained in § __.7 apply only with respect to the initial margin requirement and not with respect to variation margin.[103] The Agencies' preliminary view is that requiring covered swap entities to segregate and limit the rehypothecation, repledge, or reuse of funds and other property held in satisfaction of the initial margin requirement is necessary to (i) offset the greater risk to the covered swap entity and the financial system arising from the use of swaps that are not cleared and (ii) protect the safety and soundness of the covered swap entity. In developing this proposal, the Agencies have considered that the failure of a covered swap entity could pose significant systemic risks to the financial system, and losses borne by the financial system in such a failure could have significant consequences. The consequences could be magnified if funds or other property received by the failing covered swap entity to satisfy the initial margin requirement cannot be quickly recovered by nondefaulting counterparties during a period of financial stress. To the extent that initial margin requirements are intended to constrain risk-taking, a lack of

[103] The proposed rule does not apply the segregation requirement to variation margin because variation margin is generally used to offset the current exposure arising from *actual* changes in the market value of derivative swap transaction rather than to secure potential exposure arising from *future* changes in the market value of the swap transaction during the closeout of the exposure.

restrictions on rehypothecation, repledging, and reusing initial margin and a lack of segregation at an unaffiliated custodian will weaken their effect.

The Agencies are concerned that not requiring funds or other property held to satisfy the initial margin requirement to be held at an unaffiliated custodian and limiting its rehypothecation, repledging, or reuse at the outset may cause an entity that incurs a severe loss, due to credit or market events, to face liquidity challenges during periods of stress. Requiring the protection of pledged initial margin bilaterally between the counterparties provides assurance that the pledging counterparty is much less likely to face additional losses (due to the loss of its transferred or pledged initial margin) above the replacement cost of the non-cleared swaps portfolio. During a period of stress, the custodian will provide assurance that the counterparties' initial margin is indeed only available to meet incremental losses during the closeout of the defaulting counterparty's non-cleared swaps and has not been used to secure other obligations. As such, this reduces the incentive for the nondefaulting counterparty to become concerned with meeting its obligations to other nondefaulting counterparties, reducing the interconnected risk associated with non-cleared swaps.

As discussed above, the limitations on rehypothecation, repledging, or reusing pledged collateral will likely increase funding costs for some market participants required to post initial margin, including some covered swap entities. Moreover, when a covered swap entity intermediates non-cleared swaps between two financial end users with material swaps exposure the proposed rule would require that the covered swap entity post initial margin to each financial end user and that the covered swap entity collect initial margin from each financial end user and that these funds or other property be held at a third-party custodian that will not rehypothecate, repledge, or reuse such assets. These proposed requirements will result in a significant amount of initial margin collateral that will be held and segregated to guard against the risk of counterparty default.

The 2013 international framework sets out parameters for member countries to permit a limited degree of rehypothecation, repledging, and reuse of initial margin collateral when a covered swap entity is dealing with a financial end user if certain safeguards for protecting the financial end user's rights in such collateral are available under applicable law. If such protections exist, under the 2013 international framework, a member country may allow a swap entity to rehypothecate, repledge, or reuse initial margin provided by a non-dealer financial end user one time to hedge the covered swap entities exposure to the financial end user.[104] The Agencies seek comment on the circumstances under which one-time rehypothecation, repledge, or reuse of initial margin posted by a non-dealer financial end user would be permitted under the 2013 international framework and whether this would be a commercially viable option for market participants.

H. Section __.8: Initial Margin Models and Standardized Amounts

1. Overview of 2011 Proposal and Public Comments

Section __.8 of the 2011 proposal set out modeling standards that an initial margin model must meet for a covered swap entity to calculate initial margin under such a model. In situations where these requirements would not be met, initial margin would be calculated according to a standardized look-up table (Appendix A of the 2011 proposal). Under the 2011 proposal, all initial margin models had to calculate the potential future exposure of the swap consistent with a one-tailed 99 percent confidence level over a 10-day close-out period. In addition, the initial margin model had to be calibrated to be consistent with a period of financial stress. Initial margin models were permitted to recognize portfolio effects and offsets within a portfolio of swaps with a counterparty if they were conducted under the same QMNA. The recognition of portfolio effects and offsets was limited, however, to swaps within the following broad asset classes: Commodity, credit, equity, and interest rates and foreign exchange (considered as a single asset class). No portfolio effects or offsets were recognized across transactions in different asset classes.

The 2011 proposal requested comment on the requirements for initial margin models as well as the standardized look-up table based initial margin requirements. A number of commenters indicated that the assumption of a 10-day close-out period was too long and that many non-cleared swaps could effectively be replaced in less than 10 days. More specifically, a number of commenters agreed that the close-out period applied to non-cleared swaps should be longer than that applied to listed futures (1 day) and cleared swaps (5 days) but suggested that 10 days was too long. Other commenters indicated that the appropriate close-out period varied significantly across transactions and that a single close-out period would not be appropriate. One commenter suggested that covered swap entities should be allowed to use self-determined close-out period assumptions based on their specific knowledge of the transaction and its market characteristics. A number of commenters suggested that the standardized look-up table did not appropriately recognize the kind of portfolio risk offsets that are allowed in the context of initial margin models.

2. 2014 Proposal

a. Internal Initial Margin Models

As in the 2011 proposal, the Agencies are now proposing an approach whereby covered swap entities may calculate initial margin requirements using an approved initial margin model. As in the case of the 2011 proposal, the proposed rule also requires that the initial margin amount be set equal to a model's calculation of the potential future exposure of the non-cleared swap consistent with a one-tailed 99 percent confidence level over a 10-day close-out period. Generally, the modeling standards for the initial margin model are consistent with current regulatory rules and best practices for such models in the context of risk-based capital rules applicable to insured depository institutions and bank holding companies, are no less conservative than those generally used by CCPs, and are also consistent with the standards of the 2013 international framework.[105] More specifically, under the proposed rule initial margin models must capture all of the material risks that affect the non-cleared swap including material non-linear price characteristics of the swap.[106] For example, the initial margin calculation for a swap that is an option on an underlying asset, such as a credit default swap contract, would be

[104] The prudential regulators note that on April 14, 2014, the European Supervisory Authorities (''ESA'') issued for comment a proposal to implement the 2013 international framework. Like the prudential regulators, the ESA did not propose to allow the rehypothecation, repledge, or reuse of initial margin. *See* ''Draft Regulatory Technical Standards on Risk-mitigation Techniques for OTC-derivative Contracts Not Cleared by a CCP under Article 11(15) of Regulation (EU) No. 648/2012'', pp 11, 42–43 (April 14, 2014), *https://www.eba.europa.eu/documents/10180/655149/JC+CP+2014+03+%28CP+on+risk+mitigation+for+OTC+derivatives%29.pdf.*

[105] This conservative approach also incorporates the practices associated with model validation, independent review and other qualitative requirements associated with the use of internal models for regulatory capital purposes.

[106] *See* proposed rule § __.8(d)(9).

required to capture material non-linearities arising from changes in the price of the underlying asset or changes in its volatility. Accordingly, the Agencies' preliminary view is that these modeling standards should ensure that a non-cleared swap does not pose a greater systemic risk than a cleared swap.

All initial margin models must be approved by a covered swap entity's prudential regulator before being used for margin calculation purposes. In the event that a model is not approved, initial margin calculations would have to be performed according to the standardized initial margin approach that is detailed in Appendix A and discussed below.

In addition to the requirement that the models appropriately capture all material sources of risk, as discussed above, the proposed rule contains a number of standards and criteria that must be satisfied by initial margin models. These standards relate to the technical aspects of the model as well as broader oversight and governance standards. These standards are broadly similar to modeling standards that are already required for internal regulatory capital models.

Initial margin models will be reviewed for approval by the appropriate Agency upon the request of a covered swap entity. Models that are reviewed for approval will be analyzed and subjected to a number of tests to ensure that the model complies with the requirements of the proposed rule. Given that covered swap entities may engage in highly specialized business lines with varying degrees of intensity, it is expected that specific initial margin models will vary across covered swap entities. Accordingly, the specific analyses that will be undertaken in the context of any single model review will have to be tailored to the specific uses for which the model is intended. The nature and scope of initial margin model reviews are expected to be generally similar to reviews that are conducted in the context of other model review processes such as those relating to the approval of internal models for regulatory capital purposes. Initial margin models will also undergo periodic supervisory reviews to ensure that they remain compliant with the requirements of the proposed rule and are consistent with existing best practices over time.

i. Ten-Day Close-Out Period Assumption

Since non-cleared swaps are expected to be less liquid than cleared swaps, the proposed rule specifies a minimum close-out period for the initial margin model of 10 business days, compared with a typical requirement of 3 to 5 business days used by CCPs.[107] Moreover, the required 10-day close-out period assumption is consistent with counterparty credit risk capital requirements for banks. Accordingly, to the extent that non-cleared swaps are expected to be less liquid than cleared swaps and to the extent that related capital rules which also mitigate counterparty credit risk similarly require a 10-day close-out period assumption, the Agencies' preliminary view is that a 10-day close-out period assumption for margin purposes is appropriate.[108]

Under the proposed rule, the initial margin model calculation must be performed directly over a 10-day close out period. In the context of bank regulatory capital rules, a long horizon calculation (such as 10 days) may, under certain circumstances, be indirectly computed by making a calculation over a shorter horizon (such as 1 day) and then scaling the result of the shorter horizon calculation to be consistent with the longer horizon. The proposed rule does not provide this option to covered swap entities using an approved initial margin model. The Agencies' preliminary view is that the rationale for allowing such indirect calculations that rely on scaling shorter horizon calculations has largely been based on computational and cost considerations that were material in the past but are much less so in light of advances in computational speeds and reduced computing costs. The Agencies seek comment on whether the option to make use of such indirect calculations has a material effect on the burden of complying with the proposed rule, and whether such indirect methods are appropriate in light of current computing methods and costs.

ii. Recognition of Portfolio Risk Offsets

The proposed rule permits a covered swap entity to use an internal initial margin model that reflects offsetting exposures, diversification, and other hedging benefits within seven broad risk categories: Agricultural commodities, energy commodities, metal commodities, other commodities, credit, equity, and foreign exchange and interest rates (as a single asset class) when calculating initial margin for a particular counterparty if the swaps are executed under the same EMNA.[109] The proposed rule does *not* permit an initial margin model to reflect offsetting exposures, diversification, or other hedging benefits *across* broad risk categories.[110] As a specific example, if a covered swap entity entered into two credit swaps and two energy commodity swaps with a single counterparty under an EMNA then the covered swap entity could use an approved initial margin model to perform two separate calculations: The initial margin collection amount calculation for the credit swaps and the initial margin collection amount calculation for the energy commodity swaps. Each calculation could recognize offsetting and diversification within the credit swaps and within the energy commodity swaps. The result of the two separate calculations would then be summed together to arrive at the total initial margin collection amount for the four swaps (two credit swaps and two energy commodity swaps).

It is the preliminary view of the Agencies that the correlations of exposures across unrelated risk categories, such as credit and energy commodity, are not stable enough over time, and, importantly, during periods of financial stress, to be recognized in a regulatory margin model requirement. The Agencies note that in the case of commodities the number of distinct asset classes has been increased from one to four since the 2011 proposal. The Agencies' preliminary view is that a single commodity asset class is too broad and that the relationship between disparate commodity types, such as aluminum and corn, are not stable enough to warrant hedging benefits within the initial margin model. The Agencies seek comment on this specific treatment of commodities for initial margin purposes and whether greater or fewer distinctions should be made.

Also, the Agencies are aware that some swaps may be difficult to classify into one and only one asset class as some swaps may have characteristics that relate to more than one asset class. Under the proposal, the Agencies expect that the covered swap entity would make a determination as to which asset class best represents the swap based on a holistic view of the underlying swap. As a specific example, many swaps may have some sensitivity to interest rates even though the majority of the swap's sensitivity relates to another asset class such as equity or credit. The Agencies seek comment on whether or not this approach is reasonable and whether or

[107] *See* proposed rule § __.8(d)(1).

[108] In cases where a swap has a remaining maturity of less than 10 days, the remaining maturity of the swap, rather than 10 days, may be used as the close-out period in the margin model calculation.

[109] *See* proposed rule § __.8(d)(3).

[110] *Id.*

not instances in which the classification of a swap into one of the broad asset classes described above is problematic and material. If such instances are material, the Agencies seek comment on alternative approaches to dealing with such swaps. Should the Agencies, for example, identify an additional asset class of ''unclassified swaps'' that would not be classified into one or another broad asset class and then require that swaps in this ''unclassified swaps'' category be margined separately from all other swaps? Are there other approaches to handling such swaps that should be considered by the Agencies?

iii. Stress Calibration

In addition to a time horizon of 10 trading days and a one-tailed confidence level of 99 percent, the proposed rule requires the initial margin model to be calibrated to a period of financial stress.[111] In particular, the initial margin model must employ a stress period calibration for each broad asset class (agricultural commodity, energy commodity, metal commodity, other commodity, credit, equity, and interest rate and foreign exchange). The stress period calibration employed for each broad asset class must be appropriate to the specific asset class in question. While a common stress period calibration may be appropriate for some asset classes, a common stress period calibration for all asset classes would only be considered appropriate if it is appropriate for each specific underlying asset class. Also, the time period used to inform the stress period calibration must include at least one year, but no more than five years of equally-weighted historical data. This proposed requirement is intended to balance the tradeoff between shorter and longer data spans. Shorter data spans are sensitive to evolving market conditions but may also overreact to short-term and idiosyncratic spikes in volatility, resulting in procyclical margin requirements. Longer data spans are less sensitive to short-term market developments but may also place too little emphasis on periods of financial stress, resulting in less robust initial margins. Also, the requirement that the data be equally weighted is intended to establish a degree of consistency in model calibration while also ensuring that particular weighting schemes do not result in procyclical margin requirements during short-term bouts of heightened volatility.

Calibration to a stress period ensures that the resulting initial margin requirement is robust to a period of financial stress during which swap entities and financial end user counterparties are more likely to default, and counterparties handling a default are more likely to be under pressure. The stress calibration requirement also reduces the systemic risk associated with any increase in margin requirements that might occur in response to an abrupt increase in volatility during a period of financial stress as initial margin requirements will already reflect a historical stress event.

iv. Cross-Currency Swaps

As discussed above, an approved initial margin model must generally account for all of the material risks that affect the non-cleared swap. An exception to this requirement has been made in the specific case of cross-currency swaps. In a cross-currency swap, one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap.

An initial margin model need not recognize any risks or risk factors associated with the foreign exchange transactions associated with the fixed exchange of principal embedded in the cross-currency swap. The initial margin model must recognize all risks and risk factors associated with all other payments and cash flows that occur during the life of the cross-currency swap. In the context of the standardized margin approach, described in Appendix A and further below, the gross initial margin rates have been set equal to those for interest rate swaps. This treatment recognizes that cross-currency swaps are subject to risks arising from fluctuations in interest rates but does not recognize any risks associated with the fixed exchange of principal since principal is typically not exchanged on interest rate swaps.

The foreign exchange transactions associated with the fixed exchange of principal in a cross-currency swap are closely related to the exchange of principal that occurs in the context of a foreign exchange forward or swap. In 2012, the U.S. Treasury made a determination that foreign exchange forwards and swaps are not to be considered swaps under the Dodd-Frank Act, in part, because of their low risk profile.[112] As a result, foreign exchange forwards and swaps are not subject to the proposed rule's margin requirements. Accordingly, the Agencies' preliminary view is that it is appropriate to treat that portion of a cross-currency swap that is a fixed exchange of principal in a manner that is consistent with the treatment of foreign exchange forwards and swaps. This treatment of cross-currency swaps is limited to *only* cross-currency swaps and does not extend to any other swaps such as non-deliverable currency forwards. The Agencies note that this treatment is consistent with the 2013 international framework and seek comment on (i) whether or not this treatment of cross-currency swaps is appropriate and (ii) whether the proposed treatment of cross-currency swaps creates any additional burdens or complexities that should be considered.

v. Frequency of Margin Calculation

The proposed rule requires that an approved initial margin model be used to calculate the required initial margin collection amount on a *daily* basis. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be *collected* from a financial end user with material swaps exposure or a swap entity counterparty. In addition, when a covered swap entity faces a financial end user with material swaps exposure, the covered swap entity must also calculate the initial margin collection amount from the perspective of its counterparty on a *daily* basis. In the event that this amount increases, the covered swap entity must use this new amount as the basis for determining the amount of initial margin that it must *post* to its counterparty.

The use of an approved initial margin model may result in changes to the initial margin collection amount on a *daily* basis for a number of reasons. First, the characteristics of the swaps that have a material effect on their risk may change over time. As an example, the credit quality of a corporate reference entity upon which a credit default swap contract is written may undergo a measurable decline. A decline in the credit quality of the reference entity would be expected to have a material impact on the initial margin model's risk assessment and the resulting initial margin collection amount. More generally, as characteristics that are relevant to the risk of the swap change, so too will the initial margin collection amount. Importantly, any change to the composition of the swap portfolio that results in the addition or deletion of

[111] *See* proposed rule § __.8(d)(13).

[112] 77 FR 69694 (November 20, 2012).

swaps from the portfolio would result in a change in the initial margin collection amount. Second, the underlying parameters and data that are used in the model may change over time as underlying conditions change. As an example, in the event that a new period of financial stress is encountered in one or more asset classes, the initial margin model's risk assessment of a swap's overall risk may change as a result. While the stress period calibration is intended to reduce the extent to which small or moderate changes in the risk environment influence the initial margin model's risk assessment, a significant change in the risk environment that affects the required stress period calibration could influence the margin model's overall assessment of the risk of a swap. Third, quantitative initial margin models are expected to be maintained and refined on a continuous basis to reflect the most accurate risk assessment possible with available best practices and methods. As best practice risk management models and methods change, so too may the risk assessments of initial margin models.

vi. Benchmarking

The proposed rule requires that an initial margin model used for calculating initial margin requirements be benchmarked periodically against observable margin standards to ensure that the initial margin required is not less than what a CCP would require for similar transactions.[113] This benchmarking requirement is intended to ensure that any initial margin amount produced by an initial margin model is subject to a readily observable minimum. It will also have the effect of limiting the extent to which the use of initial margin models might disadvantage the movement of certain types of swaps to CCPs by setting lower initial margin amounts for non-cleared transactions than for similar cleared transactions.

b. Standardized Initial Margins

Covered swap entities that are either unable or unwilling to make the technology and related infrastructure investments necessary to maintain an initial margin model may elect to use standardized initial margins. The standardized initial margins are detailed in Appendix A of the proposed rule.

i. Gross Initial Margins and Recognition of Offsets Through the Application of the Net-to-Gross Ratio

The Agencies have proposed standardized initial margins that depend on the asset class (agricultural commodity, energy commodity, metal commodity, other commodity, equity, credit, foreign exchange and interest rate) and, in the case of credit and interest rate asset classes, further depend on the duration of the underlying non-cleared swap.

In addition, the proposed standardized initial margin requirement allows for the recognition of risk offsets through the use of a net-to-gross ratio in cases where a portfolio of non-cleared swaps is executed under an EMNA. The net-to-gross ratio compares the net current replacement cost of the non-cleared portfolio (in the numerator) with the gross current replacement cost of the non-cleared portfolio (in the denominator). The net current replacement cost is the cost of replacing the entire portfolio of swaps that are covered under the EMNA. The gross current replacement cost is the cost of replacing those swaps that have a strictly positive replacement cost under the EMNA. As an example, consider a portfolio that consists of two non-cleared swaps under an EMNA in which the mark-to-market value of the first swap is $10 (i.e., the covered swap entity is owed $10 from its counterparty) and the mark-to-market value of the second swap is −$5 (i.e., the covered swap entity owes $5 to its counterparty). Then the net current replacement cost is $5 ($10 − $5), the gross current replacement cost is $10, and the net-to-gross ratio would be 5/10 or 0.5.[114]

The net-to-gross ratio and gross standardized initial margin amounts (provided in Appendix A) are used in conjunction with the notional amount of the transactions in the underlying swap portfolio to arrive at the total initial margin requirement as follows:

Standardized Initial Margin = 0.4 × Gross Initial Margin + 0.6 × NGR × Gross Initial Margin

Where:

Gross Initial Margin = the sum of the notional value multiplied by the appropriate initial margin requirement percentage from Appendix A of each non-cleared swap under the EMNA; and

NGR = net-to-gross ratio

As a specific example, consider the two-swap portfolio discussed above. Suppose further that the swap with the mark-to-market value of $10 is a sold 5-year credit default swap with a notional value of $100 and the swap with the mark-to-market value of −$5 is an equity swap with a notional value of $100. The standardized initial margin requirement would then be:

$$[0.4 \times (100 \times 0.05 + 100 \times 0.15) + 0.6 \times 0.5 \times (100 \times 0.05 + 100 \times 0.15)] = 8 + 6 = 14.$$

The Agencies further note that the calculation of the net-to-gross ratio for margin purposes must be applied only to swaps subject to the same EMNA and that the calculation is performed *across* transactions in disparate asset classes within a single EMNA such as credit and equity in the above example (i.e., all non-cleared swaps subject to the same EMNA can net against each other in the calculation of the net-to-gross ratio, as opposed to the modeling approach that allows netting only within each asset class). This approach is consistent with the standardized counterparty credit risk capital requirements. Also, the equations are designed such that benefits provided by the net-to-gross ratio calculation are limited by the standardized initial margin term that is independent of the net-to-gross ratio, *i.e.,* the first term of the standardized initial margin equation which is 0.4 × Gross Initial Margin. Finally, if a counterparty maintains multiple swap portfolios under multiple EMNAs, the standardized initial margin amounts would be calculated separately for each portfolio with each calculation using the gross initial margin and net-to-gross ratio that is relevant to each portfolio. The total standardized initial margin would be the sum of the standardized initial margin amounts for each portfolio.

The Agencies also note that the BCBS has recently adopted a new method for the purpose of capitalizing counterparty credit risk.[115] While this alternative approach for recognizing risk offsets in a standardized framework may also be appropriate in a standardized margin context, the Agencies have preliminarily decided to adopt the net-to-gross ratio approach described here to recognize risk offsets. The Agencies seek comment on whether the BCBS's recently adopted standardized approach would represent a material improvement relative to the

[113] *See* proposed rule § __.8(f)(2)(ii).

[114] Note that in this example, whether or not the counterparties have agreed to exchange variation margin has no effect on the net-to-gross ratio calculation, i.e., the calculation is performed without considering any variation margin payments. This is intended to ensure that the net-to-gross ratio calculation reflects the extent to which the non-cleared swaps generally offset each other and not whether the counterparties have agreed to exchange variation margin. As an example, if a swap dealer engaged in a single sold credit derivative with a counterparty, then the net-to-gross calculation would be 1.0 whether or not the dealer received variation margin from its counterparty.

[115] *See* BCBS, ''The Standardised Approach for Measuring Counterparty Credit Risk Exposures,'' (March 2014, revised April 2014), *available at: http://www.bis.org/press/p140331.htm.*

proposed method that employs the net-to-gross ratio.

ii. Calculation of the Net-to-Gross Ratio for Initial Margin Purposes

The proposed standardized approach to initial margin depends on the calculation of a net-to-gross ratio. In the context of performing margin calculations, it must be recognized that at the time non-cleared swaps are entered into it is often the case that both the net and gross current replacement cost is zero. This precludes the calculation of the net-to-gross ratio. In cases where a new swap is being added to an existing portfolio that is being executed under an existing EMNA, the net-to-gross ratio may be calculated with respect to the existing portfolio of swaps. In cases where an entirely new swap portfolio is being established, the initial value of the net-to-gross ratio should be set to 1.0. After the first day's mark-to-market valuation has been recorded for the portfolio, the net-to-gross ratio may be re-calculated and the initial margin amount may be adjusted based on the revised net-to-gross ratio.

iii. Frequency of Margin Calculation

The proposed rule requires that the standardized initial margin collection amount be calculated on a *daily* basis. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be *collected* from a financial end user with material swaps exposure or a swap entity. In addition, when a covered swap entity faces a financial end user with material swaps exposure, the covered swap entity must also calculate the initial margin collection amount from the perspective of its counterparty on a *daily* basis. In the event that this amount increases, the covered swap entity must use this new amount as the basis for determining the amount of initial margin that it must *post* to its counterparty.

c. Daily Calculation

As in the case of internal-model-generated initial margins, the margin calculation under the standardized approach must also be performed on a *daily* basis. Since the standardized initial margin calculation depends on a standardized look-up table (presented in Appendix A), there is somewhat less scope for the initial margin collection amounts to vary on a daily basis. At the same time, however, there are some factors that may result in daily changes in the initial margin collection amount resulting from standardized margin calculations. First, any changes to the notional size of the swap portfolio that arise from any addition or deletion of swaps from the portfolio would result in a change in the standardized margin amount. As an example, if the notional amount of the swap portfolio increases as a result of adding a new swap to the portfolio then the standardized initial margin collection amount would increase. Second, changes in the net-to-gross ratio that result from changes in the mark-to-market valuation of the underlying swaps would result in a change in the standardized initial margin collection amount. Third, changes to characteristics of the swap that determine the gross initial margin (presented in Appendix A) would result in a change in the standardized initial margin collection amount. As an example, the gross initial margin applied to interest rate swaps depends on the duration of the swap. An interest rate swap with a duration between zero and two years has a gross initial margin of one percent while an interest rate swap with duration of greater than two years and less than five years has a gross initial margin of two percent. Accordingly, if an interest rate swap's duration declines from above two years to below two years, the gross initial margin applied to it would decline from two to one percent. Accordingly, the standardized initial margin collection amount will need to be computed on a *daily* basis to reflect all of the factors described above.

d. Combined Use of Internal Model Based and Standardized Initial Margins

The Agencies expect that some covered swap entities may choose to adopt a mix of internal models and standardized approaches to calculating initial margin requirements. As a specific example, it may be the case that a covered swap entity engages in some swap transactions on an infrequent basis to meet client demands but the level of activity does not warrant all of the costs associated with building, maintaining and overseeing a quantitative initial margin model. Further, some covered swap entity clients may value the transparency and simplicity of the standardized approach. In such cases, the Agencies expect that it would be acceptable to use the standardized approach to margin such swaps.

As discussed in the 2013 international framework, under certain circumstances it is appropriate to employ both a model based and standardized approach to calculating initial margins. At the same time, and as discussed in the 2013 international framework, the Agencies are aware that differences between the standardized approach and internal model based margins across different types of swaps could be used to ''cherry pick'' the method that results in the lowest margin requirement. The Agencies would not view such an approach to choosing between a standardized and model based margin method as being appropriate and would raise safety and soundness concerns regarding the swap activities themselves. Rather, the choice to use one method over the other should be based on fundamental considerations apart from which method produces the most favorable margin results. Similarly, the Agencies do not anticipate there should be a need for covered swap entities to switch between the standardized or model-based margin method for a particular counterparty, absent a significant change in the nature of the entity's swap activities. The Agencies expect covered swap entities to provide a rationale for changing methodologies to their supervisory Agency if requested.

I. Section __.9: Cross-Border Application of Margin Requirements

In global markets, counterparties organized in different jurisdictions often transact in non-cleared swaps. Section 9 addresses the cross-border applicability of the proposed margin rules to covered swap entities.

1. Overview of 2011 Proposal and Public Comments

The 2011 proposal provided an exclusion from the margin requirements for certain covered swap entities that operate in foreign jurisdictions.[116] The 2011 proposal excluded any ''foreign non-cleared swap or foreign non-cleared security-based swap'' of a ''foreign covered swap entity,'' as those terms were defined in the 2011 proposal, from application of the margin requirements. With this approach, the Agencies intended to limit the extraterritorial application of the margin requirements while preserving, to the extent possible, competitive equality among U.S. and foreign firms in the United States.

The 2011 proposal defined a ''foreign covered swap entity'' as a covered swap entity that: (i) Is not a company organized under the laws of the United States or any State; (ii) is not a branch or office of a company organized under the laws of the United States or any

[116] When the prudential regulators proposed their margin requirements in 2011, neither the CFTC nor the SEC had yet adopted policies addressing various issues raised by cross-border swaps, including which swaps a U.S. entity and a foreign entity should count toward the *de minimis* thresholds for registration as a swap dealer or major swap participant.

State; (iii) is not a U.S. branch, agency or subsidiary of a foreign bank; and (iv) is not controlled, directly or indirectly, by a company that is organized under the laws of the United States or any State. Accordingly, only a covered swap entity that is organized under foreign law and not controlled, directly or indirectly, by a U.S. company (such as a foreign bank) would have been eligible for treatment as a foreign covered swap entity; neither a foreign branch of a U.S. bank nor a foreign subsidiary of a U.S. company would have been considered a foreign covered swap entity under the 2011 proposal. This treatment reflected the potential that legal, contractual, or reputational factors could expose the U.S. bank, or U.S. parent of the foreign subsidiary, to the risks of the foreign branch's or subsidiary's swap activities. Transactions of a foreign branch or subsidiary of a U.S. company could also have direct and significant connection with activities in, and effect on, commerce of the United States and therefore affect systemic risk in the United States. Similarly, neither a U.S. branch of a foreign bank nor a U.S. subsidiary of a foreign company would have been considered a foreign covered swap entity under the 2011 proposal.

Under the 2011 proposal, foreign swaps would generally have included only swaps where the foreign covered swap entity's counterparty is not organized under U.S. law or otherwise located in the United States, and no U.S. affiliate of the counterparty has guaranteed the counterparty's obligations under the swap.[117] Specifically, the 2011 proposal defined a ''foreign non-cleared swap or foreign non-cleared security-based swap'' as a non-cleared swap or non-cleared security-based swap with respect to which (i) the counterparty is not an entity, nor a branch or office of an entity, organized under the laws of the United States or any State and not a person resident in the United States and (ii) performance of the counterparty's obligations under the swap or security-based swap has not been guaranteed by an affiliate of the counterparty that is an entity, or a branch of an entity, organized under the laws of the United States or any State, or a person resident in the United States.

The requirement that no U.S. affiliate may guarantee the counterparty's obligation was intended to prevent instances where such an affiliate, through a guarantee, effectively assumes ultimate responsibility for the performance of the counterparty's obligations under the swap. In particular, the Agencies were concerned that, without such a requirement, swaps with a U.S. counterparty could be structured, through the use of an overseas affiliate, in a manner that would evade application of the proposed margin requirements to U.S. swaps. Swaps guaranteed by a U.S. entity would also have a direct and significant connection with activities in, and an effect on, commerce of the U. S. and thus affect systemic risk in the United States.

A number of commenters argued that the 2011 proposal would put U.S. firms that do business globally at a competitive disadvantage by applying U.S. rules to U.S. firms regardless of where their operations are conducted. These commenters suggested that U.S. firms operating abroad should be subject to the same margin requirements as other foreign firms to establish competitive equity. Other commenters argued that the 2011 proposal could create situations in which a U.S. firm operating abroad could be subjected to two different and potentially conflicting margin requirements, as the foreign jurisdiction could also impose margin requirements on the foreign operations of U.S. firms.

2. 2014 Proposal

Excluded swaps. The 2014 proposal retains a slightly modified version of the exclusion proposed in 2011. Section __.9 of the proposed rule would exclude from coverage of the rule's margin requirements any foreign non-cleared swap of a foreign covered swap entity.[118] Similar to the 2011 proposal, a ''foreign covered swap entity'' is any covered swap entity that is *not* (i) an entity organized under U.S. or State law, including a U.S. branch, agency, or subsidiary of a foreign bank; (ii) a branch or office of an entity organized under U.S. or State law; or (iii) an entity controlled by an entity organized under U.S. or State law.

The proposed rule's definition of ''foreign non-cleared swap or foreign non-cleared security-based swap'' would cover any non-cleared swap of a foreign covered swap entity to which neither the counterparty nor any guarantor (on either side) is (i) an entity organized under U.S. or State law, including a U.S. branch, agency, or subsidiary of a foreign bank; (ii) a branch or office of an entity organized under U.S. or State law; or (iii) a covered swap entity controlled by an entity organized under U.S. or State law. Under this definition, foreign swaps could include swaps with a foreign bank or with a foreign subsidiary of a U.S. bank or bank holding company, so long as that subsidiary is not itself a covered swap entity. A foreign swap would not include a swap with a foreign branch of a U.S. bank or a U.S. branch or subsidiary of a foreign bank.

Comparability determinations. In addition to the exclusion for certain swaps described above, the proposed rule would permit certain covered swap entities to comply with a foreign regulatory framework for non-cleared swaps if the Agencies determine that such foreign regulatory framework is comparable to the requirements of the proposed rule. At the time of the 2011 proposal it was unclear what margin requirements would be applied in foreign jurisdictions, making it difficult to rely on foreign regulatory regimes. However, the development of the 2013 international framework makes it more likely that regulators in multiple jurisdictions will adopt margin rules for non-cleared swaps that are comparable. In light of the 2013 international framework, the Agencies are requesting comment on a proposal to allow certain non-U.S. covered swap entities to comply with the margin requirements of the proposed rule by complying with a foreign jurisdiction's margin requirements, subject to the Agencies' determination that the foreign rule is comparable to this proposed rule. These determinations would be made on a jurisdiction-by-jurisdiction basis. Furthermore, the Agencies' determination may be conditional or unconditional. The Agencies could, for example, determine that certain provisions of the foreign regulatory framework are comparable to the requirements of the proposed rule but that other aspects are not comparable for purposes of substituted compliance.

Under the proposed rule, certain types of covered swap entities operating in foreign jurisdictions would be able to meet the requirement of the proposed rule by complying with the foreign requirement in the event that a comparability determination is made by the Agencies, regardless of the location of the counterparty, provided that the covered swap entity's obligations under the swap are not guaranteed by a U.S. entity. If a covered swap entity's

[117] Under the 2011 proposal, swap and security-based swaps with *U.S. counterparties* would have been subject to the rule's margin requirements regardless of whether the covered swap entity is U.S. or foreign.

[118] Section 2(i) of the Commodity Exchange Act, as amended by section 722 of the Dodd-Frank Act, provides that the provisions of the Commodity Exchange Act, as amended by section 722 of the Commodity Exchange Act relating to swaps ''shall not apply to activities outside the United States unless those activities . . . have a direct and significant connection with activities in, or effect on, commerce of the United States.''

obligations under a swap are guaranteed by a U.S. entity, the Agencies propose that the swap be subject to the proposed rule. Foreign covered swap entities (defined as discussed above) and foreign subsidiaries of U.S. entities that are covered swap entities would be eligible to take advantage of a comparability determination. The Agencies seek comment on whether a guarantee by a person organized under the laws of the United States or of any State should affect the availability of substituted compliance.

The Agencies are also interested in commenters' views on whether the rule should clarify and define the concept of ''guarantee'' to better ensure that those swaps that pose risks to U.S. insured depository institutions would be included within the scope of the rule. For example, many swaps agreements contain cross-default provisions that give swaps counterparties legal rights against certain ''specified entities.'' In these arrangements, a swaps counterparty of a foreign subsidiary of a U.S. covered swap entity may have a contractual right to close out and settle its swaps positions with the U.S. entity if the foreign subsidiary of the U.S. entity defaults on its own swaps positions with the counterparty. While not technically a guarantee of the foreign subsidiary's swaps, these provisions may be viewed as reassuring counterparties to foreign subsidiaries that the U.S. bank stands behind its foreign subsidiaries' swaps. Other similar arrangements may include keep well agreements or liquidity puts. Moreover, depending on the magnitudes of the swaps positions involved, such agreements can expose the U.S. bank to the risk of unexpected and disorderly termination of a subset of its own swaps positions based on the swaps activities of its foreign subsidiary.

In addition, U.S. branches and agencies of foreign banks would be permitted to comply with the foreign requirement for which a determination was made, provided their obligations under the swap are not guaranteed by a U.S. entity. While such branches and agencies clearly operate within the U.S., the proposed treatment reflects the principle that branches and agencies are part of the parent organization. Under this approach, foreign branches and agencies of U.S. banks would not be eligible for substituted compliance and would be required to comply with the U.S. requirement for the same reason. The Agencies are aware of concerns regarding potential competitive disadvantages that could arise as U.S. covered swap entities compete with U.S. branches and agencies of foreign banks in the market for non-cleared swaps. The Agencies' preliminary view is that this concern can be addressed through the comparability determination process. A foreign jurisdiction with a substantially different margin requirement that resulted in a demonstrable competitive advantage over U.S. covered swap entities is unlikely to have processes that are comparable to the U.S. compliance requirements. Moreover, a foreign margin requirement that would confer a significant competitive advantage on foreign entities through a lower margin requirement or similar means would likely represent a general increase in systemic risk and weaker incentives for central clearing relative to the U.S. requirement. Accordingly, it is unlikely that such foreign requirements would be determined comparable by the Agencies, in which case the U.S. branch or agency of a foreign bank would be required to comply with the U.S. requirement.

Under the proposed rule, if a foreign counterparty is subject to a foreign regulatory framework that has been determined to be comparable by the Agencies, a covered swap entity's posting requirement would be satisfied by posting (in amount, form, and at such time) as required by the foreign counterparty's margin collection requirement, provided that the counterparty is subject to the foreign regulatory framework. In these cases, the collection requirement of the foreign counterparty would suffice to ensure two-way exchange of margin. For example, if a U.S. bank that is a covered swap entity enters into a swap with a foreign hedge fund that is subject to a foreign regulatory framework for which the Agencies have made a comparability determination, the U.S. bank must collect the amount of margin as required under the U.S. rule, but need post only the amount of margin that the foreign hedge fund is required to collect under the foreign regulatory framework.

The proposed rule provides that the Agencies will jointly make a determination regarding the comparability of a foreign regulatory framework that will focus on the outcomes produced by the foreign framework as compared to the U.S. framework. Moreover, as margin requirements are complex and have a number of related aspects, *e.g.,* margin posting requirements, margin collection requirements, model requirements, eligible collateral, and segregation requirements, the Agencies propose to take a holistic view of the foreign regulatory framework that appropriately considers the outcomes produced by the entire framework. More specifically, the Agencies propose that they generally will not require that every aspect of a foreign regulatory framework be comparable to every aspect of the U.S. framework but will require that the outcomes achieved by both frameworks are comparable. The Agencies propose to consider factors such as the scope, objectives, and specific provisions of the foreign regulatory framework and the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the relevant foreign regulatory authorities.

The Agencies propose to accept requests for a determination from a covered swap entity that it be allowed to comply with the foreign regulatory framework if a comparability determination were made to support such result. Once the Agencies make a favorable comparability determination for a foreign regulatory framework, any covered swap entity that could comply with the foreign framework will be allowed to do so (*i.e.,* they will not have to make a specific request). The Agencies expect to consult with the relevant foreign regulatory authorities before making a determination.

Entities not covered by the rule. The Agencies engage in this rulemaking pursuant to sections 731 and 764 of the Dodd-Frank Act, requiring registered swap dealers and security-based swap dealers for which one of the Agencies is the ''prudential regulator'' for purposes of Title VII, to comply with that Agency's margin rule for non-cleared swaps. Title VII's registration requirements are implemented by the CFTC and SEC, not the Agencies. After the prudential regulators issued their 2011 proposal, the CFTC adopted guidance and the SEC adopted a rule to address cross-border issues in swap regulation, including the circumstances in which foreign firms are required to register as swap entities.[119] This guidance clarifies that foreign subsidiaries of U.S. firms engaging in swaps activities abroad are not required to register with the CFTC or SEC *solely* on account of their parent's presence in the United States. Accordingly, there may be notable circumstances in which, for example, a foreign subsidiary of a U.S. insured depository institution, including foreign subsidiaries of Edge Act Corporations, may engage in non-

[119] 78 FR 45292 (July 26, 2013) (CFTC Interpretive Guidance); 79 FR 39067 (July 9, 2014) (SEC rule). A central aspect of these policies is the definition of ''U.S. person,'' which is used to categorize a swap dealer, its counterparty, or major swap participant as either a person with substantial contacts to the United States or as a foreign person.

cleared swaps activities abroad, without having to register with the CFTC or SEC, and accordingly without being covered by the margin rules being proposed by the Agencies in this **Federal Register** notice.

The Agencies note that a substantial amount of swaps activities are currently conducted through foreign subsidiaries that may not be subject to certain elements of Title VII of the Dodd-Frank Act.[120] If these foreign subsidiaries became fully consolidated with insured depository institutions for accounting purposes, the risks of such foreign activities could be borne by insured depository institutions. As noted above, in cases where the foreign subsidiaries are not registered as swap entities, the margin rules proposed by the Agencies likely would not apply by their own terms. The Agencies seek comment as to whether the proposed margin rules should be applied pursuant to the Agencies' general safety and soundness and other authority to foreign subsidiaries of such entities in all cases, irrespective of whether such subsidiaries are registered as swap entities.

The Agencies seek comment on the proposed cross-border provisions of the proposed rule. In particular, are there any reasons not to recognize foreign regulatory frameworks in the manner that has been proposed? Does the recognition of foreign regulatory frameworks raise any competitive equity or related issues that the Agencies should consider? Are there any additional types of covered swap entities that should be permitted to comply with the U.S. framework by complying with a foreign framework? Are there any other covered swap entities that should not be permitted to comply with the U.S. rule in this manner? Are there any issues or potential negative consequences associated with the comparability determination process as described in the proposal?

J. Section __.10: Documentation of Margin Matters

1. Overview of 2011 Proposal and Public Comments

The 2011 proposal included documentation requirements for covered swap entities. Under the 2011 proposal, a covered swap entity would have had to execute trading documentation with each counterparty that included credit support arrangements that granted the covered swap entity the contractual right to collect initial margin and variation margin in such amounts, in such form, and under such circumstances as would have been necessary to meet the initial margin and variation margin requirements set forth in the rule.[121] The trading documentation also would have had to specify (i) the methods, procedures, rules, and inputs for determining the value of each swap for purposes of calculating variation margin requirements, and (ii) the procedures by which any disputes concerning the valuation of swaps, or the valuation of assets collected or posted as initial margin or variation margin, would be resolved.

A number of commenters suggested that formal documentation should not be required with each of a covered swap entity's counterparties. In particular, some commenters indicated that swaps with counterparties (*e.g.,* nonfinancial end users) that would not generally be expected to post margin to a covered swap entity should not require formal documentation.

2. 2014 Proposal

Section __.10(a) of the proposal would retain the documentation requirements substantially as proposed in the 2011 proposal, except that the requirements would apply only to swaps with counterparties that are swap entities or financial end users. Under the proposal, a covered swap entity must execute trading documentation with each counterparty that is a swap entity or a financial end user that includes a credit support arrangement that grants the covered swap entity the contractual right to collect and post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the rule. The documentation must also specify the methods, procedures, rules, and inputs for determining the value of each non-cleared swap for purposes of calculating variation margin requirements and the procedures by which any disputes concerning the valuation of non-cleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved.

The CFTC and SEC are responsible for specifying swap trading relationship documentation requirements for *all* swap entities. In the case of the CFTC, these requirements have been adopted.[122] In the case of the SEC, these requirements have been proposed.[123] The Agencies request comment on whether the proposal should deem compliance with the applicable CFTC or SEC documentation requirements as compliance with this proposed rule. Allowing compliance with CFTC and SEC documentation requirements to satisfy the proposed rule's requirements in these cases will reduce the burden on covered swap entities and avoid duplicative requirements while ensuring that the goals of the proposed rule's requirements are achieved. Alternatively, the Agencies request comment on whether documentation requirements in this rule are necessary to ensure that appropriate minimum documentation standards are in effect for all covered swap entities.

K. Section __.11: Capital

The 2011 proposal would have required a covered swap entity to comply with any risk-based and leverage capital requirements already applicable to that covered swap entity as part of its prudential regulatory regime. A few commenters urged that capital should not be required with respect to covered swap entities' swaps exposures to nonfinancial end user counterparties. Other commenters argued that capital and collateral requirements for swaps should work together, so there is no need for both capital and margin requirements.

In the period since the 2011 proposal, the banking agencies have strengthened regulatory capital requirements for banking organizations through adoption of the revised capital framework as well as through other rulemakings.[124] The revised capital framework introduced a new common equity tier 1 capital ratio and a supplementary leverage ratio, raised the minimum tier 1 ratio and, for certain banking organizations, raised the leverage ratio, implemented strict eligibility criteria for regulatory capital instruments, and introduced a standardized methodology for calculating risk-weighted assets.

[120] *See* section 722 of the Dodd-Frank Act.

[121] *See* 2011 proposal § __.5.

[122] 17 CFR part 23, subpart I (2014). *See* 77 FR 55903 (September 11, 2012).

[123] 76 FR 3859 (January 21, 2011); 78 FR 30800 (May 23, 2013) (reopening of comment period).

[124] *See* 78 FR 62018 (October 11, 2013) and 79 FR 20754 (April 14, 2014). The revised capital framework also reorganized the banking agencies' capital adequacy guidelines into a harmonized, codified set of rules, located at 12 CFR part 3 (national banks and Federal savings associations); 12 CFR part 217 (state member banks, bank holding companies, and savings and loan holding companies); 12 CFR part 324 (state nonmember banks and state savings associations). The requirements of 12 CFR parts 3, 217 and 324 became effective on January 1, 2014, for banking organizations subject to the advanced approaches capital rules, and as of January 1, 2015 for all other banking organizations.

The proposal similarly would require a covered swap entity to comply with risk-based and leverage capital requirements already applicable to the covered swap entity as follows:

- In the case of covered swap entities that are banking organizations,[125] the elements of the revised capital framework that are applicable to the covered entity and have been adopted by the appropriate Federal banking agency under 12 U.S.C. 3907 and 3909 (International Lending Supervision Act), 12 U.S.C. 1462(s) (Home Owner's Loan Act), and section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);
- In the case of a foreign bank, any state branch or state agency of a foreign bank, the capital standards that are applicable to such covered entity under the Board's Regulation Y (12 CFR 225.2(r)(3)) or the Board's Regulation YY (12 CFR part 252);
- In the case of an Edge corporation or an Agreement corporation, the capital standards applicable to an Edge corporation engaged in banking pursuant to the Board's Regulation K (12 CFR 211.12(c));
- In the case of any ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (i.e., Fannie Mae and its affiliates, Freddie Mac and its affiliates, and the Federal Home Loan Banks), the risk-based capital level or such other amount applicable to the covered swap entity as required by the Director of FHFA pursuant to 12 U.S.C. 4611;
- In the case of Farmer Mac, the capital adequacy regulations set forth in 12 CFR part 652; and
- In the case of any FCS institution (other than Farmer Mac), the capital regulations set forth in 12 CFR part 615.[126] On May 8, 2014, the FCA proposed revisions to the capital rules for all FCS institutions, except Farmer Mac, that are broadly consistent with Basel III.[127]

The Agencies have determined that compliance with the regulatory capital rules described above is sufficient to offset the greater risk, relative to the risk of centrally cleared swaps, to the swap entity and the financial system arising from the use of non-cleared swaps, and helps ensure the safety and soundness of the covered swap entity. In particular, the Agencies note that the regulatory capital rules incorporated by reference into the proposed rule already address, in a risk-sensitive and comprehensive manner, the safety and soundness risks posed by a covered swap entity's swaps positions.[128] In addition, the Agencies believe that these regulatory capital rules sufficiently take into account and address the risks associated with the swaps positions of a covered swap entity.[129] As a result, the Agencies are not proposing separate capital requirements in the proposal.

In response to commenters that argued that the Agencies should not impose both capital and margin requirements, the Agencies note that the relevant statutory provisions require both capital and margin requirements. Moreover, the revised capital framework adopted by the banking agencies and this proposal are intended to operate as complementary regimes that minimize or eliminate duplication of requirements. To the extent that a covered swap entity collects margin on a non-cleared swap, the revised capital framework would recognize the risk mitigation effects of the margin that the covered swap entity has collected, which would in turn reduce the covered swap entity's risk-based capital requirement.

IV. Quantitative Impact of Margin Requirements

A. Overview

The proposed rule would apply the initial margin and variation margin requirements to non-cleared swaps that are entered into by a covered swap entity over a substantial phase-in period that begins in December 2015. The proposed rule would not require an immediate or retroactive application of initial margin or variation margin for any swap entered into prior to the relevant compliance date of the final rule.

Because the requirements would not be applied retroactively, no new initial margin or variation margin requirements would be imposed on non-cleared swaps entered into prior to the relevant compliance date until those transactions are rolled over or renewed. The only requirements that would apply to a pre-compliance date transaction would be the initial margin and variation margin requirements to which the parties to the transaction had previously agreed by contract.

The new requirements will have an impact on the costs of engaging in new non-cleared swaps after the applicable compliance date. In particular, the proposed rule sets out requirements for initial and variation margin that represent a significant change from current industry practice in many circumstances. Since the 2011 proposal was released, a number of analyses have been conducted that attempt to estimate the total amount of liquidity that will be required by the new margin requirements. Given the complexity of this proposal and its inter-relationship to other rulemakings, these analyses are subject to considerable uncertainty. In particular, these analyses make a number of assumptions regarding: (i) The level of market activity in the future, (ii) the amount of central clearing in the future, and (iii) the level of financial market volatility and risk that will determine initial margin requirements. These studies also make a number of additional assumptions which may have a measurable influence on the analysis. Notwithstanding these uncertainties, the Agencies' preliminary view is that the analysis and data that appear in these studies are useful to gauge the approximate amount of liquidity that will be required by the new requirements for non-cleared swaps.

[125] ''Banking organization'' includes national banks, state member banks, state nonmember banks, Federal savings associations, state savings associations, U.S. intermediate holding companies formed pursuant to the Board's Regulation YY (12 CFR part 252) and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, Appendix C), as well as top-tier savings and loan holding companies domiciled in the United States except certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[126] *See* proposed rule § __.11.

[127] The FCA recently proposed revisions to its capital rules for all FCS institutions, except Farmer Mac, that are comparable to the Basel III Framework.

[128] For example, with respect to interest rate, foreign exchange rate, credit, equity and precious metal derivative contracts that are not cleared, banking organizations subject to the revised capital framework are subject to a capital requirement based on the type of contract and remaining maturity, and takes into account counterparty credit risk as well as the credit risk mitigating factors of collateral. Banking organizations subject to the advanced approaches rules may use internal models for calculating capital requirements for non-cleared derivatives. *See* 12 CFR part 3, subparts D and E (OCC); 12 CFR part 217, subparts D and E (Board); 12 CFR 324, subparts D and E (FDIC), each as applicable. The FCA's capital requirements for FCS institutions other than Farmer Mac expressly address derivatives transactions. *See* 12 CFR 615.5201 and 615.5212. The FCA's capital requirements for Farmer Mac indirectly address derivatives transactions in the operational risk component of the statutorily mandated risk-based capital stress test model. *See* 12 CFR part 652, subpart B, Appendix A. The FCA, through the Office of Secondary Market Oversight, closely monitors and supervises all aspects of Farmer Mac's derivatives activities, and the FCA believes existing requirements and supervision are sufficient to ensure safe and sound operations in this area. However, the FCA is considering enhancements to the model and in the future may revise the model to more specifically address derivatives transactions.

[129] *See* footnote 49, *supra,* for a discussion of the basis for FHFA's preliminary view that the reference to existing statutory authority is sufficient to address the risks discussed in the text above as to the Enterprises notwithstanding their current conservatorship status.

Below is a discussion of a selection of studies that have been conducted in the recent past that relate to a margin framework similar to the proposed rule. Specifically, each of these studies uses the 2013 international framework described above in estimating the total amount of initial margin collateral that will be required. While this proposal is largely consistent with the 2013 international framework, the two are not identical. Therefore, the results of these studies are limited by these differences.

B. Initial Margin Requirements

The proposed rule will require an exchange of initial margin by many market participants, which represents a significant change in market practice. The total amount of initial margin that would be required at a point in time is an important input into an estimate of the liquidity costs of the new requirements. The table below presents estimates of the total amount of initial margin that would be required by U.S. swap entities and their counterparties once the requirements are fully implemented, that is, at the end of the phase-in period and after existing swaps are rolled into new swaps.

ESTIMATED INITIAL MARGIN REQUIREMENTS

Source	Initial margin estimate ($BN)
BCBS–IOSCO—Model Based	315
ISDA—Model Based	280
ISDA—Standardized	3,570

The initial margin estimates provided in the table above are taken from two different studies that have examined the impact of the 2013 international framework on overall liquidity needs. The studies were conducted by the BCBS and IOSCO [130] and ISDA.[131] Each of these studies reports an estimate of the *global* impact of margin requirements. In particular, these estimates include the impact of margin requirements on foreign financial institutions and their counterparties, in addition to U.S. financial institutions and their counterparties. In order to better align the studies' estimates with the impact of the proposed U.S. rule, the estimates in Table X have been reduced by 65 percent to reflect the fact that U.S. financial institutions and their counterparties account for roughly 35 percent of the global derivatives market.[132] The estimate reported in the table above from the BCBS–IOSCO study reflects the estimate among those provided in the study that is most consistent with the proposed rule.[133] Two estimates from the ISDA study are presented in the table above reflecting a high and low estimate. Both the ISDA low estimate and the BCBS–IOSCO estimate assume that all initial margin requirements are calculated according to an internal model with parameters consistent with those required by the proposed rule. The ISDA high estimate assumes that all initial margin requirements are calculated according to a standardized margin approach. Further, the standardized approach assumed in the ISDA study does not allow for the recognition of any offsets which would be allowed by the application of the net-to-gross ratio under the proposed rule.[134]

As discussed above, these estimates represent the total amount of initial margin that will be required at a point in time once the requirements have been fully phased in and all existing non-cleared swaps have been rolled over into new non-cleared swaps. Accordingly, the full amount of initial margin amount estimates provided in the table above would not be realized until, at the earliest, 2019.

The amounts reported in the table above reflect estimated amounts of initial margin that will be required under this proposal but do not reflect the cost of providing these amounts by covered swap entities and their counterparties. The cost of providing initial margin collateral depends on the difference between the cost of raising additional funds and the rate of return on the assets that are ultimately pledged as initial margin. In some cases, it may be that some entities providing initial margin, such as pension funds and asset managers, will provide assets as initial margin that they already own and would have owned even if no requirements were in place. In such cases, the economic cost of providing initial margin collateral is expected to be low. In other cases, entities engaging in non-cleared swaps will have to raise additional funds to secure assets that can be pledged as initial margin. The greater the cost of their marginal funding relative to the rate of return on the initial margin collateral, the greater the cost of providing collateral assets. It is difficult, however, to estimate these costs due to differences in marginal funding costs across different types of entities as well as differences in marginal funding costs over time and differences in the rate of return on different collateral assets that may be used to satisfy the initial margin requirements.

C. Variation Margin Requirements

The proposal will also require that variation margin be exchanged between covered swap entities and certain of their counterparties. The Agencies' preliminary view is that the impact of such requirements are low in the aggregate because: (i) regular exchange of variation margin is already a well-established market practice among a large number of market participants, and (ii) exchange of variation margin simply redistributes resources from one entity to another in a manner that imposes no aggregate liquidity costs. An entity that suffers a reduction in liquidity from posting variation margin is offset by an increase in the liquidity enjoyed by the entity receiving the variation margin.

D. Request for Comment

While the Agencies' preliminary view is that the studies referenced above are broadly useful for considering the overall liquidity costs of the new requirements, they do not provide useful estimates of other aspects of cost including, for example, the operational costs of complying with the requirements. Also, commenters may have additional information on the economic and liquidity costs that are not addressed in the studies referenced above. Accordingly, the Agencies request commenters to provide their own detailed quantitative impact analyses. The Agencies encourage commenters to include the following elements in their analyses: (i) The expected costs of, or additional liquidity required by, the initial margin and variation margin requirements, and (ii) the potential benefits of the initial margin and variation margin requirements to covered swap entities, their counterparties, and the financial system as a whole. The analyses should also (i) address operational and other

[130] *See* Basel Committee on Banking Supervision and the International Organization of Securities Commissions (2013), *Margin Requirements for Non-Centrally Cleared Derivatives: Second Consultative Document,* report (Basel, Switzerland: Bank for International Settlements, February).

[131] Documents on initial margin requirements are available on the International Swaps and Derivatives Association Web site.

[132] *See* ISDA Research Notes: Concentration of OTC Derivatives Among Major Dealers, Issue 4, 2010.

[133] The BCBS–IOSCO impact study discusses the impact of several different margin regimes, *e.g.,* regimes with and without an initial margin threshold.

[134] The ISDA study was conducted based on the BCBS–IOSCO February 2013 consultative document which did not include any recognition of offsets in the standardized initial margin regime. Recognition of offsets was included in the final 2013 international framework.

business related costs associated with implementing the proposed rule, and (ii) take into consideration and disclose any expected effects of the likely clearing of certain swaps through central counterparties in the future.

V. Request for Comments

The Agencies are interested in receiving comments on all aspects of the proposed rule.

VI. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board and FDIC invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

VII. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Agencies 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 OMB control number for the OCC is 1557–0251. The FDIC will obtain an OMB control number. The OMB control number for the Board is 7100–0361. In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Reporting Requirements Associated with Regulation KK (Margin and Capital Requirements for Covered Swaps Entities) (Reg KK; OMB No. 7100–0361). The information collection requirements contained in this joint notice of proposed rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The proposed rule contains requirements subject to the PRA. The reporting requirements are found in §§ __.8(c)(1), __.8(c)(2), __.8(c)(3), __.8(d)(5), __.8(d)(10), __.8(d)(11), __.8(d)(12), __.8(d)(13), and __.9(e). The recordkeeping requirements are found in §§ __.2 definition of ''eligible master netting agreement,'' paragraph (4), __.5(b)(2)(i), __.8(e), __.8(f)(2), __.8(f)(3), __.8(f)(4), __.8(g), __.8(h), and __.10. These information collection requirements would implement sections 731 and 764 of the Dodd-Frank Act, as mentioned in the Abstract below.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Commission and Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Margin and Capital Requirements for Covered Swap Entities.

Frequency of Response: Event-generated and annual.

Affected Public: The affected public of the OCC, FDIC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective proposed rule. Businesses or other for-profit.

Respondents:

OCC: Any national bank, Federal savings association, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Board: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CF. 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FHFA: With respect to any regulated entity as defined in section 1303(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(2)), the proposed rule does not contain any collection of information that requires the approval of the OMB under the PRA.[135]

[135] For the 2011 proposal, FHFA noted that with respect to any of its regulated entities, the rule would not have contained any collection of information pursuant to the PRA. However, provisions in § __.11(e) of FHFA's 2011 proposal allowing a third party that is not subject to regulation by a prudential regulator to request prior written approval of an initial margin model for use by Fannie Mae, Freddie Mac or the Federal Home Loan Banks would have been a collection of information under the PRA. *See* 76 FR 27564 at 27584. As already noted, FHFA is not re-proposing as part of the proposed rule a provision similar to that found in § ___.11(e) of the 2011 proposal. As a consequence, the provision that triggered a FHFA

FCA: The FCA collects information from Farm Credit System institutions, which are Federal instrumentalities, in the FCA's capacity as their safety and soundness regulator, and, therefore, OMB approval is not required for this collection.

Abstract: Sections 731 and 764 of the Dodd-Frank Act would require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

Reporting Requirements

Section __.8 establishes standards for initial margin models. These standards include (1) a requirement that the covered swap entity receive prior approval from the relevant Agency based on demonstration that the initial margin model meets specific requirements (§§ __.8(c)(1) and __.8(c)(2)); (2) a requirement that a covered swap entity notify the relevant Agency in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ __.8(c)(3)); (3) a variety of quantitative requirements, including requirements that the covered swap entity validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the relevant Agency that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the relevant Agency that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§§ __.8(d)(5), __.8(d)(10), __.8(d)(11), __.8(d)(12), and __.8(d)(13)).

Section __.9(e) allows a covered swap entity to request that the prudential regulators make a substituted compliance determination and must provide the reasons therefore and other required supporting documentation. A request for a substituted compliance determination must include a description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and rehypothecation requirements; and approval process and standards for models); the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under this section only if directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Recordkeeping Requirements

Section __.2 defines terms used in the proposed rule, including the definition of ''eligible master netting agreement,'' which provides that a covered swap entity that relies on the agreement for purpose of calculating the required margin must (1) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of this section. The term ''eligible master netting agreement'' is used elsewhere in the proposed rule to specify instances in which a covered swap entity may (1) calculate variation margin on an aggregate basis across multiple non-cleared swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps.

Section __.5(b)(2)(i) specifies that a covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty if the covered swap entity has made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the agency that it has made appropriate efforts to collect or post the required margin.

Section __.8 establishes standards for initial margin models. These standards include (1) a requirement that a covered swap entity review its initial margin model annually (§ __.8(e)); (2) a requirement that the covered swap entity validate its initial margin model initially and on an ongoing basis, describe to the relevant Agency any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the covered swap entity's board of directors or a committee thereof (§§ __.8(f)(2), __.8(f)(3), and __.8(f)(4)); (3) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ __.8(g)); and (4) that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (§ __.8(h)).

Section __.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that (1) provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required; and (2) specifies the methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation.

Estimated Burden per Response:

Reporting Burden

§§ __.8(c)(1), __.8(c)(2), __.8(c)(3), __.8(d)(5), __.8(d)(10), __.8(d)(11), __.8(d)(12), and __.8(d)(13): 240 hours.

§ __.9(e): 10 hours.

Recordkeeping Burden

§§ __.2, __.5(b)(2)(i), __.8(e), __.8(f)(2), __.8(f)(3), __.8(f)(4), __.8(g), __.8(h), and __.10: 69 hours.

request for OMB approval of an information collection in 2011 is no longer part of the proposed rule.

OCC

Number of respondents: 20.

Total estimated annual burden: 6,780 hours.

FDIC

Number of respondents: 3.

Total estimated annual burden: 1,017 hours.

Board

Number of respondents: 50.

Proposed revisions only estimated annual burden: 16,950 hours (Subpart A).

Total estimated annual burden: 17,048 hours.

B. Initial Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* (RFA), the Agencies are publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Agencies welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. As required by section 4s of the Commodity Exchange Act (7 U.S.C. 6(s)) and section 15F of the Securities Exchange Act (15 U.S.C. 78o–10), which were added by sections 731 and 764 of the Dodd-Frank Act, respectively, the Agencies are proposing new regulations to establish rules imposing (i) capital requirements and (ii) initial and variation margin requirements on all non-cleared swaps into which covered swap entities enter. The capital and margin standards for swap entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared.[136] Sections 731 and 764 of the Dodd-Frank Act require that the capital and margin requirements imposed on swap entities must, to offset such risk, (i) help ensure the safety and soundness of the swap entity and (ii) be appropriate for the greater risk associated with the non-cleared swaps and non-cleared security-based swaps held as a swap entity. In addition, sections 731 and 764 of the Dodd-Frank Act require the Agencies, in establishing capital requirements for covered swap entities, to take into account the risks associated with other types, classes or categories of swaps or security-based swaps engaged in, and the other activities conducted that are not otherwise subject to regulation by virtue of being a swap entity.[137]

This proposed rule implements the statutory provisions, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for covered swap entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

2. Small entities affected by the proposal. This proposal may have an effect predominantly on two types of small entities: (i) Covered swap entities that are subject to the proposed rule's capital and margin requirements; and (ii) counterparties that engage in swap transactions with covered swap entities.

A financial institution generally is considered small if it has assets of $550 million or less.[138] Based on 2014 Call Report data, no covered swap entities had total consolidated domestic assets of $550 million or less. The Agencies do not expect that any small financial institution is likely to be a covered swap entity, because these small financial institutions are unlikely to engage in the level of swap activity that would require them to register as swap dealers or major swap participants.[139]

The initial and variation margin requirements of the proposed rule apply to non-cleared swap transactions entered into by a covered swap entity with counterparties that are swap entities or financial end users. Non-financial or ''commercial'' end users would not be subject to specific requirements under the proposed rule, and a covered swap entity's collection of margin from these types of counterparties is subject to the judgment of the covered swap entity. That is, under the proposed rule, a covered swap entity is not required to collect initial or variation margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is a nonfinancial end user but shall collect initial and variation margin at such times and in such forms and such amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps. In this respect, the Agencies intend for the proposed requirements to be consistent with current market practice for such end users, with the understanding that in many cases little or no margin is, or will be, exchanged with these counterparties. The documentation requirements of the proposed rule likewise would not apply to these nonfinancial end users. The segregation requirement of the proposed rule could apply in cases where the covered swap entity posts margin to a nonfinancial end user, even though a covered swap entity is not required to post margin to nonfinancial end users under the proposed rule. In particular, under the proposal, a covered swap entity that posts any collateral other than variation margin shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty. The Agencies believe that the treatment of nonfinancial end users under the proposal should reduce the burden on nonfinancial end users including those that are small entities.

The rule would require covered swap entities to post margin to and collect margin on non-cleared swaps from counterparties that are swap entities or financial end users. The number of such counterparties and the extent to which certain types of companies are likely to be counterparties are unknown. As noted above, the CFTC has provided a list of provisionally registered swap dealers that includes 102 institutions and provisionally registered major swap participants that includes 2 institutions.[140] Swap entities also would

[136] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[137] *See* 7 U.S.C. 6s(e)(2)(C); 15 U.S.C. 78o–10(e)(2)(C). The Agencies are referencing existing capital regulations that covered swap entities are already subject to and, as a consequence, do not expect an incremental impact as a result of these requirements.

[138] *See* 13 CFR 121.201 (effective July 14, 2014); *see also* 13 CFR 121.103(a)(6) (noting factors that the Small Business Administration considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[139] The CFTC has published a list of provisionally registered swap dealers as of July 29, 2014 and provisionally registered major swap participants that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer* and *http://www.cftc.gov/LawRegulation/DoddFrankAct/registermajorswappart.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

[140] *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer* and *http://*

include security-based swap dealers and major security-based swap dealers of which the number is unknown.[141] The number of financial end user counterparties is also unknown.

The application of initial margin requirements to swaps with financial end user counterparties is limited, depending on the counterparty's level of swap activity. With respect to financial end user counterparties that engage in swap transactions with swap entities that are subject to the proposed rule's margin requirements, the proposed rule minimizes the burden on small entities by requiring that such counterparties have a material swaps exposure in order to be subject to initial margin requirements. Material swaps exposure for an entity is defined to mean that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $3 billion, where such amount is calculated only for business days. In addition, the proposed rule provides an initial margin threshold resulting in an aggregate credit exposure of $65 million from all non-cleared swaps and non-cleared security-based swaps between a covered swap entity and its affiliates and a counterparty and its affiliates. A covered swap entity would not need to collect initial margin from a counterparty to the extent the amount is below the initial margin threshold. The Agencies expect the initial margin threshold should further reduce the impact of the proposal on small entities.

Under regulations issued by the Small Business Administration, a ''small entity'' includes firms within the ''Securities, Commodity Contracts, and Other Financial Investments and Related Activities'' sector with assets of $38.5 million or less and ''Funds, Trusts and Other Financial Vehicles'' with assets of $32.5 million or less.[142] The Agencies do not expect that there will be a significant number of small entities that will have material swaps exposure or meet the initial margin threshold amount. In particular, according to 2014 Call Report data, banks with $550 million or less in total assets had an average notional derivative exposure of approximately $4 million and a large number of these entities reported no notional derivative exposure.

As noted above, all financial end users would be subject to the variation margin requirements and documentation requirements of the proposed rule. However, the Agencies believe that such treatment is consistent with current market practice and should not represent a significant burden on small financial end users. Consequently, the proposed rule would not appear to have a significant economic impact on a substantial number of small entities.

3. Compliance requirements. With respect to initial and variation margin requirements, the Agencies' proposed rule does not apply directly to counterparties that engage in swap transactions with swap entities. However, the proposed rule requires a covered swap entity to collect and post a minimum amount of initial margin (subject to a threshold) from all counterparties that are swap entities and financial end users with material swaps exposure and to collect and post a minimum amount of variation margin from all swap entity and financial end user counterparties. Certain aspects of the segregation requirement of the proposal would also apply regardless of the size of the counterparty. In particular, the proposal provides that a covered swap entity that posts any collateral other than variation margin with respect to a non-cleared swap or non-cleared security-based swap shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty.[143] As a consequence, the margin requirements may affect the amount of margin that counterparties that are small entities are required to collect and post to covered swap entity counterparties when transacting in swaps markets. Accordingly, the Agencies expect any economic impact on counterparties that are small entities to be negative to the extent that swap entities currently do not post or collect initial margin or variation margin from those counterparties but would be required to do so under the proposed rule.

4. Other Federal rules. Sections 731 and 764 of the Dodd-Frank Act require the CFTC and SEC separately to adopt rules imposing capital and margin requirements for swap entities for which there is no prudential regulator.[144] The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements.[145] Assuming all swap entities will be subject to an Agency, CFTC, or SEC margin rule that requires collection of initial margin, this rule will result in a collect-and-post system for all non-cleared swaps between swap entities.

The Agencies acknowledge that both the CFTC and SEC are responsible for specifying swap trading relationship documentation requirements for *all* registered swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. In the case of the CFTC, these requirements have been adopted.[146] In the case of the SEC, these requirements have been proposed.[147] The Agencies request comment on whether the 2014 proposal should deem compliance with the applicable CFTC or SEC documentation requirements as compliance with this rule. Allowing compliance with CFTC and SEC documentation requirements to satisfy the proposed rule's requirements in these cases will reduce the burden on covered swap entities and avoid duplicative requirements while ensuring that the goals of the proposed rule's requirements are achieved. Alternatively, the Agencies request comment on whether documentation requirements in this rule are necessary to ensure that appropriate minimum documentation standards are in effect for all covered swap entities.

Section 7 of the proposal also contains requirements regarding segregation and rehypothecation of initial margin for non-cleared for swaps. Under the Dodd-Frank Act, the CFTC and SEC have authority to separately adopt requirements for swap entities with respect to the treatment of collateral posted by their counterparties

www.cftc.gov/LawRegulation/DoddFrankAct/registermajorswappart.

[141] The number of security-based swap dealers and major security-based swap dealers is unknown because, unlike the CFTC, the SEC has not yet set up their registration system.

[142] 13 CFR 121.201.

[143] By contrast, a covered swap entity is only required to segregate margin collected pursuant to section __.3(a) of the rule from financial end users with material swaps exposure and swap entities.

[144] *See* 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78*o*–10(e)(2)(B).

[145] *See* 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78*o*–10(e)(2)(A), 78*o*–10(e)(3)(D). Staff of the Agencies have consulted with staff of the CFTC and SEC in developing the proposed rule.

[146] *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55903 (Sept. 11, 2012), *available at http://www.gpo.gov/fdsys/pkg/FR-2012-09-11/pdf/2012-21414.pdf.*

[147] *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 FR 3,859 (Jan. 2011).

to margin, guarantee, or secure non-cleared swaps pursuant to sections 724 and 763 of the Dodd-Frank Act. The CFTC has adopted such requirements, and the SEC has proposed such requirements.[148] To the extent that the CFTC and SEC segregation requirements differ from those of this proposal, the covered swap entity would be expected to comply with the stricter segregation rule.

Section 9 of the proposed rule also allows for recognition of other regulatory regimes in certain circumstances. Pursuant to this section, certain types of covered swap entities operating in foreign jurisdictions would be able to meet the U.S. requirement by complying with the foreign requirement in the event that a comparability determination is made by the Agencies, regardless of the location of the counterparty. The Agencies are seeking comment on the proposal's approach to recognizing other regulatory regimes. Allowing compliance with other regulatory regimes to satisfy the proposed rule's requirements in these cases will reduce the burden on covered swap entities and avoid duplicative requirements while ensuring that the goals of the proposed rule's requirements are achieved.

The proposed rule prescribes margin requirements on all non-cleared swap transactions between a covered swap entity and its counterparties including transactions between banks that are covered swap entities and their affiliates that are financial end users including subsidiaries of banks. To the extent that the proposed rule covers interaffiliate swap transactions, sections 23A and 23B of the Federal Reserve Act (''FRA'') might also be applicable. Section 608 of the Dodd-Frank Act amended section 23A of the FRA to include as a covered transaction a derivative transaction with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate. Banks that are swap entities may have collateral requirements as a result of this proposal and section 608 of the Dodd-Frank Act with respect to their swap transactions with affiliates. To the extent there are differences, the stricter rule would apply.

5. Significant alternatives to the proposed rule. As discussed above, the Agencies have mitigated the impact of the margin requirements on nonfinancial end users from which swap entities may be required to collect initial margin and/or variation margin by leaving the collection of margin from these types of counterparties to the judgment of the covered swap entity consistent with current market practice. In addition, the Agencies have proposed to reduce the effect of the proposed rule on counterparties to covered swap entities, including small entities, by requiring a material swaps exposure for a financial end user counterparty to be subject to initial margin requirements and through the implementation of an initial margin threshold amount. The Agencies have also requested comment on a variety of alternative approaches to implementing margin requirements. The Agencies welcome comment on any significant alternatives that would minimize the impact of the proposal on small entities.

FHFA: FHFA believes that the proposed rule, if promulgated as a final rule, would not have a significant economic impact on a substantial number of small entities, since none of FHFA's regulated entities come within the meaning of small entities as defined in the Regulatory Flexibility Act (*see* 5 U.S.C. 601(6)), and the rule would not substantially affect any business that its regulated entities might conduct with such small entities.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $100 million or more in any one year (adjusted annually for inflation). The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analysis will available at: *http://www.regulations.gov,* Docket ID OCC–2011–0008.

Text of the Proposed Common Rules (All Agencies)

The text of the proposed common rules appears below:

PART/SUBPART [ ]—[RESERVED]

MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

__.1 Authority, purpose, scope, and compliance dates.
__.2 Definitions.
__.3 Initial margin.
__.4 Variation margin.
__.5 Minimum transfer amount and satisfaction of collecting and posting requirements.
__.6 Eligible collateral.
__.7 Segregation of collateral.
__.8 Initial margin models and standardized amounts.
__.9 Cross-border application of margin requirements.
__.10 Documentation of margin matters.
__.11 Capital.
Appendix A to Part [ ]—Standardized Minimum Initial Margin Requirements for Non-cleared Swaps and Non-cleared Security-based Swaps
Appendix B to Part [ ]—Margin Values for Cash and Noncash Initial Margin Collateral

§ __.1 Authority, purpose, scope, and compliance dates.

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Compliance dates.* Covered swap entities must comply with the minimum margin requirements for non-cleared swaps and non-cleared security-based swaps on or before the following dates for non-cleared swaps and non-cleared security-based swaps entered into on or after the following dates—

(1) December 1, 2015 with respect to the requirements in § __.4 for variation margin for non-cleared swaps and non-cleared security-based swaps.

(2) December 1, 2015 with respect to the requirements in § __.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

[148] The CFTC issued a final rule regarding these arrangements and the SEC has proposed a rule. *See* Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 78 FR 66621 (Nov. 6, 2013); Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, 78 FR 4365 (Jan. 22, 2013).

(i) The covered swap entity combined with all its affiliates; and

(ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for June, July and August 2015 that exceeds $4 trillion, where such amounts are calculated only for business days.

(3) December 1, 2016 with respect to the requirements in § __.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for June, July and August 2016 that exceeds $3 trillion, where such amounts are calculated only for business days.

(4) December 1, 2017 with respect to the requirements in § __.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for June, July and August 2017 that exceeds $2 trillion, where such amounts are calculated only for business days.

(5) December 1, 2018 with respect to the requirements in § __.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for June, July and August 2018 that exceeds $1 trillion, where such amounts are calculated only for business days.

(6) December 1, 2019 with respect to the requirements in § __.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(e) Once a covered swap entity and its counterparty must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps based on the compliance dates in paragraph (d), the covered swap entity and its counterparty shall remain subject to the requirements of this [subpart].

§ __.2 Definitions.

Affiliate means any company that controls, is controlled by, or is under common control with another company.

Bank holding company has the meaning specified in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

Broker has the meaning specified in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

Clearing agency has the meaning specified in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)).

Control of another company means:

(1) Ownership, control, or power to vote 25 percent or more of a class of voting securities of the company, directly or indirectly or acting through one or more other persons;

(2) Ownership or control of 25 percent or more of the total equity of the company, directly or indirectly or acting through one or more other persons; or

(3) Control in any manner of the election of a majority of the directors or trustees of the company.

Counterparty means, with respect to any non-cleared swap or non-cleared security-based swap to which a covered swap entity is a party, each other party to such non-cleared swap or non-cleared security-based swap.

Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap.

Dealer has the meaning specified in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

Depository institution has the meaning specified in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Derivatives clearing organization has the meaning specified in section 1a(15) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(15)).

Eligible collateral means collateral described in § __.6.

Eligible master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or apply collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971 (12 U.S.C. 2183 and 2279cc), or similar laws of foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions, or

(ii) In a contractual agreement subject by its terms to any of the laws referenced in paragraph (2)(i) of this definiton;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, or suspends or conditions payment, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is or otherwise would be, a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part:

(i) Conducts sufficient legal review (and maintains sufficient written documentation of that legal review) to conclude with a well-founded basis that:

(A) The agreement meets the requirements of paragraphs (1)–(3) of this definition;

(B) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable

under the law of the relevant jurisdictions; and

(ii) Establishes and maintains written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

Financial end user means

(1) Any counterparty that is not a swap entity and that is:

(i) A bank holding company or an affiliate thereof; a savings and loan holding company; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323);

(ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as—

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)) and any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

(v) Any institution chartered and regulated by the Farm Credit Administration in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 et. seq.;

(vi) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company (15 U.S.C. 80a–53(a));

(vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(viii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in section 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(10), 1a(11), and 1a(12)); or a futures commission merchant;

(ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(xi) An entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets;

(xii) An entity that would be a financial end user described in paragraph (1) of this section, if it were organized under the laws of the United States or any State thereof; or

(xiii) Notwithstanding paragraph (2) below, any other entity that [Agency] has determined should be treated as a financial end user.

(2) The term ''financial end user'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(iii)) and implementing regulations; or

(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(D)) or section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations.

Foreign bank has the meaning specified in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

Foreign exchange forward and foreign exchange swap mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)).

Futures commission merchant has the meaning specified in section 1a(28) of the Commodity Exchange Act (7 U.S.C. 1a(28)).

Initial margin means the collateral as calculated in accordance with § __.8 that is posted or collected in connection with a non-cleared swap or non-cleared security-based swap.

Initial margin collection amount means—

(1) In the case of a covered swap entity that does not use an initial margin model, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under Appendix A of this part; and

(2) In the case of a covered swap entity that uses an initial margin model, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under the initial margin model.

Initial margin model means an internal risk management model that—

(1) Has been developed and designed to identify an appropriate, risk-based amount of initial margin that the covered swap entity must collect with respect to one or more non-cleared swaps or non-cleared security-based swaps to which the covered swap entity is a party; and

(2) Has been approved by [Agency] pursuant to § __.8 of this part.

Initial margin threshold amount means an aggregate credit exposure of $65 million resulting from all non-cleared swaps and non-cleared security-based swaps between a covered swap entity and its affiliates, and a counterparty and its affiliates.

Major currencies means:

(1) United States Dollar (USD);

(2) Canadian Dollar (CAD);

(3) Euro (EUR);
(4) United Kingdom Pound (GBP);
(5) Japanese Yen (JPY);
(6) Swiss Franc (CHF);
(7) New Zealand Dollar (NZD);
(8) Australian Dollar (AUD);
(9) Swedish Kronor (SEK);
(10) Danish Kroner (DKK);
(11) Norwegian Krone (NOK); and
(12) Any other currency as determined by [Agency].

Margin means initial margin and variation margin.

Market intermediary means a securities holding company; a broker or dealer; a futures commission merchant; a swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or a security-based swap dealer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

Material swaps exposure for an entity means that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $3 billion, where such amount is calculated only for business days.

Multilateral development bank means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the [AGENCY] determines poses comparable credit risk.

Non-cleared swap means a swap that is not a cleared swap, as that term is defined in section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

Non-cleared security-based swap means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the U.S. Securities and Exchange Commission.

Prudential regulator has the meaning specified in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

Savings and loan holding company has the meaning specified in section 10(n) of the Home Owners' Loan Act, 12 U.S.C. 1467a(n)).

Securities holding company has the meaning specified in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a).

Security-based swap has the meaning specified in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

State means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Subsidiary means a company that is controlled by another company.

Swap has the meaning specified in section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)).

Swap entity means a security-based swap dealer as defined in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)), a major security-based swap participant as defined in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)), a swap dealer as defined in section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)), or a major swap participant as defined in section 1a(33) of the Commodity Exchange Act (7 U.S.C. 1a(33)).

U.S. Government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by federal statute but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Variation margin means a payment by one party to its counterparty to meet the performance of its obligations under one or more non-cleared swaps or non-cleared security-based swaps between the parties as a result of a change in value of such obligations since the last time such payment was made.

Variation margin amount means the cumulative mark-to-market change in value to a covered swap entity of a non-cleared swap or non-cleared security-based swap, as measured from the date it is entered into (or, in the case of a non-cleared swap or non-cleared security-based swap that has a positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a non-cleared swap or non-cleared security-based swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously paid with respect to such non-cleared swap or non-cleared security-based swap.

§ __.3 Initial margin.

(a) *Collection of margin.* A covered swap entity shall collect initial margin with respect to any non-cleared swap or non-cleared security-based swap from a counterparty that is a financial end user with material swaps exposure or that is a swap entity in an amount that is no less than the greater of—

(1) Zero; or

(2) The initial margin collection amount for such non-cleared swap or non-cleared security-based swap *less* the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), as applicable.

(b) *Posting of margin.* A covered swap entity shall post initial margin with respect to any non-cleared swap or non-cleared security-based swap to a counterparty that is a financial end user with material swaps exposure. Such initial margin shall be in an amount at least as large as the covered swap entity would be required to collect under paragraph (a) of this section if it were in the place of the counterparty.

(c) *Timing.* A covered swap entity shall, with respect to any non-cleared swap or non-cleared security-based swap to which it is a party, comply with the initial margin requirements described in paragraph (a) and (b) of this section on a daily basis for a period beginning on or before the business day following the day it enters into such non-cleared swap or non-cleared security-based swap and ending on the date the non-cleared swap or non-cleared security-based swap is terminated or expires.

(d) *Other counterparties.* A covered swap entity is not required to collect initial margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is neither a financial end user with material swaps exposure nor a swap entity but shall collect initial margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately address the credit risk posed by the counterparty

and the risks of such non-cleared swaps and non-cleared security-based swaps.

§ __.4 Variation margin.

(a) *General.* On and after the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap with a swap entity or financial end user, the covered swap entity shall collect the variation margin amount from the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is positive and pay the variation margin amount to the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is negative.

(b) *Frequency.* A covered swap entity shall comply with the variation margin requirements described in paragraph (a) of this section no less frequently than once per business day.

(c) *Other counterparties.* A covered swap entity is not required to collect variation margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is neither a financial end user nor a swap entity but shall collect variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps.

(d) *Netting arrangements.* To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may calculate and comply with the variation margin requirements of this paragraph on an aggregate net basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement. If the agreement covers non-cleared swaps and non-cleared security-based swaps entered into before the applicable compliance date set forth in § __.1(d), those non-cleared swaps and non-cleared security-based swaps must be included in the aggregate for the purposes of calculating and complying with the variation margin requirements of this paragraph.

§ __.5 Minimum transfer amount and satisfaction of collecting and posting requirements.

(a) *Minimum transfer amount.* Notwithstanding § __.3 or § __.4, a covered swap entity is not required to collect or post margin pursuant to this part with respect to a particular counterparty unless and until the total amount of margin that is required pursuant to this part to be collected or posted and that has not yet been collected or posted with respect to the counterparty is greater than $650,000.

(b) *Satisfaction of Collecting and Posting Requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty under § __.3, __.4 or __.6(d) if—

(1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and

(2) The covered swap entity has—

(i) Made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of [Agency] that it has made appropriate efforts to collect or post the required margin; or

(ii) Commenced termination of the non-cleared swap or non-cleared security-based swap with the counterparty promptly following the applicable cure period and notification requirements.

§ __.6 Eligible collateral.

(a) A covered swap entity shall collect and post initial margin and variation margin required pursuant to this part from or to a swap entity or financial end user solely in the form of one or more of the following types of eligible collateral—

(1) Immediately available cash funds that are denominated in—

(i) U.S. dollars; or

(ii) The currency in which payment obligations under the swap are required to be settled;

(2) With respect to initial margin only—

(i) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(ii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;

(iii) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(iv) A major currency;

(v) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § __.11 of this part;

(vi) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(vii) Subject to paragraph (c) of this section, a security solely in the form of:

(A) Publicly traded debt, including a debt security issued by a U.S. Government-sponsored enterprise (other than one described in § __.6(a)(2)(iii)), that meets the terms of [RESERVED] and is not an asset-backed security;

(B) Publicly traded common equity that is included in:

(*1*) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by [Agency]; or

(*2*) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction; or

(viii) Gold.

(b) The value of any eligible collateral described in paragraph (a)(2) of this section that is collected and held to satisfy initial margin requirements is subject to the discounts described in Appendix B of this part.

(c) Eligible collateral for initial margin required by this part does not include a security issued by—

(1) The counterparty or affiliate of the counterparty pledging such collateral; or

(2) A bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of any of the foregoing institutions.

(d) A covered swap entity shall monitor the market value and eligibility of all collateral collected and held to satisfy its initial margin required by this part. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect such additional eligible collateral as is necessary to bring itself

into compliance with the margin requirements of this part. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly obtain sufficient eligible replacement collateral to comply with this part.

(e) A covered swap entity may collect initial margin and variation margin that is not required pursuant to this part in any form of collateral.

§ __.7 Segregation of collateral.

(a) A covered swap entity that posts any collateral other than variation margin with respect to a non-cleared swap or a non-cleared security-based swap shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty.

(b) A covered swap entity that collects initial margin amounts required by § __.3(a) with respect to a non-cleared swap or a non-cleared security-based swap shall require that such initial margin collateral be held by one or more custodians that are not affiliates of the covered swap entity or the counterparty.

(c) For purposes of paragraphs (a) and (b) of this section, the custodian must act pursuant to a custody agreement that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, repurchase agreement, reverse repurchase agreement or other means) the funds or other property held by the custodian; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § __.3(a) or posted by a covered swap entity pursuant to § __.3(b), the agreement requires the posting party to:

(1) Substitute only funds or other property that would qualify as eligible collateral under § __.6, and for which the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § __.3; and

(2) Direct reinvestment of funds only in assets that would qualify as eligible collateral under § __.6, and for which the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § __.3.

§ __.8 Initial margin models and standardized amounts.

(a) *Standardized amounts.* Unless a covered swap entity's initial margin model conforms to the requirements of this section, the covered swap entity shall calculate all initial margin collection amounts on a daily basis pursuant to Appendix A of this part.

(b) *Use of initial margin models.*

(1) A covered swap entity may calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to § __.3 on a daily basis using an initial margin model only if the initial margin model meets the requirements of this section.

(2) To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may use its initial margin model to calculate and comply with the initial margin requirements pursuant to § __.3 on an aggregate basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement. If the agreement covers non-cleared swaps and non-cleared security-based swaps entered into before the applicable compliance date set forth in § ___.1(d), those non-cleared swaps and non-cleared security-based swaps must be included in the aggregate in the initial margin model for the purposes of calculating and complying with the initial margin requirements pursuant to § __.3.

(c) *Requirements for initial margin model.*

(1) A covered swap entity must obtain the prior written approval of [Agency] before using any initial margin model to calculate the initial margin required in this part.

(2) A covered swap entity must demonstrate that the initial margin model satisfies all of the requirements of this section on an ongoing basis.

(3) A covered swap entity must notify [Agency] in writing 60 days prior to:

(i) Extending the use of an initial margin model that [Agency] has approved under this section to an additional product type;

(ii) Making any change to any initial margin model approved by [Agency] under this section that would result in a material change in the covered swap entity's assessment of initial margin requirements; or

(iii) Making any material change to modeling assumptions used by the initial margin model.

(4) [The Agency] may rescind its approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if [Agency] determines, in its sole discretion, that the initial margin model no longer complies with this section.

(d) *Quantitative requirements.*

(1) The covered swap entity's initial margin model must calculate an amount of initial margin that is equal to the potential future exposure of the non-cleared swap, non-cleared security-based swap or netting set of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the non-cleared swap, non-cleared security-based swap or netting set of non-cleared swaps or non-cleared security-based swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the non-cleared swap or non-cleared security-based swap.

(2) All data used to calibrate the initial margin model must be based on an equally weighted historical observation period of at least one year and not more than five years and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(3) The covered swap entity's initial margin model must use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories must include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, agricultural commodity risk, energy commodity risk, metal commodity risk and other commodity risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques must capture spread and basis risk and must incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(4) In the case of a non-cleared cross-currency swap, the covered swap entity's initial margin model need not recognize any risks or risk factors associated with the fixed, physically-settled foreign exchange transactions associated with the exchange of principal embedded in the non-cleared cross-currency swap. The initial margin model must recognize all material risks and risk factors associated with all other payments and cash flows that occur during the life of the non-cleared cross-currency swap.

(5) The initial margin model may calculate initial margin for a non-cleared swap or non-cleared security-based swap or a netting set of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. It may reflect offsetting exposures, diversification, and other hedging benefits for swaps and security-based swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: agricultural commodity, energy commodity, metal commodity and other commodity, credit, equity, and foreign exchange or interest rate. Empirical correlations under an eligible master netting agreement may be recognized by the initial margin model within each broad risk category, but not across broad risk categories.

(6) If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of non-cleared swaps within a broad risk category, the covered swap entity must calculate an amount of initial margin separately for each subset of non-cleared swaps and non-cleared security-based swaps for which offsetting exposures, diversification, and other hedging benefits are explicitly recognized by the initial margin model. The sum of the initial margin amounts calculated for each subset of non-cleared swaps and non-cleared security-based swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of non-cleared swaps and non-cleared security-based swaps within the broad risk category.

(7) The sum of the initial margins calculated for each broad risk category will be used to determine the aggregate initial margin due from the counterparty.

(8) The initial margin model may not permit the calculation of any initial margin collection amount to be offset by, or otherwise take into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(9) The initial margin model must include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(10) The covered swap entity may not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its initial margin model unless it has first demonstrated to the satisfaction of [Agency] that such omission is appropriate.

(11) The covered swap entity may not incorporate any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps unless it has first demonstrated to the satisfaction of [Agency] that such proxy or approximation is appropriate.

(12) The covered swap entity must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(13) The covered swap entity must review and, as necessary, revise the data used to calibrate the initial margin model at least monthly, and more frequently as market conditions warrant, to ensure that the data incorporate a period of significant financial stress appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(14) The level of sophistication of the initial margin model must be commensurate with the complexity of the non-cleared swaps and non-cleared security-based swaps to which it is applied. In calculating an initial margin collection amount, the initial margin model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(15) [The Agency] may in its sole discretion require a covered swap entity using an initial margin model to collect a greater amount of initial margin than that determined by the covered swap entity's initial margin model if [the Agency] determines that the additional collateral is appropriate due to the nature, structure, or characteristics of the covered swap entity's transaction(s), or is commensurate with the risks associated with the transaction(s).

(e) *Periodic review.* A covered swap entity must periodically, but no less frequently than annually, review its initial margin model in light of developments in financial markets and modeling technologies, and enhance the initial margin model as appropriate to ensure that the initial margin model continues to meet the requirements for approval in this section.

(f) *Control, oversight, and validation mechanisms.*

(1) The covered swap entity must maintain a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The covered swap entity's risk control unit must validate its initial margin model prior to implementation and on an ongoing basis. The covered swap entity's validation process must be independent of the development, implementation, and operation of the initial margin model, or the validation process must be subject to an independent review of its adequacy and effectiveness. The validation process must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the initial margin model;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques, including benchmarking against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization or a clearing agency would require for similar cleared transactions.

(iii) An outcomes analysis process that includes backtesting the initial margin model.

(3) If the validation process reveals any material problems with the initial margin model, the covered swap entity must notify [Agency] of the problems, describe to [Agency] any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated.

(4) The covered swap entity must have an internal audit function independent of business-line management and the risk control unit that at least annually assesses the effectiveness of the controls supporting the covered swap entity's initial margin model measurement systems, including the activities of the business trading

units and risk control unit, compliance with policies and procedures, and calculation of the covered swap entity's initial margin requirements under this part. At least annually, the internal audit function must report its findings to the covered swap entity's board of directors or a committee thereof.

(g) *Documentation.* The covered swap entity must adequately document all material aspects of its initial margin model, including the management and valuation of the non-cleared swaps and non-cleared security-based swaps to which it applies, the control, oversight, and validation of the initial margin model, any review processes and the results of such processes.

(h) *Escalation procedures.* The covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval.

§ __.9 Cross-border application of margin requirements.

(a) *Transactions to which this rule does not apply.* The requirements of §§ __.3 through __.8 and __.10 shall not apply to any foreign non-cleared swap or foreign non-cleared security-based swap of a foreign covered swap entity.

(b) For purposes of this section, a *foreign non-cleared swap or foreign non-cleared security-based swap* is any non-cleared swap or non-cleared security-based swap transaction with respect to which neither the counterparty to the foreign covered swap entity nor any guarantor of either party's obligations under the non-cleared swap or non-cleared security-based swap is—

(1) An entity organized under the laws of the United States or any State, including a U.S. branch, agency, or subsidiary of a foreign bank;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) A covered swap entity that is controlled, directly or indirectly, by an entity that is organized under the laws of the United States or any State.

(c) For purposes of this section, a *foreign covered swap entity* is any covered swap entity that is not—

(1) An entity organized under the laws of the United States or any State, including a U.S. branch, agency, or subsidiary of a foreign bank;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) An entity controlled, directly or indirectly, by an entity that is organized under the laws of the United States or any State.

(d) *Transactions for which substituted compliance determination may apply.*

(1) *Determinations and reliance.* For non-cleared swaps and non-cleared security-based swaps described in paragraph (d)(3) of this section, a covered swap entity may satisfy the provisions of this part by complying with the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that the prudential regulators jointly, conditionally or unconditionally, determine by public order satisfy the corresponding requirements of §§ __.3 through __.8 and __.10.

(2) *Standard.* In determining whether to make a determination under paragraph (d)(1) of this section, the prudential regulators will consider whether the requirements of such foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps applicable to such covered swap entities are comparable to the otherwise applicable requirements of this part and appropriate for the safe and sound operation of the covered swap entity, taking into account the risks associated with non-cleared swaps and non-cleared security-based swaps.

(3) *Covered swap entities eligible for substituted compliance.* A covered swap entity may rely on a determination under paragraph (d)(1) of this section only if the covered swap entity's obligations under the non-cleared swap or non-cleared security-based swap are not guaranteed by an entity organized under the laws of the United States or any State and the covered swap entity is—

(i) A foreign covered swap entity;

(ii) A foreign bank or a U.S. branch or agency of a foreign bank; or

(iii) A foreign subsidiary of a depository institution, Edge corporation, or agreement corporation.

(4) *Compliance with foreign margin collection requirement.* A covered swap entity satisfies its requirement to post initial margin under § __.3(b) of this part by posting initial margin in the form and amount, and at such times, that its counterparty is required to collect pursuant to a foreign regulatory framework, provided that the counterparty is subject to the foreign regulatory framework and the prudential regulators have made a determination under paragraph (d)(1) of this section, unless otherwise stated in that determination.

(e) *Requests for determinations.*

(1) A covered swap entity described in paragraph (d)(3) of this section may request that the prudential regulators make a determination pursuant to this section. A request for a determination must include a description of:

(i) The scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps;

(ii) The specific provisions of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that govern:

(A) The scope of transactions covered;

(B) The determination of the amount of initial and variation margin required and how that amount is calculated;

(C) The timing of margin requirements;

(D) Any documentation requirements;

(E) The forms of eligible collateral;

(F) Any segregation and rehypothecation requirements; and

(G) The approval process and standards for models used in calculating initial and variation margin;

(iii) The supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and non-cleared security-based swap regulatory framework and how that framework applies to the non-cleared swaps and non-cleared security-based swaps of the covered swap entity; and

(iv) Any other descriptions and documentation that the prudential regulators determine are appropriate.

(2) A covered swap entity described in paragraph (d)(3) of this section may make a request under this section only if the non-cleared swap and non-cleared security-based swap activities of the covered swap entity are directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

§ __.10 Documentation of margin matters.

(a) A covered swap entity shall execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that—

(1) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part; and

(2) Specifies—

(i) The methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements; and

(ii) The procedures by which any disputes concerning the valuation of non-cleared swaps or non-cleared security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved.

§ __.11 [Reserved]

Appendix A to Part [ ]—Standardized Minimum Initial Margin Requirements for Non-Cleared Swaps and Non-Cleared Security-Based Swaps

TABLE A—STANDARDIZED MINIMUM GROSS INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS [1]

Asset class	Gross initial margin (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign Exchange/Currency	6
Cross Currency Swaps: 0–2 year duration	1
Cross-Currency Swaps: 2–5 year duration	2
Cross-Currency Swaps: 5+ year duration	4
Interest Rate: 0–2 year duration	1
Interest Rate: 2–5 year duration	2
Interest Rate: 5+ year duration	4
Other	15

[1] The initial margin amount applicable to multiple non-cleared swaps or non-cleared security-based swaps subject to an eligible master netting agreement that is calculated according to Appendix A will be computed as follows:

Initial Margin = 0.4 × Gross Initial Margin + 0.6 × NGR × Gross Initial Margin where;

Gross Initial Margin = the sum of the product of each non-cleared swap's or non-cleared security-based swap's effective notional amount and the gross initial margin requirement for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement;

and

NGR = the net-to-gross ratio (that is, the ratio of the net current replacement cost to the gross current replacement cost). In calculating NGR, the gross current replacement cost equals the sum of the replacement cost for each non-cleared swap and non-cleared security-based swap subject to the eligible master netting agreement for which the cost is positive. The net current replacement cost equals the total replacement cost for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement.

Appendix B to Part [ ]—Margin Values for Cash and Noncash Initial Margin Collateral.

TABLE B—MARGIN VALUES FOR CASH AND NONCASH INITIAL MARGIN COLLATERAL [1]

Asset class	Haircut (% of market value)
Cash in same currency as swap obligation	0.0
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § _ .6(a)(2)(iii)) debt: residual maturity less than one-year	0.5
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § _ .6(a)(2)(iii)) debt: residual maturity between one and five years	2.0
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § _ .6(a)(2)(iii)) debt: residual maturity greater than five years	4.0
Eligible corporate (including eligible GSE debt securities not identified in § _.6(a)(2)(iii)) debt: residual maturity less than one-year	1.0
Eligible corporate (including eligible GSE debt securities not identified in § _.6(a)(2)(iii)) debt: residual maturity between one and five years:	4.0
Eligible corporate (including eligible GSE debt securities not identified in § _.6(a)(2)(iii)) debt: residual maturity greater than five years:	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0
	8.0

[1] The value of initial margin collateral that is calculated according to Appendix B will be computed as follows: the value of initial margin collateral for any collateral asset class will be computed as the product of the total value of collateral in any asset class and one minus the applicable haircut expressed in percentage terms. The total value of all initial margin collateral is calculated as the sum of the value of each type of collateral asset.

[END OF COMMON TEXT]

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

List of Subjects in 12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

Authority and issuance

For the reasons stated in the Common Preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. Part 45 is added as set forth at the end of the Common Preamble.
■ 2. The authority citation for part 45 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 3. Part 45 is amended by:
■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the OCC'';
■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The OCC.''
■ 4. Paragraphs (a), (b), and (c) of § 45.1 are added to read as follows:

§ 45.1 Authority, purpose, scope, and compliance dates.

(a) *Authority.* This part 45 is issued under the authority of 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 93a, 161, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–10) require the OCC to establish capital and margin requirements for any national bank, Federal savings association, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This part implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (d) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 5. Section 45.2 is amended by adding a definition of ''covered swap entity'' in alphabetical order to read as follows:

§ 45.2 Definitions.

* * * * *

Covered swap entity means any national bank, Federal savings association, or Federal branch or agency of a foreign bank that is a swap entity, or any other entity that the OCC determines.

* * * * *

§ 45.6 [Amended]

■ 6. Section 45.6(a)(2)(vi)(A) is amended by removing ''[RESERVED]'' and adding in its place ''12 CFR Part 1'';
■ 7. Section 45.11 is added to read as follows:

§ 45.11 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a national bank or Federal savings association, the minimum capital requirements 12 CFR Part 3.

(b) In the case of a covered swap entity that is a Federal branch or agency of a foreign bank, the capital adequacy guidelines applicable as generally provided under 12 CFR 28.14.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

List of Subjects in 12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System proposes to add the text of the common rule as set forth at the end of the Supplementary Information as Part 237 to 12 CFR Chapter II as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH–OUT

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation__)

■ 8. The authority citation for part 237 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.* and 12 U.S.C. 1461 *et seq.*

■ 9. Amend part 237 by adding the common text as set forth in the preamble as Subpart A.
■ 10. Revise the heading for Subpart A, as set forth above.
■ 11. Amend subpart A by removing ''[Agency]'' wherever it appears and adding in its place ''the Board'';
■ 12. Amend subpart A removing ''[The Agency]'' wherever it appears and adding in its place ''The Board''; and
■ 13. Amend § 237.1 by adding paragraphs (a) through (c) to read as follows:

§ 237.1 Authority, purpose, scope and compliance dates.

(a) *Authority.* This part (Regulation KK) is issued by the Board of Governors of the Federal Reserve System (Board) under section 4s(e) of the Commodity Exchange Act, as amended (7 U.S.C. 6s(e)) and section 15F(e) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o–10(e)), as well as under the Federal Reserve Act, as amended (12 U.S.C. 221 *et seq.*); section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818); the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), and the Home Owners' Loan Act, as amended1461 *et seq.*).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–10) require the Board to establish capital and margin requirements for any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a (on or after the transfer established under Section 311 of the

Dodd-Frank Act) (12 U.S.C. 5411)), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in § 237.1(d). Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 14. In § 237.2, add, in alphabetical order, the definition of ''covered swap entity.''.

§ 237.2 Definitions.

* * * * *

Covered swap entity means any swap entity that is a state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) or covered swap entity as determined by the Board. Covered swap entity would not include an affiliate of an entity listed in the first sentence of this definition for which the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation is the prudential regulator or that is required to be registered with the U.S. Commodity Futures Trading Commission as a swap dealer or major swap participant or with the U.S. Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant.

* * * * *

§ 237.6 [Amended]

■ 15. Section 237.6 is amended by removing [RESERVED] and adding in its place ''12 CFR 1.2(d)''.

■ 16. Section 237.11 is added to read as follows:

§ 237.11 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a state member bank (as defined in 12 CFR 208.2(g)), the provisions of the Board's Regulation Q (12 CFR 217) applicable to the state member bank;

(b) In the case of a covered swap entity that is a bank holding company (as defined in 12 U.S.C. 1842) or a savings and loan holding company (as defined in 12 U.S.C. 1467a), the provisions of the Board's Regulation Q (12 CFR part 217) applicable to the covered swap entity;

(c) In the case of a covered swap entity that is a foreign banking organization (as defined in 12 CFR 211.21(o)), a U.S. intermediate holding company subsidiary of a foreign banking organization (as defined in 12 CFR 252.3(y)) or any state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), the capital standards that are applicable to such covered swap entity under § 225.2(r)(3) of the Board's Regulation Y (12 CFR 225.2(r)(3)) or the Board's Regulation YY (12 CFR part 252); and

(d) In the case of a covered swap entity that is an Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)), the capital standards applicable to an Edge corporation under § 211.12(c) of the Board's Regulation K (12 CFR 211.12(c)) and to an agreement corporation under § 211.5(g) and § 211.12(c) of the Board's Regulation K (12 CFR 211.5(g) and 211.12(c)).

Federal Deposit Insurance Corporation

12 CFR Chapter III

List of Subjects in 12 CFR Part 349

Banks, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation proposes to add the text of the common rule as set forth at the end of the Common Preamble as subpart A of part 349 to chapter III of Title 12, Code of Federal Regulations, modified as follows:

PART 349—DERIVATIVES

■ 17. The part heading is revised to read as set forth above.

■ 18. The authority citation for part 349 is revised to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E), 27 *et seq.*

Subpart B—Retail Foreign Exchange Transactions

■ 19. Redesignate *§§ 349.1 through 349.16 as §§ 349.20 through 349.36*

■ *20. Designate redesignated §§ 349.20 through 349.36 as Subpart B and add a heading to subpart B as set forth above.*

Subpart A—Margin and Capital Requirements for Covered Swap Entities

■ 21. Part 349, subpart A is added as set forth at the end of the Common Preamble.

■ 22. Part 349, subpart A is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the FDIC''; and

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The FDIC''.

■ 23. Amend § 349.1 by adding paragraphs (a) through (c) to read as follows:

§ 349.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Federal Deposit Insurance Corporation (FDIC) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the FDIC to establish capital and margin requirements for any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This part implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of

1934 by defining terms used in the statutes and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (d) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

§ 349.2 [Amended]

■ 24. Amend § 349.2 by adding, in alphabetical order, the definition for ''covered swap entity.''

* * * * *

Covered swap entity means any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is a swap entity, or any other entity that the FDIC determines.

* * * * *

§ 349.6 [Amended]

■ 25. Section 349.6 is amended by removing ''[Reserved]'' wherever it appears and adding in its place ''12 CFR 1.2(d)'';

■ 26. Section 349.11 is revised to read as follows:

§ _349.11 Capital requirement.

A covered swap entity shall comply with the capital requirements that are applicable to the covered swap entity under part 324.

Farm Credit Administration

List of Subjects in 12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Farm Credit Administration proposes to add the text of the common rule as set forth at the end of the Supplementary Information as Part 624 to chapter VI of Title 12, Code of Federal Regulations, modified as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 27. The authority citation for part 624 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and secs. 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

■ 28. Part 624 is added as set forth at the end of the Common Preamble.

■ 29. Part 624 is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the FCA'';

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The FCA''; and

■ 30. Revise § 624.1 by adding paragraphs (a) through (c) to read as follows:

§ 624.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Farm Credit Administration (FCA) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and sections 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the FCA to establish capital and margin requirements for any System institution, including the Federal Agricultural Mortgage Corporation, chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in § 624.1(d). Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 31. Amend *§ 624.2 by adding, in alphabetical order, the definitions for 'Covered swap entity,'' and ''Investment grade'':*

§ 624.2 Definitions.

* * * * *

Covered swap entity means any institution chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is a swap entity, or any other entity that the FCA determines.

* * * * *

Investment grade means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

* * * * *

§ 624.6 [Amended]

■ 32. Section 624.6 is amended by removing ''[Reserved]'' wherever it appears and adding in its place ''investment grade as defined in § 624.2 of this chapter'';

■ 33. Section 624.11 is added to read as follows:

§ 624.11 Capital.

A covered swap entity shall comply with:

(a) In the case of the Federal Agricultural Mortgage Corporation, the capital adequacy regulations set forth in part 652 of this chapter; and

(b) In the case of any Farm Credit System institution other than the Federal Agricultural Mortgage Corporation, the capital regulations set forth in part 615 of this chapter.

Federal Housing Finance Agency

Lists of Subjects in 12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, and under the authority of 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to add the text of the common rule as set forth at the end of the **SUPPLEMENTARY INFORMATION** as Part 1221 of subchapter B of Chapter XII of title 12 of the Code of Federal Regulations, modified as follows:

Chapter XII—Federal Housing Finance Agency

Subchapter B—Entity Regulations

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 34. The authority citation for part 1221 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o-10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

■ 35. Part 1221 is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''FHFA''; and

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''FHFA''.

■ 36. Section 1221.1 is amended by adding paragraphs (a), (b) and (c) to read as follows:

§ 1221.1 Authority, purpose, scope and compliance dates.

(a) *Authority.* This part is issued by FHFA under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

(b) *Purpose.* Section 4(s) of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require FHFA to establish capital and margin requirements for any regulated entity that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statute's requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the related compliance date set forth in paragraph (d) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 37. Section 1221.2 is amended by adding in correct alphabetical order the following terms:

§ 1221.2 Definitions.

* * * * *

Covered swap entity means any regulated entity that is a swap entity or any other entity that FHFA determines.

* * * * *

Regulated entity means any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

* * * * *

§ 1221.6 Eligible Collateral.

■ 38. Section 1221.6 is amended by:

■ a. Removing in paragraph (a)(2)(v) the phrase ''the capital rules applicable to the covered swap entity as set forth in § __.11 of this part'' and adding in its place ''12 CFR part 324''; and

■ b. Removing the words ''terms of [RESERVED]'' where they appear in paragraph (a)(2)(vii)(A) and adding in their place the phrase ''definition of investment quality in § 1267.1 of this chapter''.

■ 39. Section 1221.11 is added to read as follows:

§ 1221.11 Capital.

A covered swap entity shall comply with the capital levels or such other amounts applicable to it as required by the Director of FHFA pursuant to 12 U.S.C. 4611.

Dated: September 3, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 9, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 3rd of September 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 3, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

Dated: September 3, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–22001 Filed 9–23–14; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2014–15 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0017: FF09M21200–145–FXMB1231099BPP0]

RIN 1018–AZ80

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2014–15 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 27, 2014.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours at U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 11, 2014, **Federal Register** (79 FR 46940), we proposed special migratory bird hunting regulations for the 2014–15 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 30, 2014, **Federal Register** (79 FR 24512), we requested that tribes desiring special hunting regulations in the 2014–15 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 11 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 3, 2014, **Federal Register** (79 FR 52226). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 11 proposed rule.

Status of Populations

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Comments and Issues Concerning Tribal Proposals

For the 2014–15 migratory bird hunting season, we proposed regulations for 31 tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 14 tribes have proposals with late seasons. We also noted in the August 11 proposed rule (79 FR 46940) that we were proposing seasons for five Tribes who have submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive proposals from two of those Tribes and, therefore, have not included them in this final rule.

The comment period for the August 11 proposed rule closed on August 21, 2014. We received three comments on our August 11 proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes. We responded to all three comments in the September 3 final rule.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013,

addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2014–15,'' with its corresponding August 2014, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

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

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2014–15 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0010—Mourning Dove Call Count Survey (discontinued 7/29/2014).
- 1018–0019—North American Woodcock Singing Ground Survey (expires 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million

or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 30 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2014–15 migratory bird hunting season. The resulting proposals were contained in a separate August 11, 2014, proposed rule (79 FR 46940). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect less than 30 days after the date of publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

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

Regulations Promulgation

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Amend § 20.110 by revising paragraphs (a), (b), (f), (g), (h), (l), (o), (r), (t), (x), (y), (aa), (bb), and (dd) to read as set forth below. (Current § 20.110 was published at 79 FR 52226, September 3, 2014.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

* * * * *

(a) *Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters).*

Doves

Season Dates: Open September 1 through 15, 2014; then open November 8 through December 22, 2014.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

Ducks (Including Mergansers)

Season Dates: Open October 17, 2014, through January 26, 2015.

Daily Bag and Possession Limits: Seven ducks, including two hen

mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, three scaup, one canvasback, and one pintail. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 19, 2014, through January 20, 2015.

Daily Bag and Possession Limits: Three dark (Canada and white-fronted) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

(b) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 2, 2014, through March 9, 2015.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Season Dates: Open September 27, 2014, through January 9, 2015.

Scaup

Season Dates: September 27, 2014, through December 21, 2014.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), one canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 75, respectively.

Geese

Dark Geese

Season Dates: Open September 27, 2014, through January 11, 2015.

Daily Bag and Possession Limits: 4 and 12 geese, respectively.

Light Geese

Season Dates: Open September 27, 2014, through January 11, 2015.

Daily Bag and Possession Limits: 20 and 60 geese, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 21 through 22, 2014.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

* * * * *

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 11 through November 30, 2014.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, one canvasback, and three scaup. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 11 through November 30, 2014.

Daily Bag and Possession Limits: Two and six, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(g) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 6 through September 14, 2014, for the early season, and open October 1, 2014, through January 20, 2015, for the late season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open September 27 through September 29, 2014, for the early season, and open October 1, 2014, through January 20, 2015, for the late season.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is three times the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 20, 2014, through January 20, 2015.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 6, 2014, through January 20, 2015.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General Conditions: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) *Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).*

Ducks

Season Dates: Open October 4, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 9 and 18 coots, respectively.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 9 and 18 geese, respectively.

General Conditions: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines. Nontoxic shot is required. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

* * * * *

(l) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Hunters

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2014, through March 10, 2015.

Daily Bag and Possession Limits: Six ducks, including no more five mallards (only two of which may be hens), four scaup, one mottled duck, two redheads, three wood ducks, one canvasback, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2014, through March 10, 2015.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open September 1, 2014, through March 10, 2015.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2014, through March 10, 2015.

Daily Bag Limit: 20.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 11, 2014, through January 15, 2015.

Daily Bag and Possession Limits: Six ducks, including five mallards (no more of which can be two hen mallard), three scaup, one canvasback, two redheads, three wood ducks, one mottled duck, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open November 1, 2014, through February 15, 2015.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open November 1, 2014, through January 27, 2015.

Daily Bag and Possession Limits: One and three, respectively.

Light Geese

Season Dates: Open November 1, 2014, through February 15, 2015.

Daily Bag and Possession Limits: 50 and no possession limit.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

* * * * *

(o) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons

Season Dates: Open September 1 through 30, 2014.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through 30, 2014.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers and Coots)

Season Dates: Open September 27, 2014, through January 11, 2015.

Scaup

Season Dates: Open September 27 through December 21, 2014.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one mottled duck, one canvasback, three scaup (when open), two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 27, 2014, through January 11, 2015.

Daily Bag and Possession Limits: 4 and 12, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

(r) The Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Mt. Pleasant, Michigan (Tribal Members Only)

Mourning Doves

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 25 doves.

Ducks

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 20, including no more than 5 hen, 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 10 in the aggregate.

Canada Geese

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15, 2014, through December 31, 2014.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 20 in the aggregate.

General Conditions: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal

members must possess a tribal hunting permit from the Saginaw Chippewa Indian Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

* * * * *

(t) *Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks Including Scaup

Duck Season Dates: Open October 4, 2014, through January 15, 2015.

Scaup Season Dates: Open October 25, 2014, through January 16, 2015.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup, one canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 24 snipe, respectively.

Canada Geese

Season Dates: Open October 4, 2014, through January 16, 2015.

Daily Bag and Possession Limits: 4 and 12, respectively.

White-Fronted Geese

Season Dates: Open October 4, 2014, through January 16, 2015.

Daily Bag and Possession Limits: 10 and 30, respectively.

Light Geese

Season Dates: Open October 4, 2014, through January 16, 2015.

Daily Bag and Possession Limits: 10 and 30, respectively

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

* * * * *

(x) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Band-Tailed Pigeon

Season Dates: Open September 1 through October 31, 2014.

Daily Bag and Possession Limits: Four and eight, respectively.

Mourning Dove

Season Dates: Open September 1 through October 31, 2014.

Daily Bag and Possession Limits: 10 and 20, respectively.

Ducks

Season Dates: Open October 1, 2014, through March 10, 2015.

Daily Bag and Possession Limits: 10 ducks, including no more than 7 mallards, 3 of which may be hen mallards, 3 pintail, 3 scaup, 3 canvasback, and 3 redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open October 1, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Open October 1, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Geese

Season Dates: Open October 1, 2014, through March 10, 2015.

Daily Bag and Possession Limits: 6 and 12, respectively.

Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(y) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)*

Ducks

Season Dates: Open September 21, 2014, through February 26, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, two canvasback, one harlequin per season, and two redheads. Possession limit is twice the daily bag limit (except for harlequin).

Geese

Season Dates: Open September 28, 2014, through February 26, 2015.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2014, through February 26, 2015.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 21, 2014, through February 26, 2015.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

* * * * *

(aa) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Ducks

Season Dates: Open October 1, 2014, through February 28, 2015.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2014, through February 15, 2015.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2014, through February 28, 2015.

Daily Bag and Possession Limits: 7 and 10 geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2014.

Daily Bag and Possession Limits: Two and two, respectively.

Mourning Dove

Season Dates: Open September 1 through December 31, 2014.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(bb) *Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).*

Teal

Season Dates: Open October 10, 2014, through February 21, 2015.

Daily Bag Limits: 10 teal.

Ducks

Season Dates: Open October 13 through February 21, 2015.

Daily Bag Limits: Six ducks, including no more than four hen mallards, six black ducks, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded merganser, three wood ducks, one canvasback, two redheads, and two pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 6, 2014, through February 21, 2015.

Daily Bag Limits: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Woodcock

Season Dates: Open October 10 through November 24, 2014.

Daily Bag Limits: Three woodcock.

Canada Geese

Season Dates: Open September 3 through 20, 2014, and open October 27, 2014, through February 21, 2015.

Daily Bag Limits: Eight Canada geese.

Snow Geese

Season Dates: Open September 3 through 20, 2014, and open November 24, 2014, through February 21, 2015.

Daily Bag Limits: 15 snow geese.

Sora and Virginia Rails

Season Dates: Open September 1 through November 10, 2014.

Daily Bag Limits: 5 sora and 10 Virginia Rails.

Snipe

Season Dates: Open September 1 through December 13, 2014.

Daily Bag Limits: Eight snipe.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

* * * * *

(dd) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).*

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2014.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2014.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks and Mergansers

Season Dates: Open October 18, 2014, through January 26, 2015.

Daily Bag Limits: Seven, including no more than two female mallards and two redhead. The season on scaup is closed.

Possession Limits: Twice the daily bag limit.

Pintail and Canvasback

Season Dates: Open October 18 through November 30, 2014.

Daily Bag Limits: Two pintail and one canvasback.

Possession Limits: Twice the daily bag limit.

Coots

Season Dates: Open October 18, 2014, through January 25, 2015.

Daily Bag and Possession Limits: 25 and 50, respectively.

Canada Geese

Season Dates: Open October 18, 2014, through January 25, 2015.

Daily Bag and Possession Limits: Three and six Canada geese, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

* * * * *

Dated: September 10, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–22506 Filed 9–23–14; 8:45 am]

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FEDERAL REGISTER

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Part V

Department of Veterans Affairs

38 CFR Part 17

Hospital Care and Medical Services for Camp Lejeune Veterans; Payment or Reimbursement for Certain Medical Expenses for Camp Lejeune Family Members; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO78

Hospital Care and Medical Services for Camp Lejeune Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations in order to implement a statutory mandate that VA provide health care to certain veterans who served at Camp Lejeune, North Carolina, for at least 30 days during the period beginning on January 1, 1957, and ending on December 31, 1987. The law requires VA to furnish hospital care and medical services for these veterans for certain illnesses and conditions that may be attributed to exposure to toxins in the water system at Camp Lejeune. This rule does not implement the statutory provision requiring VA to provide health care to these veterans' family members; regulations applicable to such family members will be promulgated through a separate notice.

DATES: *Effective Date:* This rule is effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: Terry Walters, Deputy Chief Consultant, Post-Deployment Health, Office of Public Health (10P3A), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1017 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 11, 2013, VA published a notice of proposed rulemaking setting forth proposed regulations to provide hospital care and medical services to certain veterans who served at Camp Lejeune for at least 30 days from January 1, 1957, to December 31, 1987. 78 FR 55671–55675, Sept. 11, 2013. Interested persons were invited to submit comments on or before October 11, 2013. We received a total of 65 comments. All of the issues raised by the commenters that opposed at least one portion of the rule can be grouped together by similar topic, and we have organized our discussion of the comments accordingly. Based on the rationale set forth in the proposed rule and in this document, VA is adopting the proposed rule as a final rule with one change to 38 CFR 17.400(d)(2)(A).

Limitations on Retroactive Copayments

In paragraph § 17.400(d)(2)(A) of the proposed rule, we had stated that in order to receive retroactive reimbursement for care provided by VA for a condition or illness that was made copayment exempt, veterans must request Camp Lejeune status no later than September 11, 2015. We explained that we selected that date because it was two years after publication of the proposed rule. We received numerous comments on this provision.

First, commenters misunderstood the effect of § 17.400(d)(2)(A). To be clear, it is not a deadline to enroll in VA as a Camp Lejeune veteran. Rather, as we explained in the proposed rule, § 17.400(d)(2) establishes that VA would retroactively reimburse certain copayments paid by Camp Lejeune veterans for VA-provided health care. There is no deadline for a veteran to enroll in VA and be recognized as a Camp Lejeune veteran.

Commenters were also concerned about the deadline for retroactive copayments. For example, one individual noted that a veteran could be treated for a period of time without being diagnosed with one of the 15 conditions, and stated that in such a case the veteran's copayments should be returned to the veteran. Another commenter suggested that VA apply a deadline for retroactive copayment only after VA notifies the affected veteran of his or her eligibility for Camp Lejeune veteran status and the procedures to apply for retroactive reimbursement.

We note that as soon as the law became effective, VA began an aggressive effort to notify veterans of the Camp Lejeune veteran status. VA does not hold or maintain the records of all individuals who served at Camp Lejeune, and has instead engaged in comprehensive outreach to all veterans. In addition, new enrollees in the VA healthcare system are now required to answer on the enrollment form, VA form 10–10EZ, whether they served at Camp Lejeune for the requisite time periods. VA has conducted, and will continue to conduct for at least the next two years, aggressive outreach to veterans through the Marine Corp registry and the Agency for Toxic Substances and Disease Registry (ATSDR) Community Action Panel, and will provide education to VA environmental health providers. VA has directly notified Veteran Service Organizations on the benefit that VA is providing to veterans. VA has used both print and digital methods to reach the largest possible number of veterans. Finally, VA clinicians are being trained to identify the 15 illnesses or conditions and ask whether veterans diagnosed as having one of them served at Camp Lejeune.

Having a deadline after which VA will not accept retroactive claims for copayment reimbursement is necessary to ensure program integrity and reduce potential administrative burdens associated with retroactive reviews of old claims. It is also consistent with other retroactive payment authorities in part 17 of title 38, Code of Federal Regulations. See 38 CFR 17.129 and 17.1004. We do, however, accept the commenters' suggestions that more time is needed for veterans to learn about this program. We therefore adjust the deadline for submission of a request for Camp Lejeune status to obtain eligibility for retroactive reimbursement from September 11, 2015, to September 24, 2016. This will align the two-year deadline with the date that this rule takes effect, rather than the date that it was proposed.

Issues Concerning Enrollment Procedures

We received several comments about the enrollment process. Some commenters asked specific questions about how the regulation would be applied to their particular cases, or identified themselves as Camp Lejeune veterans and requested benefits. Whenever possible, based on identifying information provided in the comment, we have contacted these individuals privately to assist them. It is inappropriate to address individuals' claims with specificity in this notice; however, several commenters were concerned that the enrollment process would be burdensome, or that VA would require veterans to fill out forms or otherwise take actions that, in practice, VA does not require. To address these concerns, we assure the public that enrollment as a Camp Lejeune veteran will be as seamless and simple as possible. Veterans who identify themselves as Camp Lejeune veterans on VA Form 10–10EZ and whose status is confirmed will not need to re-enroll for VA care or take any further action in order to be copayment-exempt for future care related to their Camp Lejeune illness. Veterans also will generally not need to take any specific actions, once their status is verified, to receive retroactive reimbursement for copayments paid before their Camp Lejeune status was established (as long as the care was provided on or after August 6, 2012, the date that the legislation authorized VA to begin providing Camp Lejeune benefits). VA will pay retroactive copayments in accordance with paragraph (d)(2) of the regulation without requiring further action by such veterans. Only in extraordinary situations—for example, if

it is not immediately apparent that the claimant is a veteran—will VA require veterans to take additional action by providing more information or evidence related to their claims.

One commenter was concerned that veterans will not remember the exact dates that they resided at Camp Lejeune. The commenter was also concerned, generally, that older veterans have difficulty filling out forms.

We understand that some veterans may have difficulty completing VA's application for enrollment, VA Form 10–10EZ, which is available online at *https://www.1010ez.med.va.gov/*. VA offers resources at the local level in VA Medical Centers to assist veterans in filling out our forms. In addition, we operate a help line (1–877–222–VETS(8387)). Moreover, we note that veterans who are already enrolled need only identify themselves as Camp Lejeune veterans at their local facility or on the help line—or state that they believe they may qualify as a Camp Lejeune veteran—and VA will take appropriate action, without requiring that the veteran fill out a new form or remembering the specific dates they resided at Camp Lejeune. Finally, VA recently revised the VA Form 10–10EZ in order to reduce the burden on veterans. VA will continue to provide veterans with assistance to complete applications, and provide Camp Lejeune veterans with specific guidance and help. However, we do not make any changes based on the above comments.

Concerns Over Clinical Identification of Illnesses or Conditions

Many commenters were concerned by § 17.400(c), which states that VA will assume that one of the 15 illnesses or conditions are considered attributable to the veteran's active duty in the Armed Forces unless VA clinically determines under its clinical practice guidelines that the illness or condition is not attributable to the veteran's service. One commenter suggested that VA include a ''preponderance of the evidence'' standard of proof for determining whether a Camp Lejeune veteran's illness or condition is attributable to a cause other than service at Camp Lejeune. Other commenters suggested that VA remove § 17.400(c) entirely because, they assert, it is impossible to determine the cause of a specific illness or condition. We are not making any changes to the final rule based on these comments because the comments misconstrue the effect of the law and regulation.

Under 38 U.S.C. 1710(e)(1)(F), VA is required to provide hospital care and medical services to a veteran who served at Camp Lejeune who has one of the 15 identified illnesses or conditions. VA does not, and cannot, require veterans to produce affirmative evidence of a connection between their illness or condition and exposure to contaminated water at Camp Lejeune. The only limitation on this requirement is that, under 38 U.S.C. 1710(e)(2)(B), VA is barred from providing such care to a veteran based solely on the veteran's status as a Camp Lejeune veteran if the veteran's illness or condition is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than exposure at Camp Lejeune. In other words, the burden is on VA to clinically determine that, in a particular veteran's case, his or her illness or condition resulted from something other than service at Camp Lejeune. Thus, VA practice will not be to require veterans to make an affirmative showing of a connection unless VA determines that an illness or condition is not connected to service at Camp Lejeune.

Moreover, it is not VA's intent, nor has it been our practice, to attempt to disqualify Camp Lejeune veterans from receiving copayment-free care for a listed condition or illness. We acknowledge that given current science, it may be difficult in many situations to determine the cause of a veteran's illness or condition. In these cases, VA will give the benefit of the doubt to the veteran.

For example, one commenter stated that lung cancer, one of the 15 listed illnesses or conditions, could be erroneously attributed to cigarette smoking rather than service at Camp Lejeune. Medical science cannot definitively distinguish clinically whether the origin of an individual's lung cancer is the result of service at Camp Lejeune or cigarette smoking. Therefore, VA would not be able to rule out the clinical possibility that the veteran's lung cancer was caused by service at Camp Lejeune, and such a veteran would receive his or her cancer treatments without being required to make a copayment. This would be true even if cigarette smoking were medically more likely than not the cause of the veteran's lung cancer.

Some commenters questioned whether the proposed rule would cover secondary illnesses or conditions that arise from, or lead to the development of, one of the 15 listed illnesses or conditions. Once VA enrolls a Camp Lejeune veteran as a Priority Group 6 veteran, that individual receives comprehensive VA care; however, pursuant to 38 U.S.C. 1710(e)(1)(F), VA may only waive copayments for hospital care and medical services provided for one of the 15 illnesses or conditions. Therefore, VA will determine clinically whether a separate condition or illness was caused by or resulted from one of the 15 illnesses or conditions. VA will also determine clinically whether any prior treatment was provided for one of the 15 illnesses or conditions that was undiagnosed at the time that the hospital care or medical services were provided. If such a clinical nexus exists, then VA would waive or reimburse the copayment. If VA clinically determines that the illness or condition is not related to one of the 15 illnesses or conditions, then VA will assess a copayment. Similarly, VA cannot reimburse a copayment if VA clinically determines that the previously provided hospital care or medical services were not for one of the 15 illnesses or conditions. This is consistent with the limited mandate to provide care in section 1710(e)(1)(F) and VA's provision of hospital care and medical services for other Priority Group 6 veterans. See 38 CFR 17.108(d).

One commenter provided an example of breast cancer, which is one of the 15 illnesses covered by the statute that metastasizes to the patient's brain. VA clinicians evaluate the unique needs of each patient, and will do so for Camp Lejeune veterans as well. We will use this same approach for determining the clinical progression of an illness or condition in each Camp Lejeune veteran. In this example, if a VA clinician determines that a Priority Group 6 Camp Lejeune veteran's breast cancer (one of the 15 listed illnesses) may have spread to his or her brain, and VA waives copayment for the breast cancer due to the connection to service at Camp Lejeune, then VA would also waive copayments for treatment of the brain cancer. If the VA clinician affirmatively identifies a clinical origin of the brain cancer other than the breast cancer, then VA will assess copayments for the treatment of the brain cancer.

One commenter suggested that VA implement baseline screenings for all Camp Lejeune veterans. Once VA enrolls veterans in the healthcare system, regardless of their Priority Group level, veterans and their clinicians together determine what is appropriate for each individual's clinical needs. Screenings for one or more of the 15 illnesses or conditions may often be clinically indicated and medically appropriate. In such cases, VA would consider such screenings to be related hospital care or medical services, and Camp Lejeune veterans will not be charged a copayment.

Some commenters stated that Camp Lejeune veterans who have been diagnosed with at least one of the 15 illnesses or conditions should be able to continue to see their private physicians in order to ensure continuity of care. Some also suggested that VA reimburse veterans, either prospectively or retroactively, for care obtained from private physicians. We noted in the proposed rule that 38 U.S.C. 1710 only authorizes VA to provide direct hospital care and medical services to certain veterans. 78 FR 55672, Sept. 11, 2013. Section 1710 does not authorize VA to provide payment or reimbursement for care that VA did not provide to the veteran. Referral for non-VA medical care once enrolled is for preauthorized care. VA will authorize non-VA care for Camp Lejeune veterans in the same manner that VA authorizes such care for all Priority Group 6 veterans. In general, VA is a direct care provider, but may preauthorize non-VA care for certain veterans based on a variety of circumstances, such as the urgency of an individual's medical condition, the relative distance of the travel involved, or the nature of the treatment required, in accordance with our authority in 38 U.S.C. 1703 and 8153 Subject to the provisions of § 17.400(d)(2), VA will reimburse Camp Lejeune veterans for copayments made for preauthorized non-VA hospital care and medical services that VA furnished on or after August 6, 2012. Commenters also inquired about reimbursement for costs incurred by Camp Lejeune veterans for hospital care and medical services that veterans obtained from non-VA providers prior to acquiring Camp Lejeune veteran status. Although, as noted above, VA does preauthorize non-VA hospital care and medical services when clinically appropriate, this law does not authorize VA to pay for hospital care and medical services that have already been provided to the veteran from a non-VA provider.

Similarly, one commenter stated that he is a Camp Lejeune veteran who obtains his care locally, and that by doing so, rather than travelling to the nearest VA facility, he was saving VA ''thousands of dollars.'' He requested reimbursing veterans for local care when the veteran lives more than one hour away from the closest VA hospital that can provide care. VA understands that there are instances where geography is a vital factor in determining the best course of treatment or care. As noted above, VA preauthorizes non-VA care based on a variety of circumstances, including geographic location, and will make the same determinations for Camp Lejeune veterans.

In addition, veterans enrolled in Priority Group 6, which includes Camp Lejeune veterans, may be eligible for travel benefits associated with their care in accordance with 38 CFR part 70—although eligibility as a Camp Lejeune veteran does not independently establish eligibility for travel benefits. We do not make any changes based on this comment.

A commenter requested that VA add ''and symptoms arising therefrom prior to diagnosis'' to § 17.400(c) in order to ensure that VA exempts veterans from copayments for hospital care and medical services provided for symptoms that existed before the appropriate diagnosis was made. We note that when issues of copayments are connected to clinical determinations, VA defers to the expertise of the clinical provider. VA conducts the same review process for veterans receiving treatment in connection to exposure to Agent Orange. First, the veteran requests a review of his copayments by calling the VA call center at 1–877–222–VETS(8387). The call center will then refer the request to VA Utilization nurses who manually review the claim and the veteran's medical records. The nurses also contact the providers. If the veteran's provider determines that the hospital care and medical service provided prior to the diagnosis of one of the 15 conditions or illnesses were attributable to the veteran's service at Camp Lejeune, then the provider will update the veteran's progress notes and VA will manually process a refund of the copayment. Camp Lejeune veterans will be able to request the same review of copayments made for hospital care and medical services furnished by VA prior to the diagnosis of one of the 15 illnesses or conditions. We therefore make no changes to the rule based on the above comments.

One commenter asked whether VA would require veterans to repay copayments waived or reimbursed for care for one of the 15 illnesses or conditions if VA later determines that the veteran's illness or condition resulted from a cause other than his or her service at Camp Lejeune. VA would assess a copayment for such hospital care or medical services, but we note that those instances would be rare. See 38 CFR 17.102(a) (authorizing VA to recoup payment when care is provided in error). VA would attempt to make the clinical determination about the origin of an illness or condition at the time that the veteran either enrolls, or if enrolled, the time that the veteran notifies VA of his or her service at Camp Lejeune during the relevant time periods. Any veteran who self-identified as a Camp Lejeune veteran and received care from VA for one of the 15 illnesses or conditions, may be subject to copayments for care provided prior to the publication of this final rule if VA determines that the illness or condition resulted from a cause other than service at Camp Lejeune.

A commenter suggested that VA recruit doctors who specialize in one or more of the 15 listed illnesses or conditions, and that those doctors be in the U.S. Military, or be veterans. We note that VA currently employs clinicians who specialize in each of the 15 illnesses or conditions. Though VA proudly employs a great number of veterans, it is not our view that one's status as a veteran or member of the armed forces has any bearing on an individual's ability to serve as a VA clinician. VA seeks to recruit well-qualified clinicians and will continue to do so utilizing existing hiring practices.

Appeals

One commenter suggested that the rule ''should include provisions that provide for notice of a denial, the provision of the research forming the basis for the denial, and the opportunity to challenge the denial before a judicial body'' and provide the ''ability of Camp Lejeune veterans to challenge the clinical practice guidelines and the denial of medical assistance.''

Veterans are given the same appeal rights for Camp Lejeune benefits as for other benefits administered by VA. Along with the written explanation for the denial of benefits, the veteran receives a form explaining the appeals process (VA Form 4107VHA for VHA decisions). Part 20 of title 38, CFR, gives the Board of Veterans' Appeals jurisdiction over questions of law and fact that affect the provision of VA benefits. The Board's jurisdiction also extends to questions of eligibility for health care benefits administered by the Veterans Health Administration, which would include eligibility as a Camp Lejeune Veteran. See 38 CFR 20.101(b). The clinical practice guidelines provide factors for clinicians to consider when determining whether an illness or condition is attributable to a cause other than the veteran's residence at Camp Lejeune. The guidelines explain such clinical indications, evolve over time, and encourage clinicians to consider the veteran's full history in order to make the best possible clinical determination. The clinical practice guidelines will serve as a resource to VA clinicians and will not require that VA clinicians take specific actions. Therefore, we do not

make any changes based on the above comment.

Comments Suggesting Expanding VA's Authority

A number of commenters raised specific concerns with the statute authorizing the provision of hospital care and medical services.

Many commenters suggested other conditions or illnesses that should be covered. Other commenters stated that the dates of eligible service at Camp Lejeune, January 1, 1957, to December 31, 1987, should be expanded to cover veterans who served at Camp Lejeune before or after such dates. Regardless of the merit of these comments, VA is without legal authority to provide benefits other than those authorized by statute. We do not make any changes based on these comments.

Some commenters suggested that veterans be compensated in connection to their service at Camp Lejeune. Several suggested that they had been unable to conceive a child, and believed that this inability was directly due to exposure at Camp Lejeune, and asked to be compensated accordingly. VA cannot expand our authority through regulation beyond what Congress authorizes us to provide in law. Section 1710(e)(1)(F) of title 38, U.S.C., authorizes VA only to provide health care; it is not a compensation program. We lack authority to provide compensation under this law; however, if the commenter believes that they have a service-connected disability due to their exposure at Camp Lejeune, they should file a disability compensation claim with the Veterans Benefits Administration.

One commenter suggested that VA furnish hospital care and medical services for individuals who served at Camp Lejeune while on active duty for training. We are legally barred from doing so because 38 U.S.C. 1710(e)(1)(F) requires VA to furnish hospital care and medical services to Camp Lejeune veterans who ''served on active duty.'' Active duty is defined, as a matter of law, in 38 U.S.C. 101(21)(A), as full-time duty in the Armed Forces, other than active duty for training.

Some commenters raised issues of the validity of the studies relied on by Congress in enacting this law. VA cannot expand benefits beyond those granted by statute, even if the commenters believe that science does not support certain limitations in the law. Therefore, we do not make any changes based on the above comments.

Comments Related to VA Claims Backlog

Commenters requested that VA improve its claims backlog for veteran benefits. We note that this issue is outside the scope of this rulemaking and VA will therefore not respond to those comments here.

Comments Related to Family Members

A number of commenters raised issues related to VA's furnishing of hospital care and medical services to the family members of Camp Lejeune veterans. As we noted in the proposed rule, VA will publish a separate rulemaking concerning the family members of Camp Lejeune veterans. Such comments are outside the scope of this rulemaking and no changes will be made to this rule based on those comments.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(d)(3), the Secretary of Veterans Affairs finds good cause to issue this final rule with an immediate effective date. This rule is necessary to provide clarity regarding VA's duty to provide health care to veterans who may have been exposed to toxic substances due to their service at Camp Lejeune. Section 102 of Public Law 112–154 requires VA to provide hospital care and medical services to Camp Lejeune veterans for the listed conditions and illnesses as of August 6, 2012. Many of the 15 listed conditions or illnesses are life-threatening and require immediate medical care. VA is capable of treating Camp Lejeune veterans for such illnesses or conditions immediately, which may lead to improved health outcomes for many veterans. However, this rule provides VA with the necessary framework to immediately implement this statutory requirement.

This rule clearly defines how VA proposes to identify and integrate Camp Lejeune veterans into its enrollment system so VA can provide necessary health care to these veterans. For example, Public Law 112–154 requires VA to provide hospital care and medical services to ''a veteran who served on active duty in the Armed Forces at Camp Lejeune, North Carolina, for not fewer than 30 days during the period beginning on January 1, 1957, and ending on December 31, 1987.'' The legislation, however, does not define the scope of who should be considered a Camp Lejeune veteran. This rule at § 17.400(b) in the definition for ''Camp Lejeune veteran'' explains that a veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties. The regulation also explains that the 30-day minimum service requirement may be ''consecutive or nonconsecutive'' days. Without this regulation, VA would not be able to clearly identify all the veterans who should be provided the necessary health care as a result of their service at Camp Lejeune. Because of this final rule, VA will be able to identify those individuals who should be considered Camp Lejeune veterans and conduct outreach to the identified class of veterans. Although we expect most Camp Lejeune veterans to seek VA medical care for treatment of their illness or condition regardless of this rule, there may be some veterans who may go without treatment if they are not identified as a Camp Lejeune veteran, and their illness or condition does not result in eligibility for enrollment. Because many of the 15 listed conditions or illnesses are life-threatening and require immediate medical care, this rule with an immediate effective date is necessary to allow VA to provide medical care to all individuals identified as Camp Lejeune veterans.

Furthermore, under the provisions of this rule, VA will be able to reimburse veterans for copayments that certain veterans may have already paid for illnesses or conditions identified in this rule. An immediate effective date will allow VA to reimburse copayments to alleviate this financial hardship for some of these veterans.

For these reasons, the Secretary has concluded that ordinary effective-date procedures would be impracticable and contrary to the public interest and is accordingly issuing this final rule with immediate effective date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule has no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no new provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). However, we note that veterans would apply for hospital care and medical services as a Camp Lejeune veteran under § 17.400 by completing VA Form 10–10EZ, ''Application for Health Benefits,'' which is required under 38 CFR 17.36(d) for all hospital care and medical services. The Office of Management and Budget (OMB) approved the collection of information for VA Form 10–10EZ and assigned OMB control number 2900–0091. As discussed in a separate notice (78 FR 39832, July 2, 2013), we requested approval from OMB to amend this form to include a specific checkbox for individuals to identify themselves as meeting the requirements of being a Camp Lejeune veteran. OMB approved the amended collection. This particular amendment to the form will have no appreciable effect on the reporting burden for the revised VA Form 10–10EZ. We also do not anticipate a significant increase in the total number of applications filed because most Camp Lejeune veterans likely would have applied for VA medical care for treatment of their illness or condition regardless of this rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–12. This final rule will directly affect only individuals and will not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on June 18, 2014, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Dated: September 18, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set forth in the supplementary information of this rulemaking, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.36 [AMENDED]

■ 2. Amend § 17.36(b)(6) by removing ''38 U.S.C. 1710(e);'' and adding, in its place, ''38 U.S.C. 1710(e); Camp Lejeune veterans pursuant to § 17.400;''.

§ 17.108 [AMENDED]

■ 3. Amend § 17.108(e)(2) by removing ''or post-Gulf War combat-exposed veterans;'' and adding in its place ''post-Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to § 17.400;''.

§ 17.110 [AMENDED]

■ 4. Amend § 17.110(c)(4) by removing ''or post-Persian Gulf War combat-exposed veterans.'' and adding in its place ''post-Persian Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to § 17.400.''.

§ 17.111 [AMENDED]

■ 5. Amend § 17.111(f)(5) by removing ''or post-Persian Gulf War combat-exposed veterans.'' and adding in its place ''post-Persian Gulf War combat-exposed veterans, or Camp Lejeune veterans pursuant to § 17.400.''.

■ 6. Add an undesignated center heading and § 17.400 to read as follows:

Hospital Care and Medical Services for Camp Lejeune Veterans and Families

§ 17.400 Hospital care and medical services for Camp Lejeune veterans.

(a) *General.* In accordance with this section, VA will provide hospital care

and medical services to Camp Lejeune veterans. Camp Lejeune veterans will be enrolled pursuant to § 17.36(b)(6).

(b) *Definitions.* For the purposes of this section:

Camp Lejeune means any area within the borders of the U.S. Marine Corps Base Camp Lejeune or Marine Corps Air Station New River, North Carolina.

Camp Lejeune veteran means any veteran who served at Camp Lejeune on active duty, as defined in 38 U.S.C. 101(21), in the Armed Forces for at least 30 (consecutive or nonconsecutive) days during the period beginning on January 1, 1957, and ending on December 31, 1987. A veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties.

(c) *Limitations.* For a Camp Lejeune veteran, VA will assume that illnesses or conditions listed in paragraph (d)(1)(i) through (xv) of this section are attributable to the veteran's active duty in the Armed Forces unless it is clinically determined, under VA clinical practice guidelines, that such an illness or condition is not attributable to the veteran's service.

(d) *Copayments.* (1) *Exemption.* Camp Lejeune veterans are not subject to copayment requirements for hospital care and medical services provided on or after August 6, 2012, for the following illnesses and conditions:

(i) Esophageal cancer;
(ii) Lung cancer;
(iii) Breast cancer;
(iv) Bladder cancer;
(v) Kidney cancer;
(vi) Leukemia;
(vii) Multiple myeloma;
(viii) Myleodysplasic syndromes;
(ix) Renal toxicity;
(x) Hepatic steatosis;
(xi) Female infertility;
(xii) Miscarriage;
(xiii) Scleroderma;
(xiv) Neurobehavioral effects; and
(xv) Non-Hodgkin's Lymphoma.

(2) *Retroactive Exemption.* VA will reimburse Camp Lejeune veterans for any copayments paid to VA for hospital care and medical services provided for one of the illnesses or conditions listed in paragraph (d)(1) of this section, if the following are true:

(i) The veteran requested Camp Lejeune veteran status no later than September 24, 2016; and

(ii) VA provided the hospital care or medical services to the Camp Lejeune veteran on or after August 6, 2012.

Authority: 38 U.S.C. 1710.

[FR Doc. 2014–22637 Filed 9–23–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO79

Payment or Reimbursement for Certain Medical Expenses for Camp Lejeune Family Members

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is promulgating regulations to implement statutory authority to provide payment or reimbursement for hospital care and medical services provided to certain veterans' family members who resided at Camp Lejeune, North Carolina, for at least 30 days during the period beginning on January 1, 1957, and ending on December 31, 1987. Under this rule, VA will reimburse family members, or pay providers, for medical expenses incurred as a result of certain illnesses and conditions that may be attributed to exposure to contaminated drinking water at Camp Lejeune during this time period. Payment or reimbursement will be made within the limitations set forth in statute and Camp Lejeune family members will receive hospital care and medical services that are consistent with the manner in which we provide hospital care and medical services to Camp Lejeune veterans.

DATES: *Effective Date:* This interim final rule is effective October 24, 2014.

Comment Date: Comments must be received on or before November 24, 2014.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO79, Payment or Reimbursement for Certain Medical Expenses for Camp Lejeune Family Members.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Walters, Deputy Chief Consultant Post-Deployment Health, Office of Public Health (10P3A), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1017. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 2012, the President signed into law the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112–154 (the Act). Among other things, section 102 of the Act created 38 U.S.C. 1787, requiring VA to furnish hospital care and medical services to certain family members of Camp Lejeune veterans for certain specified illnesses and conditions. The law requires the family members to have resided for at least 30 days at Camp Lejeune, North Carolina (hereinafter referred to as Camp Lejeune), while their veteran family member served on active duty in the Armed Forces at Camp Lejeune for at least 30 days during the period beginning on January 1, 1957, and ending on December 31, 1987. This interim final rule implements this statutory requirement by amending existing VA regulations and creating a new regulation, 38 CFR 17.410.

On September 11, 2013, VA published a notice of proposed rulemaking concerning hospital care and medical services provided to Camp Lejeune veterans. 78 FR 55671. In the supplementary information to that rulemaking, we provided our interpretation of the purposes of the Act, set forth criteria to identify a ''Camp Lejeune veteran,'' defined the types of exposures experienced by veterans who served at Camp Lejeune during the statutorily defined period, and defined several terms relevant to this rulemaking. The final rule would apply equally and to the same extent to family members who resided at Camp Lejeune during the statutorily defined period. Under the law, family members, like veterans, experienced the same risks of exposure if they resided at Camp Lejeune during the statutorily prescribed period, and therefore should be considered as needing identical hospital care and medical services as those provided to Camp Lejeune veterans. This rulemaking addresses only those regulatory provisions specific to family members, which must be unique because VA has neither the authority nor the resources to provide comprehensive medical care to veterans' family members. In recognition of these limitations, we interpret the statutory authority to ''furnish'' ''hospital care and medical services'' as authorizing

VA to reimburse these family members, or pay providers, when they have exhausted all claims and remedies against a third party for payment of medical care for an illness or condition caused by Camp Lejeune exposure. VA will not directly provide care to family members under any circumstances outside VA's separate authorities to provide limited emergency care to non-veterans. In paragraph (a) of 38 CFR 17.410 VA states that it will pay providers or reimburse Camp Lejeune family members for certain hospital care and medical services associated with the specified conditions and furnished by non-VA health care providers. We clarify the terms of the payment or reimbursement in paragraph (d), which is discussed in detail below.

Paragraph (b) of § 17.410 sets forth the definitions applicable to 38 CFR 17.410. For the reasons explained above, we define Camp Lejeune in this section by using the same definition established in 38 CFR 17.400(b). Under § 17.400(b), ''Camp Lejeune'' means any area within the borders of the U.S. Marine Corps Base Camp Lejeune or Marine Corps Air Station New River, North Carolina. This area includes the areas in which non-military personnel would have resided while their active duty family member served at Camp Lejeune.

We define ''Camp Lejeune family member'' as an individual who meets two requirements. First, the individual resided (or was in utero while his or her mother either resided at Camp Lejeune or served at Camp Lejeune under § 17.400(b)) for at least 30 (consecutive or nonconsecutive) days during the period beginning on January 1, 1957, and ending on December 31, 1987. Second, the individual is either related to a Camp Lejeune veteran by birth, was married to such a veteran, or was a legal dependent of the veteran. Department of Defense rules determined whether servicemembers and their families were authorized to reside at Camp Lejeune during the relevant period; our definition here aligns with those rules. Eligible individuals must meet both the residency and relational requirements as set forth in 38 U.S.C. 1787(a). We note that the requirement that a family member be related to the veteran by birth includes individuals who were in utero while the mother of the individual resided at Camp Lejeune, as identified under 38 U.S.C. 1787(a). The requirement of relation by birth or marriage encompasses any relative of the Camp Lejeune veteran who could have been authorized by a service department to reside on Camp Lejeune and therefore may have been exposed to contaminated water. We also clarify that family members include individuals who were legal dependents of the Camp Lejeune veteran during their residency at Camp Lejeune, such as adopted children, stepchildren, or individuals for whom the veteran had custody as determined by a U.S. court.

When referring to Camp Lejeune veterans, we use the same definition provided in 38 CFR 17.400(b). Under this definition, a ''Camp Lejeune veteran'' is any veteran who served at Camp Lejeune on active duty, as defined in 38 U.S.C. 101(21), in the Armed Forces for at least 30 (consecutive or nonconsecutive) days during the period beginning on January 1, 1957, and ending on December 31, 1987. A veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties.

We define a ''health-plan contract'' to carry the same definition under this section as we define the term in § 17.1001(a). The § 17.1001(a) definition of health-plan contract implements the definition set forth in 38 U.S.C. 1725(f). Under 38 U.S.C. 1787(b)(3), VA must use that same definition for the purposes of this rulemaking. Under that definition, health-plan contracts include insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar arrangements under which health services for individuals are provided or the expenses of such services are paid, public insurance programs such as TRICARE, CHAMPVA, Medicare or Medicaid, and worker's compensation law or plans. Similarly, as directed by 38 U.S.C. 1787(b)(3), we define ''third party'' in accordance with the definition set forth by Congress in section 1725(f), and as defined in 38 CFR 17.1001(b). Under § 17.1001(b), third parties include: A Federal entity, a State or political subdivision of a State, an employer or an employer's insurance carrier, an automobile accident reparations insurance carrier, and a person or entity obligated to provide, or to pay the expenses of, health services under a health-plan contract. VA has not changed those definitions in this rulemaking because Congress specified in section 1787(b)(3) that VA must define these terms to have the same meaning given to them under section 1725(f).

In § 17.410(c), we explain that individuals who seek to apply for status as a Camp Lejeune family member must complete VA Form 10–068, ''Camp Lejeune Family Member Heath Care Program Application.'' Once an individual submits a form, VA will confirm that the information is accurate in order to confirm Camp Lejeune family member status. VA has systems in place to verify that individuals meet the residence requirements and that they have the appropriate relationship to the Camp Lejeune veteran. VA will consider all supporting evidence submitted to confirm that an individual resided at Camp Lejeune for at least 30 days, including utility bills, pay stubs, tax forms, and similar documentation. Additionally, VA will consider as evidence any available internal housing records that show that the related Camp Lejeune veteran resided in family housing on Camp Lejeune along with all other residency-related evidence when confirming the accuracy of the family member's application.

Under § 17.410(d), we set out the process that providers of care or family members must follow in order to receive payment or reimbursement for hospital care and medical services provided by a non-VA health care provider that occurred after March 26, 2013 in connection with the 15 illnesses or conditions listed in 38 U.S.C. 1710(e)(1)(F) and 38 CFR 17.400(d)(1). These conditions are esophageal cancer, lung cancer, breast cancer, bladder cancer, kidney cancer, leukemia, multiple myeloma, myleodysplasic syndrome, renal toxicity, hepatic steatosis, female infertility, miscarriage, scleroderma, neurobehavioral effects, and non-Hodgkin's lymphoma. Pursuant to 38 U.S.C. 1787(b)(2), VA may not pay or reimburse for hospital care and medical services ''for an illness or condition of a [Camp Lejeune] family member that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than the residence of the family member [at Camp Lejeune].'' We address this clinical determination made with the support of VA clinical practice guidelines in § 17.410(d), and discuss in detail below.

First, pursuant to § 17.410(d)(1), Camp Lejeune family members, or providers of hospital care or medical services, must file a timely claim for payment or reimbursement. The earliest that a Camp Lejeune family member can submit a claim for reimbursement will be the date that VA approves the application for Camp Lejeune family member status. VA will begin to accept applications immediately upon publication of this interim final rulemaking. We will apply a 2-year limit from the time of approved Camp Lejeune family member status for a timely claim filing. This 2-year limit is consistent with VA's review of applications for retroactive copayment

waivers made by Camp Lejeune veterans. Given that a number of claims may be for care received prior to the date of application, we set forth separate standards for timely claims. We will also pay for or reimburse certain claims for hospital care and medical services that took place before VA receives the Camp Lejeune family member's application. If the hospital care or medical services were provided prior to the date that the family member application was received by VA, we explain in § 17.410(d)(1)(i) that VA will accept claims for care dating as far back as two years prior to the date that the Camp Lejeune family member's application was received, but not earlier than March 26, 2013, the date on which appropriations to pay such claims were received, provided that claims for such care are received by VA no more than 60 days after VA approves the application. We note that the 2-year limit may be shortened if VA does not have the appropriation to provide payment or reimbursement due to the limitation set forth in § 17.410(d)(5). We note further that the 2-year limit is contingent upon claims being submitted within 60 days of the family member's application.

In § 17.410(d)(1)(ii), we explain the claim deadline for payment or reimbursement of hospital care and medical services that the Camp Lejeune family member received after VA has already received the Camp Lejeune family member's application. In that instance, the Camp Lejeune family member must file such a claim within two years after the date of discharge from hospital care or the date that the medical services were rendered. We believe that two years strikes an appropriate balance between allowing Camp Lejeune family members or providers adequate time to acquire the appropriate information to submit claims, and allowing VA to manage the claims process in an efficient and expedient manner. Further, this two-year requirement provides the family members and providers sufficient time to submit the medical claims to other health insurers for payment and receipt of their explanation of benefits.

We believe that VA can only effectively carry out its duty to reimburse for care provided to family members in 38 U.S.C. 1787(a) if both family members and providers can submit claims directly to VA. In order to satisfy the exhaustion requirement set forth in § 17.410(d)(4) (discussed in detail below), VA will ensure that third party payers with liability for a claim, such as private health insurers, have satisfied their respective liability before VA will cover the remaining liability to the provider. VA will primarily rely on the Camp Lejeune family member to self-report his or her insurance information, and any future changes that might occur. VA will examine claims for falsified information, and VA will follow up to verify whether the individual is insured and filing accurate claims.

In § 17.410(d)(2), we require that the Camp Lejeune family member's treating physician certify that the claimed hospital care or medical services were provided for an illness or condition listed in § 17.400(d)(1). We also require under § 17.400(d)(2) that the treating physician provide information about any co-morbidities, risk factors, or other exposures that may have contributed to the illness or condition. Because VA is not going to be conducting clinical examinations, we must rely on the clinical determinations made by the individual's treating physician who did conduct such clinical examinations of the Camp Lejeune family member. VA will use this information to reach the clinical determinations described in § 17.410(d)(3). Because VA is not providing hospital care and medical services to the Camp Lejeune family member directly, we require this information from the treating physician in order to satisfy the requirements that the treatment be for one of the 15 illnesses or conditions set forth in 38 U.S.C. 1710(e)(1)(F). Pursuant to 38 U.S.C. 1787(b)(2), VA may not furnish hospital care and medical services to a Camp Lejeune family member for illnesses or conditions that VA finds to have resulted from a cause other than the individual's residence at Camp Lejeune. VA will use clinical practice guidelines to make this determination, which we discuss in greater detail in relation to § 17.410(d)(3). VA will evaluate the clinical information provided by the Camp Lejeune family member's treating physician in conjunction with these clinical practice guidelines, and any other medical and scientific evidence and research, to reach the clinical findings described and discussed in § 17.410(d)(3).

In § 17.410(d)(3), we incorporate a limitation similar to the one in § 17.400(c) by establishing that if a Camp Lejeune family member is diagnosed with one of the 15 illnesses or conditions listed in the Act, then the illness or condition is attributable to the individual's residence at Camp Lejeune. However, if VA clinically finds, after consideration of clinical practice guidelines and other accepted forms of medical documentation, evidence, or research with respect to the listed illness or condition, that the illness or condition is not attributable to the individual's residence at Camp Lejeune, then VA will not provide payment or reimbursement for care under this rule. For many of the 15 conditions or illnesses specified in the Act, scientific knowledge limits VA's ability to make a determination regarding a specific cause. When the best scientific evidence available at the time limits VA's ability to attribute the family member's condition to a specific cause, VA will assume the condition or illness was caused by exposures while at Camp Lejeune, and thus will provide payment to providers or reimbursement to Camp Lejeune family members provided they meet all other requirements under this rule. For other conditions or illnesses, current medical knowledge offers more guidance. As such, the clinical practice guidelines represent best practices, providing factors for clinicians to consider when making determination about whether an illness or condition is attributable to a cause other than the individual's residence at Camp Lejeune. The guidelines encourage clinicians to consider each patient's full history in order to make the best possible clinical determination. Best practices cannot be static. Consistent with standard VA practice, the clinical guidelines used to make the determinations necessary to implement this regulation will be subject to continuous improvement. Specifically, over time we will update the clinical practice guidelines to reflect evolution in the science underlying these conditions, experience in implementing the guidelines, and other factors that reflect our understanding of clinical indications and the potential for more specific determinations. Camp Lejeune family members will have the option to request reconsideration of clinical determinations, and at that time will be able to submit additional evidence supporting the claim as well. Appeals will be reviewed by VA clinicians with expertise on Camp Lejeune matters, or experts on the specific illness or condition in question. To the extent that there are issues about the adequacy and sufficiency of VA's review of evidence presented by the Camp Lejeune family member, the individual can appeal to the Board of Veterans Appeals.

Under 38 CFR 17.410(d)(3), the claim must be for hospital care or medical services provided in connection with one of the 15 illnesses or conditions listed in § 17.400(d)(1). As explained in the proposed rule for ''Hospital Care and Medical Services for Camp Lejeune Veterans,'' VA is in the process of

developing clinical practice guidelines in order to determine whether an individual has been diagnosed with one of the illnesses or conditions listed in the Act and to determine the clinical relationship of a specific illness or condition to possible exposure to contaminated drinking water at Camp Lejeune. 78 FR 55673, Sept. 11, 2013. We will utilize those same non-determinative clinical practice guidelines in concluding whether the similar requirement under 38 U.S.C. 1787(b)(2), that VA may not furnish hospital care and medical services for Camp Lejeune family members if the illness or condition is determined ''to have resulted from a cause other than the residence of the family member [at Camp Lejeune],'' is satisfied.

The VA health care system is designed to provide comprehensive health care to veterans. Section 1787(a) authorizes VA to furnish hospital care and medical services to veterans' family members only for the 15 listed illnesses and conditions listed in 38 U.S.C. 1710(e)(1)(F). We believe that family members will receive continuity of health care for these 15 illnesses or conditions and any other health needs by receiving hospital care and medical services from their private providers. More importantly, because our authority to provide care to family members is limited to care specifically for one of the listed illnesses or conditions, there could be significant medical and ethical issues presented if VA were to attempt to provide direct care to family members. Our medical providers treat the ''whole patient,'' and it could be unethical (and bad for the patient) in many cases to treat a specific illness or condition while disregarding other medical issues. Therefore, as a matter of policy, VA has determined that it is in the best interests of Camp Lejeune family members to receive hospital care and medical services from private providers chosen by the family. In contrast, VA provides direct care to Camp Lejeune veterans by enrolling them in the VHA health care system because VA has separate authority to provide hospital care and medical services to eligible veterans. This is explained further in ''Hospital Care and Medical Services for Camp Lejeune Veterans,'' 78 FR 55671, September 11, 2013.

In 38 CFR 17.410(d)(4), we explain that any hospital care and medical services must be authorized under VA's medical benefits package in § 17.38. In 38 CFR 17.38, VA sets forth the broad scope of the medical benefits package that it furnishes to veterans, based on our authority to provide ''hospital care'' and ''medical services'' under 38 U.S.C. 1710. Because the authorizing statutes for both family members under 38 U.S.C. 1787 and veterans under 38 U.S.C. 1710 use the terms ''hospital care'' and ''medical services,'' we will pay only for care and services that meet the statutory definitions under section 1701, i.e., those that we would otherwise be authorized to provide to veterans. In short, through the payment and reimbursement system described in this rulemaking, we will ''furnish'' the same hospital care and medical services to family members that we would furnish to veterans for the 15 illnesses and conditions specified in Act.

Under § 17.410(d)(5), Camp Lejeune family members or hospital care or medical service providers must exhaust all claims and remedies reasonably available to the family member or provider against a third party, including health-plan contracts. We have repeated in § 17.410(d)(5) a statutory requirement under 38 U.S.C. 1787(b)(3). Section 1787(b)(3) specifically cites health-plan contracts, which we defined in § 17.1001(a) to include private health insurance. Generally, this requirement will be interpreted to be satisfied when the Camp Lejeune family member submits claims for all hospital care and medical services to the all relevant third party insurers, including Medicare and Medicaid, before submitting the claim to VA. We recognize that in some cases the only option available to the family member may have been to obtain out-of-network care, and in such cases we will find that the exhaustion requirement has been met and will cover the claimed amount so long as it is otherwise in compliance with all relevant third-party coverage.

Under paragraph § 17.410(d)(6), we note that payment or reimbursement will only be made if adequate funds have been appropriated to implement 38 U.S.C. 1787. Medical Services account funds will be available each fiscal year for Camp Lejeune care received by qualifying family members on or after the date that an appropriations act is signed into law. Under 38 U.S.C. 1787(b)(1), VA is authorized to furnish hospital care and medical services to Camp Lejeune family members ''to the extent and in the amount provided in advance in appropriations Acts for such purpose.'' VA is not authorized to provide payments or reimbursements before the date that an appropriation Act provides funds for the purpose of furnishing hospital care and medical service to Camp Lejeune family members. The Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 396, appropriated funds to the Medical Services account for fiscal year 2014 for, among other things, ''hospital care and medical services authorized by section 1787 of title 38, United States Code.'' These funds became available on October 1, 2013, and will expire on September 30, 2014.

In 38 CFR 17.410(e), we establish the amounts that VA will pay or reimburse for hospital care and medical services furnished to family members. Under paragraph (e)(1), if a third party is liable for partial payment for hospital care or medical services provided to a Camp Lejeune family member consistent with the other requirements of § 17.410, then VA will pay or reimburse the lesser of two rates. The first possible rate is the amount for which the Camp Lejeune family member remains personally liable. For example, if a Camp Lejeune family member receives medical services consistent with paragraph (d) and is insured under a health-plan contract, then VA will pay or reimburse any cost share or copayment amounts for which the Camp Lejeune family member is personally liable under that health-plan contract.

The second rate calculation is based on VA's existing mechanisms for paying for hospital care and medical services provided by non-VA providers to veterans under 38 CFR 17.55 and 17.56. Section 17.55 sets VA's payment methodology for authorized public or private hospital care to veterans. Section 17.56 sets VA's payment methodology for authorized medical services provided to veterans. Both 38 U.S.C. 1710(e)(1)(F) and 1787 require VA to ''furnish hospital care and medical services'' for the same set of 15 illnesses or conditions. Given the identical language, VA intends, to the extent possible, to furnish hospital care and medical services to Camp Lejeune family members in the same manner that it does for veterans receiving non-VA care, including calculating payments at the same rate. Under §§ 17.55(g) and 17.56(c), payments made by VA under those authorities ''shall be considered payment in full.'' Likewise, by cross-referencing §§ 17.55 and 17.56 in § 17.410(e)(1) and (2), any payments or reimbursements made will be payment in full, which in turn extinguishes all personal liability for the Camp Lejeune family member for the hospital care and medical services related to one of the 15 illnesses or conditions listed in the Act.

VA will pay the lesser of those two calculations because by extinguishing the Camp Lejeune family member's individual liability, VA will satisfy the requirement under 38 U.S.C. 1787 to

furnish hospital care and medical services. By paying the lesser of the two rates listed in § 17.410(e)(1), VA will ensure that its resources are being managed in the most efficient way possible. Under paragraph (e)(2), if VA is the sole payer, meaning that no other party is liable for the provided hospital care and medical services, then VA will calculate payment amounts by using the methodologies in §§ 17.55 and 17.56.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this interim final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

Under 5 U.S.C. 553(b)(B), the general requirements for notice of proposed rulemaking do not apply when the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. In accordance with that section, the Secretary of Veterans Affairs finds good cause to issue this interim final rule without prior notice and comment. Accordingly, it is not necessary to obtain public comment prior to implementation. Moreover, although public comments prior to implementation are not necessary to fulfill the mandate of the law in a timely manner, comments received after publication and a brief period of implementation may assist in understanding whether this interim final rule requires minor adjustments or refinement of attendant procedures.

First, VA believes that prior notice and comment would be contrary to the public interest. This interim final rule implements VA's duty to furnish hospital care and medical services to family members of veterans, pursuant to 38 U.S.C. 1787, who may have been exposed to toxic substances due to their residence at Camp Lejeune. Many of the 15 listed conditions or illnesses are life-threatening and require immediate medical care that is often quite costly to patients, regardless of whether they have health-plan contracts. For example, several of the 15 illnesses or conditions are serious cancers, and medical research indicates that the probability of survival increases with early diagnosis and treatment. The cost of care for one of the 15 illnesses or conditions is frequently prohibitive, leading individuals to delay or forego obtaining vital hospital care and medical services. In addition to increased mortality, delays in pursuing care can unnecessarily complicate treatment when the individual eventually does seek care because, by that time, the illness or condition can progress and may directly lead to secondary conditions. VA is capable of reimbursing Camp Lejeune family members for such illnesses or conditions, and there are critical health care reasons to ensure that these family members can obtain care as soon as possible.

In addition, we believe that prior notice and comment are unnecessary. This interim final rule enforces the Congressional mandate of 38 U.S.C. 1787 very broadly. We do not believe that we would receive any comments suggesting that the proposed coverage is too broad and should be more restrictive than is provided in this rule. For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be unnecessary, and contrary to the public interest and is accordingly issuing this rule as an interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This interim final rule has no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This interim final rule will impose the following new information collections requirements. Section 17.410(c) of title 38, CFR, requires an individual applying for benefits associated with hospital care and medical services for Camp Lejeune family members to submit an application to VA on VA Form 10068, ''Camp Lejeune Family Member Program Application.'' Section 17.410(d)(1) requires a Camp Lejeune family member or provider of care or services to submit a timely claim for payment or reimbursement. Section 17.410(d)(2) requires the provider of a Camp Lejeune family member to certify that a Camp Lejeune family member has been diagnosed with one of the 15 required illnesses or conditions. Section 17.410 requires VA to maintain timely information about the Camp Lejeune family member in order to correctly identify the individual in VA's system, and to submit any information or reimbursements. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collections to OMB for its review. OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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. We have requested that OMB approve the collections of information on an emergency basis. If OMB does not approve the collections of information as requested, we will immediately remove §§ 17.410(c), 17.410(d)(1), 17.410(d)(2), or take such other action as is directed by OMB.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through *www.regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AO79, Payment or Reimbursement for Certain Medical Expenses for Camp Lejeune Family Members.''

Title: Camp Lejeune Family Member Program Application.

Summary of collection of information: Section 17.410(c) requires individuals to complete an application in order to be considered for designation by VA as Camp Lejeune Family Members.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for benefits as a Camp Lejeune family member.

Description of likely respondents: Veterans' family members.

Estimated number of respondents per year: 3,000.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 1,500 hours.

Estimated average burden per collection: 30 minutes.

Title: Camp Lejeune Family Members Claim Form.

Summary of collection of information: Claims for payment or reimbursement of hospital care or medical services will be submitted to VA by the Camp Lejeune family member.

Description of the need for information and proposed use of information: This information is needed to determine the amount that VA will pay or reimburse the Camp Lejeune family member.

Description of likely respondents: Veterans' family members.

Estimated number of respondents per year: 3,000.

Estimated frequency of responses per year: 11.

Estimated total annual reporting and recordkeeping burden: 16,500 hours.

Estimated average burden per collection: 30 minutes. VA estimates that there will be some claims that will be completed by filling out the information and attaching a recently-received bill, which may take as little as 15 minutes. Other complicated instances may require an hour or more of time. VA has decided to use an estimate of 30 minutes to represent the average time required to complete the form and submit the supporting documentation.

Title: Camp Lejeune Family Members Treating Physician Report.

Summary of collection of information: The physician providing hospital care or medical services will certify whether the Camp Lejeune family member has been diagnosed with one or more of the illnesses or conditions listed in 38 CFR 17.400(d)(1). The physician must also list any other co-morbidities, risk factors, or other exposures that may have contributed to the patient's development of the diagnoses illness or condition.

Description of the need for information and proposed use of information: VA will utilize the diagnosis information to determine whether the Camp Lejeune family member has been diagnosed with one of the illnesses or conditions identified in 38 CFR 17.400(d)(1). VA will also use this information to determine whether the condition or illness resulted from a cause other than the Camp Lejeune family member's residence at Camp Lejeune.

Description of likely respondents: Camp Lejeune family members' treating physicians.

Estimated number of respondents per year: 3,000.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 750 hours.

Estimated average burden per collection: 15 minutes.

Title: Camp Lejeune Family Members Information Update Form.

Summary of collection of information: The Camp Lejeune family member will complete this form if he or she changes his or her address or health plan contract.

Description of the need for information and proposed use of information: VA will use the information provided to update the Camp Lejeune family member's information as initially provided on the Camp Lejeune Family Member Program Application.

Description of likely respondents: Veterans' family members.

Estimated number of respondents per year: 1,000.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 250 hours.

Estimated average burden per collection: 15 minutes.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule. VA considers comments by the public on collections of information in:

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–12. This rule will not require any medical providers to provide care, does not specify that care be provided by any particular medical providers, and does not supersede any existing insurance or other payment mechanism. Rather, this rule simply authorizes VA to serve as a payer of last resort for care obtained privately by Camp Lejeune family members. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) as any regulatory action that is likely to result in a rule that may: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been

determined to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on March 5, 2014, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical devices, Medical research, Mental health programs, Nursing homes, Veterans.

Dated: September 18, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Add § 17.410 under undesignated center heading ''Hospital Care and Medical Services for Camp Lejeune Veterans and Families'' to read as follows:

§ 17.410 Hospital care and medical services for Camp Lejeune family members.

(a) *General.* In accordance with this section and subject to the availability of funds appropriated for such purpose, VA will provide payment or reimbursement for certain hospital care and medical services furnished to Camp Lejeune family members by non-VA health care providers.

(b) *Definitions.* For the purposes of this section:

Camp Lejeune has the meaning set forth in § 17.400(b).

Camp Lejeune family member means an individual who:

(i) Resided at Camp Lejeune (or was in utero while his or her mother either resided at Camp Lejeune or served at Camp Lejeune under § 17.400(b)) for at least 30 (consecutive or nonconsecutive) days during the period beginning on January 1, 1957, and ending on December 31, 1987; and

(ii) Meets one of the following criteria:

(A) Is related to a Camp Lejeune veteran by birth;

(B) Was married to a Camp Lejeune veteran; or

(C) Was a legal dependent of a Camp Lejeune veteran.

Camp Lejeune veteran has the meaning set forth in § 17.400(b).

Health-plan contract has the meaning set forth in § 17.1001(a).

Third party has the meaning set forth in § 17.1001(b).

(c) *Application.* An individual may apply for benefits under this section by completing and submitting an application form.

(d) *Payment or reimbursement of certain medical care and hospital services.* VA will provide payment or reimbursement for hospital care and medical services provided to a Camp Lejeune family member by a non-VA provider if all of the following are true:

(1) The Camp Lejeune family member or provider of care or services has submitted a timely claim for payment or reimbursement, which means:

(i) For hospital care and medical services provided before the date that the application discussed in paragraph (c) of this section was received by VA, the hospital care and medical services must have been provided no more than 2 years prior to the date that VA receives the application but not prior to March 26, 2013, and the claim for payment or reimbursement must be received by VA no more than 60 days after VA approves the application;

(ii) For hospital care and medical services provided on or after the date that the application discussed in paragraph (c) of this section was received by VA, the claim for payment or reimbursement must be received by VA no more than 2 years after the later of either the date of discharge from a hospital or the date that medical services were rendered;

(2) The Camp Lejeune family member's treating physician certifies that the claimed hospital care or medical services were provided for an illness or condition listed in § 17.400(d)(1), and provides information about any co-morbidities, risk factors, or other exposures that may have contributed to the illness or condition;

(3) VA makes the clinical finding, under VA clinical practice guidelines, that the illness or condition did not result from a cause other than the residence of the family member at Camp Lejeune;

(4) VA would be authorized to provide the claimed hospital care or medical services to a veteran under VA's medical benefits package in § 17.38;

(5) The Camp Lejeune family member or hospital care or medical service provider has exhausted without success all claims and remedies reasonably available to the family member or provider against a third party, including health-plan contracts; and

(6) Funds were appropriated to implement 38 U.S.C. 1787 in a sufficient amount to permit payment or reimbursement.

(e) *Payment or reimbursement amounts.* Payments or reimbursements under this section will be in amounts determined in accordance with this paragraph (e).

(1) If a third party is partially liable for the claimed hospital care or medical services, then VA will pay or reimburse the lesser of the amount for which the Camp Lejeune family member remains personally liable or the amount for which VA would pay for such care under §§ 17.55 and 17.56.

(2) If VA is the sole payer for hospital care and medical services, then VA will pay or reimburse in accordance with §§ 17.55 and 17.56, as applicable.

(Authority: 38 U.S.C. 1787)

(The information collection requirements have been submitted to OMB and are pending OMB approval.)

[FR Doc. 2014–22635 Filed 9–23–14; 8:45 am]

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FEDERAL REGISTER

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The President

Proclamation 9171—National Employer Support of the Guard and Reserve Week, 2014

Proclamation 9172—National Historically Black Colleges and Universities Week, 2014

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Title 3—

The President

Proclamation 9171 of September 19, 2014

National Employer Support of the Guard and Reserve Week, 2014

By the President of the United States of America

A Proclamation

On the eve of our Nation's birth, a courageous people stood up to the tyranny of an empire and declared their independence. They proclaimed the values of equality and justice and fought a revolution to secure them. In 13 colonies, farmers and tradesmen laid their lives on the line, picked up arms, and answered their new country's call to defend freedom.

Throughout our history, patriotic Americans have always stepped up in our Nation's time of need. It is in this spirit that our National Guard and Reserve members carry forward a proud legacy of service and sacrifice. This week, we honor all those who stand ready to defend our way of life and the families, employers, and communities who support them.

More than 1 million citizen-Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen serve our country in the National Guard and Reserve. They live in our communities and work in our cities and towns. We know them as our teachers, coaches, and doctors—but when a crisis strikes or the strength of our military is needed, they leave the comfort of their civilian lives to protect our Nation. Members of the Guard and Reserve have responded to disasters at home and have served tours of duty in Iraq and Afghanistan.

Our country is grateful to all our Guardsmen and Reservists and the employers who stand behind them and their families. By providing workplace flexibility and helping the advancement of their civilian careers, employers ease the burden on those who serve and their loved ones. And we appreciate all our country's businesses that go above and beyond in small and large ways to recognize our patriots. We know that when it comes to supporting our Nation's heroes, everybody can do something—every business, every school, and every American.

The United States has a profound obligation to care for those who serve in our Armed Forces, and my Administration will keep providing unprecedented support to the members of our military. We have increased access to Federal education benefits for service members and their loved ones and worked to improve our veterans health care system. This year, in conjunction with First Lady Michelle Obama and Dr. Jill Biden's Joining Forces initiative, we launched the Veterans Employment Center, an online tool that connects veterans, transitioning service members, and their families with employers who are seeking to leverage their skills and talents. It is the first Government-wide program to bring career resources and job opportunities together in one place. My Administration will keep engaging all sectors of society to give our military communities the support they have earned.

During National Employer Support of the Guard and Reserve Week, we salute the heroes in our everyday lives. As a Nation, let us renew our commitment to serve the families who represent the best of America as well as they serve us.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim September 21 through September 27, 2014, as National Employer Support of the Guard and Reserve Week. I call upon all Americans to join me in expressing our heartfelt thanks to the members of the National Guard and Reserve and their civilian employers. I also call on State and local officials, private organizations, and all military commanders, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2014–22926
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Presidential Documents

Proclamation 9172 of September 19, 2014

National Historically Black Colleges and Universities Week, 2014

By the President of the United States of America

A Proclamation

For generations, the promise of an education has been a beacon of hope for millions of Americans seeking a better life. At a time when it was deemed illegal for African Americans to learn to read or write, brave men and women took great risks to learn these skills in secret. And after the Civil War, determined individuals made extraordinary sacrifices to establish the institutions we know today as Historically Black Colleges and Universities (HBCUs). These schools waged a war against illiteracy and ignorance and offered a newly free people the opportunity to write their own chapter in the American story. This week, we honor their important legacy and renew our commitment to their spirit: that every person deserves a chance to succeed.

Over more than 150 years, HBCUs have provided students with the tools to meet the challenges of a changing world. These institutions are hubs of opportunity that lift up Americans and instill in their students a sense of who they are and what they can become. Their campuses are engines of economic growth and community service and proven ladders of intergenerational advancement. Across our country, their graduates strengthen our communities, lead our industries, and serve our Nation. And their successes inspire the next cohort of graduates and leaders.

HBCUs have forged pathways to help students overcome barriers to equal opportunity, but more work remains to ensure that a world-class education is within the reach of every person willing to work for it. That is why my Administration is fighting to make college more affordable with larger grants and low-interest loans. We are investing hundreds of millions of dollars in HBCUs, and because half of all students at these schools are the first in their family to attend college, we are supporting programs that help these first-generation scholars succeed. Our goal is to have the highest proportion of college graduates in the world by 2020, and investing in these institutions and their students will play a vital part in meeting it.

Today, because of the work of bold leaders—and of parents and grandparents who never dreamed of going to college themselves but who saved and sacrificed so their children could—more young people have the chance to achieve their greatest potential and full measure of happiness. During National Historically Black Colleges and Universities Week, we recognize the ways these schools have made our Nation more just and we continue our work to make higher education accessible to every child in America.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 21 through September 27, 2014, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.

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